

SENTENCING LEGISLATION (TRANSITIONAL PROVISIONS) AMENDMENT BILL 2008

Second Reading

Resumed from an earlier stage of the sitting.

MR J.R. QUIGLEY (Mindarie) [2.47 pm]: I will recount the comments I made before question time. I pointed out that the term “truth in sentencing” is a misnomer; the only truth is to be found in the sentence handed down by the judge. I also canvassed the attraction of attending upon the court to find out whether the mere repeal would have sufficed, and the objections at two levels to that course of action—the question of the separation of powers, and the fact that, in any event, the Chief Justice could not bind the Court of Appeal and his fellow justices on an appropriate way forward. During question time—I hope this does not drive the Attorney General onto the defensive—the Premier pointed the finger at this side of the chamber and said that the previous Labor government completely mucked-up truth in sentencing, and that it was our fault. I get a sense from the Attorney General that it is not his position that a particular party—Labor or Liberal—has erred in its approach to sentencing reform rather than the fact that, after the best efforts of this chamber, a court gave a legal construction to the legislation that took the members of this chamber somewhat by surprise. I did not hear howls of accusation between 2003 and 2008 accusing the previous Labor government of having mucked it up. This accusation is *ex post facto*. Some members of the government of today have read the decision in *Yates* and decided that the former government “mucked it up”. That is not the case. Nor is it the case today that we could point at the Attorney General and say that he has mucked up the reforms. However, in the fullness of time the government might revisit these reforms, as suggested by my learned colleague the member for Victoria Park. As the Director of Public Prosecutions pointed out in the briefing yesterday, the decision in *Yates* is still good law. This legislation does not specifically set aside any element of *Yates*, other than to say that the court will not start with a one-third discount.

[Member’s time extended.]

Mr J.R. QUIGLEY: In a worst-case manslaughter, the sentence in *Yates* might find itself reflected in other cases with judges saying, “*Yates* got this, and now I’ve got a case of multiple beatings of another infant which has led to death.”

Clause 4 of the bill, which will insert new section 3A(3), reads —

A court sentencing an offender to a fixed term can have regard to the minimum custodial period of the fixed term to be imposed and the minimum custodial periods of fixed terms imposed before the relevant commencement, whether or not clause 2 applied to their imposition.

That means that a judge can have regard to the sentence and outcome in *Yates*’s case when considering the overall justice of a sentence imposed on an offender in the future. It is agreed that by reason of section 7 of the Sentencing Act, to which I referred immediately before question time, the judge can consider aggravating circumstances and the prescribed maximum sentence when striking the sentence, and then have regard to clause 4, which will become section 3A(3) of the Sentencing Legislation (Transitional Provisions) Amendment Act. This could then apply downward pressure on sentencing, which is not intended by this legislation. I am saying that it could. That is not the intention of the government or the Attorney General, because the clear intention is laid out in the penultimate paragraph on page 17 of the Attorney General’s second reading speech. It states that the clear intent and purpose of this legislation is that if an offender such as Farmer is sentenced after this legislation comes into effect, it will be open to the judge to use the maximum penalty of 20 years’ imprisonment as the starting point of the sentence, and the judge would not be obliged to apply a one-third reduction to that sentence. That is agreed. However, there would be a body of precedent cases in which sentences have already been struck that may cause downward pressure on sentences. I believe that it was for that reason that the Director of Public Prosecutions at the briefing expressed his concern that the amendments to the sentencing legislation contained in this bill do not specifically or by legislative warrant set aside any and all of the principles in *Yates*. They do not override those principles expressly, nor does the legislation expressly say that the sentencing judge must start with the maximum sentence in the worst case. Those principles may well be available, but the legislation needs legislative warrant that it will be the starting point in the worst case and that it is not for the court to consider a tariff, because if we go back to a tariff, *Yates* would be part of that tariff.

I have never been in opposition before, and as an opposition member I am unsure of the protocol in dealing with briefings. I do not want to breach any confidence communicated in those briefings, but I believe I am at one with the Attorney General in predicting the effect this legislation will have on the prison population. I say that, bearing in mind that the Attorney General does not want the general prison population to increase. However, in cases in which head sentences—had there been no impediment in the legislation—would have been more than two-thirds of the maxima, he would not want a head sentence to be brought down by an immediate one-third discount, although there will be a small number of cases in which the sentence will increase.

