PRISONERS (INTERSTATE TRANSFER) AMENDMENT BILL 2009

Second Reading

Resumed from 31 March.

MR P. PAPALIA (Warnbro) [12.24 pm]: I rise to address this Prisoners (Interstate Transfer) Amendment Bill, which, like the previous legislation, was introduced into Parliament by the previous government. It amends the Prisoners (Interstate Transfer) Act 1983 by introducing nationally agreed protocols for a range of factors taken into account when a transfer of prisoners is requested. I understand that the resolution on these changes passed at the national level in 2004. Although there have been some minor amendments due to drafting style changes, it is substantially the same legislation that was introduced in the previous Parliament but lapsed at the time of the last election.

Changes proposed by this bill will effectively reduce the emphasis on prisoners' welfare in a range of factors that the minister may have regard to when considering a request for the transfer of a prisoner. It expands the range of factors to include the welfare of the prisoner or person concerned, so that is still there. However, the factors also include the administration of justice in this or any other state; the security and good order of any prison in this or any other state; the safe custody of the prisoner or person concerned; the protection of the community in this or any other state; and any other matter the minister considers relevant. I understand that essentially the bill provides more guidance regarding not only who is eligible for transfer, but also who can be refused transfer under this legislation. Again, the number of prisoners affected is relatively small. I have been told by the Department of Corrective Services that in 2007 only one prisoner was transferred in and one was transferred out, and in 2008 it was one in and two out. However, currently 22 applications are pending in the system for transfer on welfare grounds. I received a briefing from the department, which indicated to me that this bill will have a lot of application to Indigenous prisoners who may be incarcerated in the Northern Territory, by giving them the ability to move back closer to their country in the north-west of the state. I understand that three such prisoners have just been brought back from the Northern Territory recently and possibly two more are waiting. That indicates that it is very apt legislation for the house to be passing. Those transfers may have been achieved under the previous legislation, but if this bill facilitates them in any way, I and the opposition will be very supportive of it.

In light of the many amendments to the bill that have been made in regard to my concerns and the concerns the opposition holds about the disproportionate representation of Indigenous prisoners in our prison system, any effort that can be made to move prisoners back to their country, in accordance with the recommendations of the Mahoney review and also the review of the Inspector of Custodial Services of the same time, will be welcome. Those reviews identified the need to house Indigenous and non-Indigenous prisoners as close as possible to their support mechanisms. In the case of Indigenous prisoners, the importance of being close to country and being in country was clearly identified as an essential component of any hope that we have of achieving good outcomes for Indigenous prisoners and of possibly targeting the outrageous disproportionate representation in prisons of Indigenous prisoners.

I understand that, unfortunately, we have lagged a little in enacting this change to the legislation, and that all other states and territories, with the exception of the Northern Territory—ironically where these prisoners have recently come from—have already enacted this agreed legislation. Nevertheless, it is better that we do it as fast as possible now. I urge the minister to ensure that the bill passes through the other place as quickly as possible; the opposition will certainly support that. As I said, this is essentially the same legislation that we introduced in 2007 and we are fully supportive of any measure that the government can undertake to facilitate some measure to tackle the disproportionate representation of Aboriginal prisoners in prisons. This issue is not the only measure the bill deals with but it may in some small way assist, and I therefore urge the government to pass the bill through the other place as quickly as possible.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.C. PORTER (Bateman — Minister for Corrective Services) [12.29 pm]: I move —

That the bill be now read a third time.

MR M. McGOWAN (Rockingham) [12.29 pm]: Mr Speaker, I do not have —

Mr R.F. Johnson: The member never had much to say on the previous one!

Mr M. McGOWAN: I had a lot to say on the previous bill. I can talk at length, if the member would like!

Several members interjected.

The SPEAKER: Order, members!

Mr M. McGOWAN: If I could be heard in silence, it would be appreciated.

The SPEAKER: That is an interesting question, member for Rockingham.

Mr M. McGOWAN: I simply want to make a straightforward procedural point; that is, to point out to the Minister for Corrective Services that in summing up the second reading stage of a bill, it is traditional for the relevant minister to address the comments made in relation to the legislation. I did not hear the minister do so, and I hope that he will use the third reading stage to address the comments made, as is the tradition. It is not simply a matter of politeness; I think what the relevant minister has to say about the commentary provided is a matter of record. I realise that the member for Warnbro did not have a lot to say and I realise that I probably have even less to say about the Prisoners (Interstate Transfer) Amendment Bill 2009, but it is still appropriate for the minister to comment on it, given that the first minister to deal with this legislation was, I assume, the recently departed member for Fremantle or —

Mr R.F. Johnson: No, it was the member for Girrawheen.

Mr M. McGOWAN: The member for Girrawheen—in any event, I am sure that the minister will no doubt have a few words to say about the bill and I offer him that opportunity.

MR C.C. PORTER (Bateman — Minister for Corrective Services) [12.30 pm] — in reply: I thank the member for Rockingham for his acute interest in procedure and for his swiftness in correcting me when I fail in that regard. This was a failing; it certainly was not intentional. I am still coming to grips with some of the finer points of procedure. I also thank the member for Rockingham for contributing to the third reading debate on the Prisoners (Interstate Transfer) Amendment Bill 2009 so that I could have the opportunity to speak briefly to a few points raised by the member for Warnbro.

I agree with the member for Warnbro that this is good legislation. My observation, in the very short time that I have been considering those matters in my position as minister, is that it is quite remarkable that as a government and as a minister we have limited the decision-making process to the word "welfare" and welfare of the prisoner. As the member pointed out, it seems to me in my observation that there are two types of transfer that occur. They are largely, for want of a better word, "rudimentary" transfers and the member mentioned many involving Indigenous prisoners who have committed an offence across the border, in the Northern Territory for instance, when they might usually have been domiciled in Western Australia. In those circumstances, at times it seems to me that the decision-making process involves some stretch, expansion or strain on the interpretation of "welfare" to ensure that the right outcome occurs because it may be that there is some convenient, procedural or other reason for doing this. However, strictly speaking, on a balance of probabilities, it is a very difficult thing to categorise many of those transfers as welfare transfers. I think some of those rudimentary transfers will be able to be more clearly delineated under some of the other heads of discretion that are now being added into the act.

It seems to me that there are also, though I have not necessarily yet encountered them, some very complicated matters that will arise, whereby people will seek to transfer their sentence to another jurisdiction for reasons that are complicated. The considerations that a minister may wish to take into account will also be complicated. I think that in those circumstances, again, it might be a tendency of relevant ministers to stretch the definition of "welfare" so that a greater relevance in this area can be brought to bear to make a decision in many cases not to allow transfer. It seems to me that this at least promotes detail and honesty in the decision-making process, rather than creating a situation in which there is a tendency, if a minister wants to do something that might not necessarily be justifiable on welfare grounds or refuses to do something that might not be justifiably refused on welfare grounds, to stretch the definition of "welfare". Therefore, I think in that sense it is very good legislation, and it surprises me, in fact, that prior to this time, welfare was only ever a limiting criteria. I thank the member for his contribution to the debate.

Question put and passed.

Bill read a third time and passed.