SENTENCING LEGISLATION AMENDMENT BILL 2016

First Reading

Bill read a first time on motion by **Mrs L.M. Harvey (Minister for Police)**.

Explanatory memorandum presented by the minister.

Second Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [11.21 am]: I move —

That the bill be now read a second time.

This bill consolidates a number of amendments to sentencing legislation. It implements an election commitment to provide stricter supervision of certain serious and violent offenders; it implements amendments informed by the findings of the statutory review of the Sentencing Act 1995; and it seeks to respond to two issues raised as a result of Western Australian Court of Appeal decisions.

I will introduce the bill by dealing first with elements that will have the greatest impact on the state's criminal justice system. Part 3 of the bill implements a Liberal–National government election commitment targeting serious violent offenders, domestic violence offenders and serial arsonists under a new post-sentence supervision order. This allows seriously violent criminals to be supervised in the community for a period of two years following completion of their sentence. It includes a number of standard obligations and may include a number of additional requirements the Prisoners Review Board thinks fit, including a direction that an offender wears a global positioning system tracking device. The offences that determine a serious violent offender are outlined in a new schedule 4 to the Sentence Administration Act 2003, which includes the offences of manslaughter, unlawful assault causing death, grievous bodily harm, robbery, arson and a number of sexual offences. The court may also declare any indictable offence carrying a penalty of imprisonment to be a serious violent offence where the offence involved serious violence or resulted in serious harm or death, particularly in domestic violence circumstances, as defined in the bill. Post-sentence supervision orders will not replace the existing legislative provisions in Western Australia that relate to dangerous sexual offenders. Sex offenders under sentence for a serious sexual offence will continue to be considered for a continuing detention order or a supervision order under the Dangerous Sexual Offenders Act 2006.

In the Attorney General's statement to Parliament in 2013, it was made clear that, since 1995, and with some amendments along the way, the Sentencing Act introduced by the Liberal government in 1995 has served the state well for over 20 years. But, like most human endeavour, there is always room for improvement, and part 4 of the bill I introduce today does that. Division 3 of part 4 of the bill introduces a suspended fine as a direct alternative to a fine. This allows a court to impose a fine and suspend it for a period of up to 24 months, after which, if the offender commits no further offences during the period of suspension, the fine will be discharged.

The definition of a victim is significantly broadened for the purposes of making a victim impact statement and takes into account the complex family structures of Aboriginal and Torres Strait Islander people. Also, the definition of personal harm is expanded to mean psychological or psychiatric harm, in addition to bodily harm. The bill also ensures that, in all cases, a copy of the victim impact statement will be given to the Prisoners Review Board.

Amendments in the bill enhance the current conditional release order, providing the court with the ability to offer the offender attendance at a rehabilitation program or unpaid community work as an alternative to a fine. The court will have discretion to set no undertaking, a monetary undertaking, or require the offender to deposit money with the court to secure their good behaviour for up to 24 months. Under the enhanced conditional release orders, the offender will be given a log book, in which the required number of hours to be worked or attended will be signed off by the activity manager. Minor changes to terms such as "parole eligibility order", "written reasons" and "prescribed" are effected in the bill, as are minor changes to the time periods for pre-sentence reports.

Another important policy initiative of the government, that of a partially suspended imprisonment sentence, is also introduced by the bill. The concept of conditional suspended sentences was introduced in 2004 and has proved effective. The concept of partially suspended sentences, which, of course, can be made conditional, fills a gap and allows the court to signal to the offender that a short period of immediate imprisonment is necessary whilst the balance can be suspended on conditions. The bill returns the minimum term of imprisonment to three months, from six months, following evidence of "sentence creep", where the same number of people were jailed, but for longer. The bill addresses how time spent in custody on remand is dealt with by the courts, particularly in circumstances where the offender was on bail for some of the time on remand and/or where the offender may have spent time in custody on remand for another offence. Eligibility for parole is clarified by the bill by

providing that the date set by the court is the earliest date on which parole may be considered, making clear to both offenders and the public that when an offender reaches his or her parole eligibility date there is to be no expectation that the offender will be released on that day. The bill describes the functions of speciality courts, which have all operated without specific legislation, particularly with regard to empowering the court to order the reappearance of the offender simply to check on compliance with a community order.

The bill makes two amendments following decisions of the Western Australian Court of Appeal. The first clarifies that where a superior court, on a plea of guilty by the accused, is required to determine in proceedings under the Sentencing Act whether the offence was committed in circumstances of aggravation, that determination is one of fact to be decided by a judge alone, and not by verdict of a jury. The second addresses the situation where provisions relating to re-socialisation programs under section 13 of the Sentence Administration Act 2003 did not apply to prisoners sentenced before the commencement on 4 November 1996 of the Sentence Administration Act 1995. The bill makes amendments to assist the Prisoners Review Board meet its reporting obligations, allowing it to report on individual prisoners of its own accord, whenever it thinks fit, rather than whenever it considers there are special circumstances for doing so. It also allows the Prisoners Review Board to combine the reviews of all sentences for an individual prisoner.

This bill proposes to strike a balance in sentencing between protecting the community from serious violence offenders, often repeat offenders, and in this joins other government initiatives such as the recent Criminal Law Amendment (Burglary and Other Offences) Act 2015 aimed at achieving this goal; and providing more sentencing options for the courts in dealing with the vast majority of cases that come before the courts which are generally of a much less serious nature and in this state involve an over-representation of Aboriginal people. I commend the bill to the house.

Debate adjourned, on motion by **Ms S.F. McGurk**.