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

My friends have referred to a question that we asked at the briefing. We were presented with a spreadsheet showing the prediction of bands of sentences for which a term might be increased, which indicated that they would increase mostly in the middle band. I was at a bit of a loss to understand the bow in the increase in sentences, although the Attorney General explained it to me as he understood it. I am not poking fun at him by saying that, because I am very aware of where predictive charts and predictions all might go. Sentencing is as we want it to be: a discretionary exercise that reflects not only the seriousness of offences, but also the seriousness with which judges view offences in the context of the facts that are placed before them on a given day. I am therefore very sceptical about the mathematical calculations for predicting the costs and outcomes of a range of sentences of the type put forward by the Attorney General, because they can turn on the sentencing patterns of particular judges. I will not refer to the superior courts, but it was well known in my day in the Magistrates Court during the 1970s and 1980s that some magistrates had a far stiffer approach to sentencing than other magistrates. I recall entering into magistrate shopping—getting remands until we got a magistrate who was predicted to be more compassionate or easier to deal with in striking a sentence. I do not make any criticism of all of that, other than to say that in a de facto way it acknowledged that there were differences between magistrates. We need end up only with a stiff sentencing judge who has before him the worst type of offences and offenders to see how the statistics can be dragged out and where all of this might go.

In seeking to comment on this legislation, I do not place much emphasis on the cost of this provision to the state and on how many extra years offenders might spend in jails. That is not what the community is concerned with when we seek to effect these amendments. The outcome is the outcome. Rather, the public wants the legislation to provide clarity. If this legislation must come back before the chamber in the future, I will not say, “I told you so”, because no-one knows what its effect will be. The Attorney General and the government are doing what they believe is required. The provisions of the Sentencing Legislation (Transitional Provisions) Amendment Bill 2008 can be read in conjunction with sections 7 and 8 of the Sentencing Act. Section 7 deals with the aggravating factors and certain circumstances and section 8 deals with mitigating factors that a judge must take into account when striking the head sentence. The opposition and I believe that to provide certainty and clarity, clause 4 could have provided a legislative warrant for the power to award the maximum penalty and a legislative expression overturning some of the approaches adopted by the court in the Yates decision that would not require either the courts, the community or the Attorney General to refer to his second reading speech in order to state what the government’s intention was at the time these amendments were passed.

I support the legislation. In his second reading speech, the Attorney General referred to the Markarian case in the High Court in which the inadequate sentencing, whether it was either too lenient or severe, risked undermining the public’s confidence in the administration of justice. I think that has happened since the Yates decision was handed down, when the courts decided that the transitional arrangements apply across the board and that the approach to be taken is for judges to issue a mandated one-third discount in all cases. Therefore, the maximum penalty is never available because the penalty is automatically reduced by one-third. We have dealt with the concerns of His Honour Justice Eric Michael Heenan in the Farmer case and The Hon Judge Peter Nisbet from the District Court. I am having a senior’s moment and am forgetting the name of the relevant case —

Mr C.C. Porter: Bropho.

Mr J.R. QUIGLEY: I thank the Attorney General. I commend the legislation to the house. I hope it is passed very swiftly, but I would like it to be further beefed up by amendment.

MR P. PAPALIA (Warnbro) [3.04 pm]: I rise with some trepidation to address the Sentencing Legislation (Transitional Provisions) Amendment Bill 2008, not only because I am the only member who has spoken on the bill who does not have a law degree or any practical experience in the law, but also because I feel that my focus will be at odds with much of the discussion that has taken place to date. It certainly will be at odds with the popular and the populist view of this legislation. Although I support penalties being applied that reflect the nature and seriousness of crimes and society’s concerns about the discrepancies of sentences that have been handed down both recently and in the past, my concerns regarding this legislation, the nature of the debate and the way the Attorney General has gone about distributing information about this legislation focus primarily on the impact the corrective services system has on the people in that system. The member for Girrawheen said earlier that she also has concerns about that impact.

Now that I am the shadow Minister for Corrective Services, I am very concerned about the potential impact of this legislation. A couple of weeks ago during the Address-in-Reply debate, I told the Attorney General that I found it disturbing that he was reported in *The Australian* of 17 October to have said that he did not consider Indigenous justice issues or a focus on programs and initiatives to tackle Indigenous justice issues to be at the top of his list of priorities. I said at the time that I considered him to be an intelligent and capable man both prior to and since his appointment to the position of Attorney General. I stated that I thought that might have been an early observation and I hoped he might have shifted his view since then. I had felt quite positive that he and I were moving the narrative together. The Attorney General had indicated his willingness to consider establishing

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

work camps on a larger scale than previously was the case and other initiatives that were focused on reducing the overall prison population rather than continuing down the path that I will admit both sides of politics have pursued for a long time, which is endeavouring to prove that each is the toughest on crime, thereby increasing the prison population at the greatest rate they can. That approach has not resulted in people feeling safer, but it has resulted in the prison population growing dramatically and continuing to grow by about 100 people to 150 people a year. The demands on the state to finance the prison system will continue to grow at an incredible rate if we continue along that path and take the same approach. I fear that the focus on sentencing reflecting the nature of the crime and more properly reflecting what society expects may be overshadowing the very real need to attempt a different approach to try to tackle the ever-growing number of prisoners.

