

SENTENCING AMENDMENT BILL 2014

Introduction and First Reading

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

Explanatory memorandum presented by the minister.

Second Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.14 pm]: I move —

That the bill be now read a second time.

The Sentencing Amendment Bill 2014, which I introduce to the house today, will resolve an anomaly in Western Australian sentencing legislation that has been found to avert the proper operation of laws that allow for the transfer of prisoners from interstate prisons. In Australia, a national transfer scheme allows prisoners to transfer interstate for welfare reasons. Until recently, it was understood that prisoners who transferred under the Prisoners (Interstate Transfer) Act 1983 would stand in the same position after transfer as they did before the transfer. These prisoners would maintain their original sentences, including the set minimum parole periods, made by courts in the original jurisdiction. However, it was recently found that due to the operation of section 93(1) of the Sentencing Act 1995, the Prisoners Review Board did not have the legislative authority to grant parole to interstate prisoners in cases in which that parole period exceeded two years. This was brought to the government's attention in the case of Mr Joseph Dino Diano.

Mr Diano was sentenced in Queensland on 12 May 2010 to seven years' imprisonment with eligibility for parole to be made available on 12 May 2013. Early in 2013, Mr Diano was transferred to Western Australia under the prisoners transfer act. Mr Diano was released from custody on 15 May 2013 on the basis of his original sentence that made him eligible for parole. However, on 15 October 2013, Mr Diano was advised that his parole had been cancelled and a warrant issued for his arrest because on review of its decision the PRB found that it did not have the authority to make a parole order relating to Mr Diano until 2015 due to the conditions set by section 93(1) of the Sentencing Act 1995.

On 5 March 2014, the Western Australian Supreme Court of Appeal delivered its finding in the case of *Re Cock; Ex parte Diano* [2014] WASC 63 and confirmed the PRB's view that the operation of section 93(1) of the Sentencing Act 1995 meant that prisoners like Mr Diano would not be eligible for parole in WA, despite the intent of the prisoners transfer act. Under section 26 of the prisoners transfer act, Western Australia has accepted prisoners from other states over many years on the premise that interstate prisoners' sentences will remain the same as provided under section 26. Until 2013, the PRB had continued to operate under this premise and considered the release of these prisoners at their earliest eligible date. Thus, the proposed amendment to the Sentencing Act 1995, by the Sentencing Amendment Bill 2014, will match the legislation with what has been the custom and practice within WA for many years.

I am informed that there are currently seven other interstate prisoners who could be adversely affected in the same way as Mr Diano and, therefore, there is a pressing need to amend the Sentencing Act 1995 to ensure that these prisoners are treated with the fairness that was meant to be afforded to them under the national transfer scheme. The Attorney General has worked closely with the Minister for Corrective Services, as the minister responsible for prisons in Western Australia, to develop this bill to recognise the original court's sentences of these prisoners who have transferred from other states and territories.

The bill before us ensures the smooth operation and legislative consistency between three acts: the Sentencing Act 1995; the Prisoners (Interstate Transfer) Act 1983; and the Sentence Administration Act 2003. In doing so, it ensures that prisoners with translated sentences from other states and territories may be considered for parole eligibility at the time determined by the original court in the prisoner's original sentence.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.