HIGH RISK OFFENDERS BILL 2019

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.05 pm]: I move —

That the bill be now read a second time.

This bill delivers on a McGowan government election commitment to establish a high-risk offenders board and extend the Supreme Court's ability to make a continuing detention order or supervision order to serious violent offenders in the same manner as the provisions contained in the Dangerous Sexual Offenders Act 2006. In doing so, this bill fully preserves the provisions that apply in respect of dangerous sexual offenders in the Dangerous Sexual Offenders Act.

The bill introduces the term "high-risk offender" to expand the current cohort of offenders under the Dangerous Sexual Offenders Act to include offenders who commit serious violent offences and who present an unacceptable risk of reoffending in a like manner, if not subject to a continuing detention order or a supervision order. Clauses 3 and 7 of the bill define the term "high-risk offender", which is the characterisation of the satisfaction that the Supreme Court must arrive at before it imposes a continuing detention order or a supervision order. In order to be considered a high-risk offender, an offender must be a serious offender under custodial sentence.

Clauses 3 and 5 define the term "serious offence", including by reference to schedule 1. Schedule 1 comprises serious sexual offences and violent offences, the majority of which attract a maximum penalty of imprisonment for seven years or more. All serious sexual offences under the Dangerous Sexual Offenders Act and all offences contained in schedule 4 to the Sentence Administration Act for the purposes of a post-sentence supervision order are included in schedule 1 to the bill. Serious offences also include offences against the law of the commonwealth or any place outside Western Australia if the offender's acts or omission that constituted the offence under that law would have constituted a serious offence if they had occurred in Western Australia, as well as prescribed commonwealth offences. Furthermore, to deliver on the election commitment of dealing with offenders who use a firearm in the commission of an offence, an amendment to the Sentencing Act allows a court to declare an offence as a serious offence for the purposes of this bill.

The bill introduces a two-tiered scheme to deal with high-risk offenders. Part 4 of the bill sets out the first tier, which provides for the most stringent control of the highest risk offenders in order to protect the community through continuing detention orders and supervision orders—collectively referred to as restriction orders, as defined in clause 3—made by the Supreme Court. The provisions that govern continuing detention orders and supervision orders have been replicated from part 2, division 2, of the Dangerous Sexual Offenders Act. Parts 4, 5, 6 and 7 of the bill contain the provisions that deal with the application process, disclosure of evidentiary material, making of orders, amending of supervision orders, reviews of continuing detention and appeals and reports used to inform the court, and are largely based on corresponding provisions in the Dangerous Sexual Offenders Act.

In short, in the lead-up to an offender's earliest release date, which could be the date that they are eligible to be released on parole or the end of their term of imprisonment, they will be assessed, based on their risk profile. If the offender's risk profile warrants, the Attorney General may make an application to the Supreme Court for a restriction order. In practice, though, the Attorney General will authorise either the State Solicitor or the Director of Public Prosecutions to make an application or take proceedings under this bill in the name of the state.

The state has the burden to satisfy the Supreme Court, by acceptable and cogent evidence, and to a high degree of probability, that it is necessary to make an order for continuing detention or supervision to ensure adequate protection of the community against an unacceptable risk that the offender will commit a serious offence. A preliminary hearing will be held to decide whether the court is satisfied that there are reasonable grounds for believing that the court might find that the offender is a high-risk offender. If the Supreme Court makes such a finding, the offender will be ordered to undergo examination by a psychiatrist and a qualified psychologist for the purpose of preparing reports to be considered by the court in deciding whether to make a restriction order. The court will also set a date for hearing the application. To account for situations in which an offender may be released from their term of imprisonment prior to the application being decided, the Supreme Court may order that the offender be detained in custody for a stated period or, if the offender is not in custody, order that the offender be detained in custody for a stated period.

When the Supreme Court comes to hear and decide the application, it must have regard to a number of matters outlined in clause 7(3) of the bill. If at this hearing the Supreme Court decides that the offender is a high-risk offender, the court must make either a continuing detention order or a supervision order. A continuing detention order is an order that provides for a high-risk offender to be detained in custody for an indefinite term for control,

care or treatment. There are no changes to the operation or management of continuing detention orders in this bill. Part 5 of the bill ensures that continuing detention orders are reviewed at regular intervals and replicates the provisions of part 3 of the Dangerous Sexual Offenders Act.

A supervision order is an order that requires a high-risk offender to be subject to conditions that the court considers appropriate for a period stated in the order. Matters such as the application process for a supervision order nearing expiry, applications to amend a supervision order and offences associated with the contravention of a supervision order have not changed. However, there are two minor amendments. Firstly, clause 27(3) adjusts the time frame for when a supervision order commences. Currently, a supervision order commences from a stated date, but no earlier than 21 days after the order is made. This amendment provides flexibility on that time frame. Although the default is still 21 days, if the court is satisfied that the implementation of the order is practically feasible, the court may rule that the order commence earlier. This would be only in situations in which representation is made to the court by those responsible for the management and supervision of the offender in the community, and would be influenced by factors such as availability of suitable accommodation. Secondly, clauses 33 and 80 increase two penalties—unlawfully interfering with the operation of an electronic monitoring device, and contravening a supervision order. The current penalties for these offences are imprisonment for 12 months and imprisonment for two years, respectively. Both penalties will be increased to be punishable by imprisonment for three years to reflect the serious nature of these offences.

Part 6 of the bill is modelled on part 4 of the Dangerous Sexual Offenders Act, which provides for an appeal to the Court of Appeal against a decision of the Supreme Court, but now includes a provision to clarify that appeals lie from only final decisions.

The second tier of this scheme comprises post-sentence supervision orders, contained in part 5A of the Sentence Administration Act. Although I will not go into the same level of detail as the Attorney General did in the other place, post-sentence supervision orders, when stripped of provisions that may result in constitutional vulnerability, serve a legitimate purpose for persons who are not at the highest risk of reoffending but still present a significant risk of reoffending if not supervised beyond their term of imprisonment. This bill provides that those offenders who are not subject to a restriction order may still be considered by the Prisoners Review Board for a post-sentence supervision order.

Part 2 of this bill delivers on the McGowan government's election commitment to establish the High Risk (Sexual and Violent) Offenders Board, which will ensure that agencies work closely together when carrying out their serious offender functions. The board will consist of the heads of relevant agencies, or their nominees, with relevant agencies being those involved with the management and oversight of offenders who are subject to an order made under this bill. Provisions contained in this bill also allow for the appointment of community members to the board, as is the case with the Prisoners Review Board. The board will be responsible for a number of important functions associated with high-risk offenders, including: to develop knowledge, understanding, skills and expertise in all aspects of the assessment and management of this cohort of offenders; to facilitate cooperation between, and the coordination of, relevant agencies, including to facilitate information sharing; to develop best practice standards and guidelines for relevant agencies; and to advise relevant agencies on matters such as resourcing, service provision and training.

Part 3 of this bill contains provisions that emphasise the importance of cooperation between agencies that play a role in the management and oversight of offenders who are subject to an order under this bill or those agencies that have information that may assist in the management and oversight of such offenders.

This bill delivers on the McGowan government's election commitment to deal with those offenders for which the community expects the strongest response from government and maintains our legacy to protect the Western Australian community, especially the most vulnerable, from sexual and violent offenders.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2924.]

Debate adjourned, pursuant to standing orders.

House adjourned at 10.15 pm