As I stated in the Address-in-Reply debate, I am particularly concerned about the disproportionate representation of Indigenous people in our prison system. It is unacceptable that 40 per cent or more of the prison population comprises Indigenous people, despite Indigenous people representing only 2.3 per cent of the state's population. Analysis from the Australian Institute of Criminology in August this year shows that Indigenous prisoners around the country are twice as likely to be readmitted to prison in two years and are more than twice as likely to return to prison for assault. That suggests to me, without any benefit of the modelling which has undoubtedly been done and which has been referred to today, that this legislation will potentially disproportionately impact on the Indigenous population. Already they are disproportionately represented in the prison system, but I feel and I fear that this legislation may increase that prejudice in many ways, and we may find that, rather than tackling the problem, we are actually expanding it dramatically and delaying focus on solving the real problem.

I reiterate the statement I made in my Address-in-Reply contribution. I commend the Attorney General for the initiatives he has taken in this part of the corrective services challenge. I wholeheartedly support his engagement with the Australian Employment Covenant, and any other initiatives that seek to provide vocational training in prison and post-prison to ensure that we can cut recidivism rates, particularly in the case of Aboriginal prisoners. I urge the Attorney General not to lose sight of the positive approach he indicated in response to my Address-in-Reply speech.

The ACTING SPEAKER (Mr P.B. Watson): Members for Riverton and Carine, when you come into the chamber, you are required to acknowledge the Chair. I know that you are new members, and that this is fairly easy to forget. You can be called to order for not acknowledging the Chair, but I realise that you are new to the chamber.

MR C.C. PORTER (Bateman — Attorney General) [3.11 pm] — in reply: I thank all members for their contributions. No doubt some of the issues raised by members will be raised again during consideration in detail. With respect to the costing, I am happy to talk ad infinitum during consideration in detail about the methodology; in fact, it interests me greatly. However, I will not give the ultimate result of that methodology because that is a cabinet document. In effect, it has been before cabinet and has formed the basis of the government's planning for a capital infrastructure program for prisons. No doubt the other issues will be addressed piece by piece during consideration in detail. I will have something to say about the issues with respect to my own press release some time ago. I take on board what was said by the members for Fremantle and Victoria Park about those.

This is a very important afternoon for this Parliament. This is a problem that successive governments have had in trying to deal with this issue. Nothing I have heard in any of the advice I have received on this matter—I have received legions of advice—leads me or the people who have given me the advice to anything other than the view that this legislation will achieve what it sets out to do; that is, for the first time in a long time in this jurisdiction, make the legislated statutory maximum sentence available. I will not hold this chamber's deliberations up any further.

Mr M. McGowan: It is traditional for a minister to respond in his closing speech to the major issues that have been raised during the second reading debate. I know you have said that these can be raised during consideration in detail, but what you say now often colours what is said during consideration in detail, and whether you answer the questions that were posed at this point.

Mr C.C. PORTER: I think there were three major issues, and I have summarised each of them. There were some troubles with my press release, and we will no doubt talk about those during consideration in detail. Having re-read it, I can see that there was a level of inaccuracy in it.

Mr B.S. Wyatt: The trouble was that it was false.

Mr C.C. PORTER: That is not far from the mark, quite frankly. To the extent that it is false, no-one is more disappointed than me about that. That press release said at the beginning that this is the first step, and then it refers to the legislation. That creates the impression that this piece of legislation contains the other two dot

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

points, which it clearly does not. I accept that that press release was sloppy. The member for Fremantle was quoting from his own press release, but I notice that he did not give us the title of it.

Mr J.A. McGinty: It is on the web. I can give you a copy if you want.

Mr C.C. PORTER: I know what it is.

An enormous amount of advice has come through from a variety of people. We will no doubt have the opportunity to speak in consideration in detail about what the member for Fremantle regards as some of the advice that he received recently and when he was Attorney General. Again, all the advice I have received is to the effect that this legislation will achieve what it sets out to achieve; that is, make the maximum penalty available in these circumstances. No doubt further questions will be asked about costings, and I am happy to talk about that ad infinitum.

Mr J.A. McGinty: That is not what Robert Cock told me yesterday, at the briefing we had.

