

CRIMINAL LAW AMENDMENT (HOMICIDE) BILL 2008

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Minister for Child Protection) [5.09 pm]: I move —

That the bill be now read a second time.

This bill introduces significant reforms to the law of homicide in accordance with the recommendations of the Law Reform Commission, in its comprehensive “Final Report: Review of the Law of Homicide”. Western Australia is the only state in Australia that currently has separate offences for wilful murder and murder. This bill will consolidate the crime of wilful murder into the crime of murder. The new, amalgamated offence will provide that the intent required to establish murder must be either an intent to kill, an intent to cause bodily injury likely to endanger human life, or the prosecution of an unlawful purpose likely to endanger human life. The consolidated crime of murder will now carry a presumptive penalty of life imprisonment with a minimum non-parole period of 10 years and no maximum non-parole period. Courts will also be able to impose a whole-of-life sentence upon all murderers. Such sentences are currently only available when a person is guilty of wilful murder. The new sentencing regime for murder will provide the court with the discretion to impose a penalty of up to 20 years’ imprisonment for cases in which a term of life imprisonment would be clearly unjust and the offender is unlikely to be a threat to the safety of the community when released from imprisonment. The court is required to give written reasons explaining why life imprisonment was not imposed. This will give courts greater sentencing discretion when dealing with cases such as mercy killings, infanticide and battered spouses.

New offences—one-punch homicide and dangerous driving of a conveyance: The bill introduces a new offence of unlawful assault causing death to address the so-called one-punch homicide cases. These are cases in which a person who is punched falls to the ground and suffers a blow to the head from hitting the ground and dies. Western Australia will be the first state in Australia to introduce legislation that creates an offence to deal specifically with this issue. Under the new offence it will be irrelevant whether the death was foreseen or foreseeable, and it will also be irrelevant that the death was unintended. The offence will be committed when a person unlawfully assaults another person who dies as a direct or indirect result of the assault. This new offence reinforces community expectations that violent attacks, such as a blow to the head, are not acceptable behaviour and will ensure that people are held accountable for the full consequences of their violent behaviour. A person convicted of this offence will be liable to a penalty of 10 years’ imprisonment. A new offence will also be created to cover dangerous driving of conveyances other than motor vehicles. An offence will be committed when a person who, for example, pilots an aircraft dangerously or navigates a vessel dangerously and is involved in an incident and a person is directly or indirectly killed or suffers grievous bodily harm as a result. The penalties for this offence will be 10 years’ imprisonment in the case of death and seven years’ imprisonment in the case of grievous bodily harm.

Dangerous driving: This bill will amend the maximum penalties for dangerous driving causing death and dangerous driving causing grievous bodily harm, in line with the penalties for culpable driving of a conveyance, to 10 years’ imprisonment for death and seven years’ imprisonment for grievous bodily harm.

Alternative verdicts: This bill will also provide for offences to be automatic alternative charges. The inclusion of alternative offences is intended to overcome difficulties that may arise if, for example, a person is charged with murder and a jury does not consider that there is enough evidence to convict the offender of that charge. This will rectify the present anomaly that has led to persons escaping liability despite their clear involvement in the death of another.

Infanticide: This bill will also repeal the old-fashioned offence of infanticide from the Criminal Code, which is a specific crime relating to mothers who kill their babies. The Law Reform Commission recommended that infanticide be repealed and that the crime be subsumed under the crime of murder. A mother genuinely incapacitated by a mental illness will be able to raise the defence of insanity. The changes made in this bill to the sentencing options for murder, which I outlined before, give the courts greater sentencing discretion to allow them to deal appropriately with exceptional cases such as infanticide.

Repeal of defence of provocation: The bill will abolish the partial defence of provocation. Under the current section 281 of the Criminal Code, a person who kills another in circumstances that would constitute wilful murder or murder is guilty only of manslaughter if the person acted “in the heat of passion caused by a sudden provocation before there is time for his passion to cool”. If an offender was provoked by the victim, it is

considered that this, as well as any other relevant circumstance, is most appropriately taken into account when sentencing the offender. Therefore the partial defence of provocation is repealed.

Self-defence: A new self-defence provision is inserted into section 248 of the Criminal Code by this bill. The self-defence provision contains concepts that are new to the law of Western Australia. The test for whether an act is done in self-defence will follow the example of the model Criminal Code. It incorporates a subjective element of whether the person believes on reasonable grounds that the act of self-defence is necessary and an objective element of whether the force used was reasonable in the circumstances that the accused believed on reasonable grounds existed at the time. Similar tests will apply to the newly framed defences of emergency and duress in the proposed new sections 25 and 32 respectively. The new tests are intended to simplify and clarify the law of self-defence. Another important change contained in this bill is that the harmful act that the person believes it is necessary to act against in self-defence will not have to be imminent. By providing that the threat need not be imminent, the defence will more readily apply to women who are the victims of domestic violence in the so-called "battered spouse" situation. It will still be necessary for persons to show that there are reasonable grounds for the person's belief that the act of self-defence was necessary and that the force used must be objectively reasonable in the circumstances the person believed to exist. It is not expected that this provision will apply to situations in which it would be reasonable for the person to take other steps, such as going to the police or escaping from the harmful situation.

New partial defence of excessive self-defence: The bill will introduce a new partial defence of excessive self-defence. A person who kills another person under circumstances of excessive self-defence will be found guilty of manslaughter rather than murder. The defence will apply in circumstances in which a person genuinely believes that it is necessary to act in self-defence but the amount of force used is not objectively reasonable and the use of that force results in death. It is anticipated that this provision will also result in more offenders pleading guilty, therefore reducing the number of trials.

Defence against home invasion: This bill will amend the defence against home invasion found in section 244 of the Criminal Code. This amendment will not affect an occupant's right to use lethal force when the occupant reasonably believes that violence is likely or is threatened.

Other amendments: Section 23 of the Criminal Code is separated into its three constituent parts in order to clarify its meanings. In addition, the egg-shell skull rule is incorporated into the Criminal Code. Under that common law principle, a person is not excused from criminal responsibility for causing death or grievous bodily harm by a direct application of force merely because the victim had an unforeseeable abnormality, defect or weakness. In the case of duress, there will be exceptions when the person is voluntarily associating with the person making the threat and when the association is for the purpose of doing the act or making the omission that creates the offence or when the association is for an unlawful purpose in which it is likely that such a threat would be made. Thus, for example, a person who joins in a bank robbery would not be able to rely on the defence of duress if an accomplice threatened to shoot the person if he or she did not harm a bank teller.

Other areas for review: The Law Reform Commission has made recommendations for more detailed reviews of some areas of law. For example, it has recommended that a review be conducted of cases involving the amendments to sections 59 and 59B of the Road Traffic Act 1974 to determine whether amendments made to those sections in 2004 have operated unfairly to any accused. In another recommendation, the Law Reform Commission suggested that an inquiry be established to look into the difficult area of euthanasia and suicide pacts and how the law should respond to these killings. While these recommendations are not the subject of any clauses in this bill, the government will carry out such reviews and inquiries in due course.

This bill provides yet another step in the government's reform of the criminal justice system in Western Australia in line with the government's tough-on-crime policy. I commend this bill to the house.

Debate adjourned, pursuant to standing orders.