Mr C.C. PORTER: We will go into that during consideration in detail. Two of the four points raised by the member for Fremantle express concerns that I have always shared about this legislation. They are generic concerns about the legislation. I must say that I do not understand the fourth point raised by the member for Fremantle in his interpretation of what the Director of Public Prosecutions said yesterday, but no doubt we will have the opportunity to discuss that during consideration in detail. To the extent that there is any possibility that the Yates decision might still have applicability into the future, all the best advice I have is that that cannot be the case, because the basis upon which Yates was decided will be entirely removed. All I can say is that the member's characterisation of that advice does not perfectly accord with my view about what it was. Indeed, it was slightly different from the view of the member for Girrawheen. It is also incredibly unhelpful in matters of this complexity to go into "he said-she said" arguments about the content, tone or substance of views. No doubt the member for Fremantle will be asking questions, but I will take on the four points he attributed to the DPP. I will accept them as his views, and we will deal with each in turn during consideration in detail.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Schedule 1 clause 3A inserted —

Mr J.A. McGINTY: Can the Attorney General advise the house of the impact of these changes on the prison population, and the cost? Can the Attorney General also advise whether any money has been allocated by cabinet for this measure; and, if so, how much? Can the Attorney General also explain to us the seven models that he has spoken about in this house but has so far not provided any detail about?

Mr C.C. PORTER: I will start with the modelling that has been done. The member for Girrawheen has said that some basic modelling was done when this legislation—or the former government's version of it—was in contemplation. As I said in my response just now, I am very pleased that there has been talk about how we have structured that modelling and how the methodology has progressed. We looked at all the prisoners who have been sentenced in one calendar year in Western Australia, and we then broke that down into sentencing bands—by that I mean ranges of sentencing—and used that as a proxy for seriousness. The bands that we used were under 12 months; 12 to 24 months; 24 to 36 months; 36 to 60 months; 60 to 96 months; 96 to 120 months; 120 to 180 months; and more than 180 months, which is a minimum non-parole period of 15 years. We then examined the number of sentences handed down within each of those bands in each calendar year. Those figures were: zero to 12 months, 966; 12 to 24 months, 865; 24 to 36 months, 304; 36 to 60 months, 228; 60 to 96 months, 74; 96 to 120 months, 19; 120 to 180 months, seven; and for more than 180 months, three. That is, in a calendar year, the number of people who have been sentenced in those bands.

Mr J.A. McGinty: What was the figure for under 12 months?

Mr C.C. PORTER: It was 966.

Mr J.A. McGinty: If we take a five-year period, which is the period for which the vast bulk of people are sentenced—they fade away to very small numbers after that—do you have a rough percentage of what that figure is?

Mr C.C. PORTER: I could probably tell the member. I will take 72 months, which is six years. If we assume that half the people who have been sentenced to between 60 and 96 months are either side of the 72-month

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

bracket, I would say that the figure is 36, plus 19, plus seven, plus three. From the figures I have given, that is a total of 2 466 people sentenced in a calendar year.

We then looked at the mean maximum sentence lengths and the mean minimum sentence lengths, and the average sentence lengths in each category. We then looked at what would be the assumed percentage increase in the length of sentences under truth-in-sentencing legislation; that is, if there was no one-third discount and no amelioration in sentence length. This was one of the issues that was raised by the member for Mindarie. The member for Mindarie said that this scenario would involve a bowing out of sentences. People have often spoken of the possibility that sentence lengths would—without any amelioration whatsoever—increase by one-third. However, without any amelioration whatsoever, sentence lengths would increase by substantially more than one-third at both the low end and the high end, and by very much more than one-third at the middle. I will explain why that is the case.

Ms M.M. QUIRK: I reiterate that this is very difficult to absorb in a verbal format. I ask the Attorney whether it is possible to provide us with something in writing so that we can expedite the argument and the consideration of this matter. I understood yesterday that we would be getting that information.

Mr C.C. PORTER: It is very difficult to give the member a hard copy of that information. I cannot give the member the exact outcome of the modelling, because the document that contains the data on which all the planning was based is a cabinet document. It seems to me that what the member is after, in the end, is for me to give her the number of beds over the four out-year period that we have estimated that our model of truth in sentencing will require by way of increments. That seems to be the information that ultimately the member is after, and that is not information that I am able or willing to give.

Ms M.M. QUIRK: What I am after is the document that the Attorney General is reading from. I am mindful that the Attorney General does not want to disclose information that has gone to cabinet, but I do not think it is too much to ask for material that is not before cabinet. There are functions on computers that, to the best of my knowledge, allow editing and cutting and pasting. I would have thought it would not be a major exercise for someone to give us a version that contains some of this material. I have to say that the Attorney General is treating this Parliament with contempt, because he is asking us to sit here while he reads out figures to us and he is expecting us to—on the spot—make some rough and ready calculations. This is a matter of high public interest, Attorney. I would have thought that it would not be beyond the wit of officers from the Attorney General's office or the Department of Corrective Services to provide that information in a format that does not betray cabinet confidentiality.

Mr C.C. PORTER: If the member would bear with the verbal explanation a bit further, it might become a little clearer. The methodology can be explained without pictorial reference. I assure the member that is the case. As I was saying, what occurs is that in the middle range —

Ms M.M. Quirk: Not all of us have a rocket intellect. Some of us need to contemplate these things. The minister cannot expect us to immediately understand the implications.

The ACTING SPEAKER: Order, member! Let the minister finish his comments.

Mr C.C. PORTER: I understand the point the member is making. What happens is that at the top and bottom ends, we would get—with no amelioration—about a 50 per cent increase. I will explain why that is the case. In the case of a 20-year maximum sentence, under the present system, the 20 years would be decreased by one-third to 13.4 years, and, if we presume that parole is granted, it would then become 12.4 years.

Mr J.A. McGinty interjected.

Mr C.C. PORTER: Sorry; 11.4 years. In the case of a 20-year maximum sentence, with no-one third reduction, but minus two years for parole, the sentence would be 18 years. That is an increase of nearly 50 per cent. The difference between 11.4 years and 18 years is an increase in sentence length of slightly more than 50 per cent. At the other end of the scale, if we had a three-year sentence, and we subtracted from that the one-third discount to make it two years, minus half for parole, we would have a one-year sentence. Without any one-third discount, or without any amelioration, we would have a three-year sentence, minus half for parole, so we would have a 1.5-year sentence. Members will see there again that the sentence length has been increased by 50 per cent. The extra time spent in custody is 0.5 of a year, when the original sentence would have been one year. The time spent in custody actually expands by 50 per cent at both the upper and bottom ends of the range. At the middle of the range—say, for instance, a six-year sentence—with truth in sentencing, six years would become four years, minus half for parole, so we would have a two-year sentence. Without truth in sentencing, and with no potential amelioration, the sentence would be six years, minus two years for parole, leaving a four-year sentence. That is a 100 per cent increase in sentencing, because a two-year sentence would become double that; that is, a sentence in custody of four years. Members will see that the misnomer in the calculations is the suggestion that in a situation that was unameliorated, truth in sentencing would cause a straight line increase of one-third. In fact,

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

unameliorated, it would start at 50 per cent and balloon out to about 89 per cent or 90 per cent, and it would then go back to about 50 per cent at the very top end of the range.

Mr J.A. McGinty: Will that be the effect of your legislation?

Mr C.C. PORTER: No, of course not. I am saying that that is the control for the models. All we have done with the modelling is that in each of those bands, using as the control an unameliorated increase, we have presumed in the first band—which is a sentence of under 12 months—50 per cent, and we have then presumed in the second band 50 per cent. In the middle bands, the figures we have presumed are 63 per cent, 89 per cent, 72 per cent, 61 per cent, 61 per cent and 55 per cent. So, we have mirrored that ballooning effect—that growing effect—in the middle. Instead of accepting as the control the full, unameliorated increase, the modelling has, over seven different models, plugged in figures on what percentage increase in time spent in custody could be expected in each band.

Mr J.A. McGinty: Yes.

Mr C.C. PORTER: We have started at low increments, in the nature of five per cent, eight per cent, 9.5 per cent and 10 per cent, and we have gone up to the very rare cases of sentences lasting over 180 months—for example, 15-year minimum non-parole periods—where we have anticipated that there would be something like a 50 per cent increase. That is the way the modelling has been done.

The ACTING SPEAKER (Mr P.B. Watson): The member has 28 seconds left.

Mr C.C. PORTER: The seven different models are, in effect, seven different versions of what people anticipate the increments will be in each category under the legislation, based on their knowledge of sentencing. We have consulted people in and about the department and the courts who have an idea of how sentencing practice might work under such a model. We have done that modelling seven times. After that, we have then built in a medium range, and we have come up with a number of beds over four years, and costed that.

Ms M.M. Quirk: I want to hear the rest of the Attorney General's explanation.

Mr C.C. PORTER: I thank the member.

Mr B.S. Wyatt: That number of beds, is that confidential, or is that something —

Mr C.C. PORTER: Ultimately, that is the information that I am unwilling and unable, in my view, to give members, because it is information which is cabinet —

Mr B.S. Wyatt: I assume that information will be provided to the Treasurer by you, going forward, to ascertain how much extra money the Department of Corrective Services —

Mr C.C. PORTER: That is correct, yes.

Ms M.M. Quirk: Yes.

Mr P. Papalia: Beyond purely the length of sentence, does the modelling account for implications arising from the security classification of prisoners? For example, do we know whether we will have an expanded number of medium and minimum security level prisoners, which will have a different impact than purely the increase in the length of sentence?

Mr C.C. PORTER: No, the modelling is not that sophisticated. It calculates the average cost of a prisoner a day, and the average cost of construction and maintenance of infrastructure that might be required for extra beds.

Mr P. Papalia: Do you understand why I am interested?

Mr C.C. PORTER: Of course.

Mr P. Papalia: Because the ability to provide programs and intervention strategies rests largely upon what classification the prisoners are.

Mr C.C. PORTER: I understand that, and I understand the member for Mindarie's point, that this is highly imperfect modelling because we could not devise a better system to make a judgement as to how many extra beds would be required. That is why we proceeded over seven versions of the model, and then tried to narrow it down to a medium range. The member for Mindarie was quite correct when he said that it would be very, very difficult to come up with a full anticipation of what the increments in time spent in custody in each of those categories that I have mentioned would be, because it is, by nature, discretionary.

Ms M.M. Quirk: Yes.

Mr C.C. PORTER: I would also add to that the accompanying difficulty that each of those bands of sentencing represent, if members like, proxies for seriousness. If members consider, for instance, a three-year sentence, that might be a very low level grievous bodily harm, or it might be the worst ever reckless driver. Other than going

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

through every single one of the many sentences that are handed down in any given calendar year—which would be, in my view, cost prohibitive, if not impossible—we have used those bands of sentencing length as a proxy for seriousness, and then assumed greater increments at the higher bands as a proxy for higher seriousness, and lower increments at the lower bands. The description given by one of the persons who I think understands sentencing practice best is that we would expect in the higher bands the large increments of the 50 per cent type that I have discussed—the Farmer-type scenarios. There would be something slightly less than that—between 15 per cent and 40 per cent—in the next range down. For the rest, we would expect something in the nature of bracket creep. I cannot think of a better term to describe them, but they will not be of the unameliorated range. In some instances they will be minor, and in some instances they will be greater, but, overall, there will be a moderate bracket creep-type increment in the lower ranges.

Ms M.M. Quirk: I know that by the Attorney General’s nature he is conservative, and that he does not want to be held to figures that may ultimately prove not to be correct. I think we understand and we all appreciate that there is a level of guesswork involved, and that best endeavours have been made through the formulation of these sentencing models and the very complicated process of how that occurs. However, I think we need to have some better idea and we need to at least have some information in front of us. I note that the Attorney General is reading from a document. From my recollection, it is a table; and, from my recollection of what cabinet documents look like, it certainly does not appear to have “Cabinet in Confidence” stamped on it anywhere. I ask, pursuant to standing order 157, that that be tabled.

Mr C.C. PORTER: Again, these are documents that I have regularly taken to cabinet and informed cabinet on with respect to applications and submissions made to them. My view is that these are cabinet documents, and I am unwilling to table them on that basis.

Mr B.S. Wyatt: While you are on your feet, I still do not understand the sentencing figures and the figures for the extra beds, with respect. Is that something that just came through cabinet? I think it will have to become a public issue at some point when the Treasurer signs the cheque for that extra \$2 million, or whatever it is, to pay for these extra beds. I do not understand why it is sensitive.

Mr C.C. PORTER: The point of it is that if a prison were to accommodate overcrowding in two to three years’ time, some portion of that prison will take prisoners who might be prisoners by virtue of the present overcrowding, by virtue of truth in sentencing, by virtue of the provision of additional police officers, or by virtue of increased investigative practices and techniques such as deoxyribonucleic acid testing. I have given these figures to cabinet on the basis of making an application for funding for prisons—or at least that portion that I can guess will arise from the legislative changes that we are making.

Mr B.S. Wyatt: In any event, the prisons will still need to be there, regardless of where prisoners are coming from or why they are there?

Mr C.C. PORTER: That is correct.

Mr J.A. McGinty: Why is there this secrecy around your best estimate of how many extra prisoners there will be? I cannot understand it.

Mr C.C. PORTER: Because the prison bed estimate forms the basis of requests to cabinet for capital and infrastructure to deal with the increment. By that nature, they are cabinet documents.

Mr J.A. McGinty: You are asking Parliament to approve legislation that will result in an increase in the prison population. I would have thought it was perfectly reasonable for you to say by how much, but you are not prepared to tell us that.

Mr C.C. PORTER: No, I am not.

Ms M.M. Quirk: All we have requested is a copy of the document that you showed us yesterday on the screen on the computer. Unfortunately, our eyesight was not up to seeing it. We’re not requesting cabinet documents, we’re requesting a copy of a document that you showed us yesterday on a screen on a computer.

Mr B.S. Wyatt: If I follow it, it will be in next year’s budget estimates. We are asking questions about your budget which, I assume, will increase, whether next year or in years ahead. At that point it will become apparent, or you’ll have to at least answer the questions about what impact truth in sentencing has had on the budget.

Mr C.C. PORTER: I think that is right, and at that point members will appreciate that because of this modelling we will have some indication as to what the actual sentencing practice has translated into. The data that goes into those increments and categories can be properly formulated. Therefore, if one likes, this is provisional, based upon what we actually see. We have a bit of lead time; the member is quite correct.

Mr J.A. McGINTY: Can the Attorney General provide us with the median-range figures, which he indicated form the basis of his summary of the seven different funding models, for how many people there are and what

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

the expected increase in the average sentence would be for each of the sentences within the range of that final figure?

Mr C.C. PORTER: I am sorry; is the member for Fremantle after information on what the increment was in each category?

Mr J.A. McGinty: In your median-range figures, which you summarised or condensed to form the seven models, there are a number of people. In each sentencing range, by how much do you expect the sentences to increase?

Mr C.C. PORTER: Yes, I can give that information to the member.

The ACTING SPEAKER (Mr P.B. Watson): Attorney General, before we go on, I advise people who are in the chamber and at the back of the chamber to turn off their mobile phones, please.

Mr J.A. McGinty: It is not me this time.

The ACTING SPEAKER: No, I am talking about the advisers at the back of the chamber, too.

Mr C.C. PORTER: Eight per cent —

Mr J.A. McGinty: What is that for—under 12 months?

Mr C.C. PORTER: — for under 12 months; 15 per cent for 12 to 24 months; 23 per cent for 24 to 36 months; 30 per cent for 36 to 60 months; 38 per cent for 60 to 96 months; 45 per cent for 96 to 120 months; 50 per cent for 120 to 180 months; and 50 per cent for over 180 months. That is a high median-range model. I can give the member some figures for a lower median-range model.

Mr J.A. McGinty interjected.

Mr C.C. PORTER: Yes, but it is a bed number increment based on a median of those three median-range models. I do not have the data showing the exact percentage increase for each of those.

Mr J.A. McGinty: Why won't you give us the bed numbers in each of those ranges?

Mr C.C. PORTER: As I said, that is a matter that is before cabinet for planning on prison infrastructure.

Mr J.A. McGINTY: I must say that I find it quite extraordinary that the Attorney General will not tell us what either the budgetary impact or the prison impact of this legislation will be, yet he expects us to support it. I suggest to the Attorney General that he seek some further advice on this matter. He is no doubt correct when he says that budget documents are not subject to freedom of information applications. However, I think it is altogether a different question whether the Attorney General should advise the Parliament of the effect of this legislation. I think the answer to that question is yes. I indicate that if the Attorney General is not willing to provide that information, I will have no option but to move that standing orders be suspended to allow us to debate a motion to compel the Attorney General to provide that information. I do not want to go down that path, but, frankly, I do not think the Attorney General has got it right. This information should be in the public arena. We do not want to know what cabinet gave consideration to, but there are two very simple figures that we do want. We want to know, firstly, how many more beds will be required in the system, according to the Attorney General's best estimate and, secondly, what is the cost, and perhaps over what period. I believe that a request for information on how many beds there will be and what the cost will be is perfectly reasonable. It is information that should be in the public arena, because that is, in the Attorney General's estimation, the effect of the legislation. It is just not correct for the Attorney General to say, "I'm not going to tell you." I want to give the Attorney General some advance notice that if he persists in this view, that is what we will have to do. The Attorney General might like to seek some advice on that. I would be happy, for instance, Mr Acting Speaker, for you to leave the chair until the ringing of the bells so that the Attorney General can consult with the Premier on this question, because I doubt that the Premier would be of the view that the effect of this legislation should not be revealed to the Parliament that is being asked to support it.

Mr C.C. PORTER: I am very happy to seek that advice from the Premier. I have no difficulties with that.

Mr J.A. McGINTY: In which case, Mr Acting Speaker, I request that you adjourn for five minutes, or whatever the appropriate procedure is.

The ACTING SPEAKER: Is the Attorney General in agreement with the adjournment?

Mr C.C. Porter: As long as we are quite clear on what information the member wants. He wants an estimate of bed numbers over four years —

Ms M.M. Quirk: And the cost.

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

Mr J.A. McGINTY: It is bed numbers and cost. What is the effect of this legislation? I am not interested in the intimate breakdown, which the Attorney General might well say goes to cabinet considerations. However, I believe that we are entitled to know at least the broad impact of the legislation on bed numbers over whatever period is appropriate. I am not being particular about that. If the Attorney General has some indication of the cost, I am not going to bicker about a final decimal point or anything like that. However, I think that is information that we ought to have.

Mr C.C. PORTER: I can say that there is available information on the number of beds that we anticipate over four years and the recurrent cost of that, but I cannot give the member a breakdown of the components of perceived necessary capital expenditure that might attach to truth in sentencing, because it is just impossible to break down what part of a prison is the truth-in-sentencing part versus the increased police part or the investigative techniques part or the natural population growth part or the overcrowding part. I simply cannot do that.

Mr J.A. McGinty: Sure. However, if the Attorney General were to say that his best estimate is that it will require an extra 200 prison beds in four years, if that is the figure, I think that would most probably —

Mr C.C. PORTER: That figure is available. I am happy to seek the Premier's advice on whether I am able to give that figure to the member.

Mr J.A. McGinty: Frankly, I can't think of why you wouldn't be.

Mr C.C. PORTER: I think that is a figure that, based on our modelling, has been used to inform cabinet, but I am happy to seek advice on that.

Mr J.A. McGINTY: We do not want to know it as a cabinet piece of information. We just want to know what is the effect of this legislation. Frankly, I want to get this legislation through this place and into the other house.

Mr C.C. Porter: I understand.

Mr J.A. McGINTY: We can be here trying to extract blood from a stone or teeth from a tiger, or whatever the appropriate analogy is, but if the Attorney General can get approval, I would like him to give us the best available figure—I do not care whether it has been to cabinet; I do not want to know what has been to cabinet—for the expected impact of this legislation on bed numbers. It should not be all that hard to then extrapolate that in terms of the cost impact.

Mr C.C. Porter: Recurrent cost impact.

Mr J.A. McGINTY: Yes. If the Attorney General cannot quantify capital, so be it, because we know roughly what a prison costs, and it might be possible to get a figure for the cost impact from that. If, say, 200 extra prison beds were needed, we know that it would cost a couple of hundred million dollars. The Attorney General might even have an indicative figure on that. However, more importantly, what will be the expected impact on the prison population and what number of extra beds will be required? If that information can be made available, I would be very much appreciative of it.

Mr C.C. PORTER: I am prepared to seek advice on whether I can make that information available.

The ACTING SPEAKER: I am a bit loath to leave the chair. Perhaps the Attorney General can consult with the Premier in the chamber.

Mr C.C. PORTER: Thank you, Mr Acting Speaker.

The ACTING SPEAKER: Would the Attorney prefer that I leave the chair?

Mr C.C. PORTER: Yes, Mr Acting Speaker.

The ACTING SPEAKER: I will leave the chair until the ringing of the bells.

Sitting suspended from 3.49 to 3.58 pm

Mr C.C. PORTER: In response to the member for Fremantle's question about the government estimate in the out-years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 for the incremental bed requirement because of truth in sentencing, we estimate a median figure of 604 beds.

Mr J.A. McGinty: Is that across all those years?

Mr C.C. PORTER: That is the number of beds that we will need in the fourth year; yes, it is across all those years. I will have the recurrent expenditure figures available shortly.

Mr J.A. McGINTY: Fine. I appreciate the Attorney's response; that information is all that we really need. I thank the Attorney very much.

Mr C.C. Porter: You're welcome.

Extract from *Hansard*

[ASSEMBLY - Wednesday, 3 December 2008]

p868c-877a

Mr John Quigley; Mr Paul Papalia; Mr Christian Porter; Mr Jim McGinty; Ms Margaret Quirk; Acting Speaker

Mr J.A. McGINTY: Mr Acting Speaker, I had circulated an amendment in my name to deal with an issue on which we thought this legislation was defective; that is, the ability of a court to award a maximum term in a particular case. Accordingly, I will move —

Page 3, after line 9 — To insert —

- (4) A court sentencing an offender to a fixed term can impose a penalty up to the statutory penalty for the offence.

Debate interrupted, pursuant to standing orders.

[Continued on page 897.]