

SENTENCING AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [12.40 pm]: I move —

That the bill be now read a second time.

This bill continues this government's commitment to achieving truth in sentencing, a program that commenced in 2009 with the Sentencing Legislation Amendment and Repeal Act 2009. That act repealed the transitional sentencing provisions introduced by the previous Labor government, and so abolished the automatic reduction by one-third of any head sentence of imprisonment imposed by a court. The act restored to courts the ability to give effect to the legislative intent behind Parliament's prescribing maximum sentences by restoring to judges the ability to impose the maximum term of imprisonment in circumstances that warrant such terms.

This bill continues the government's program of making court processes more transparent to the community, by setting a maximum discount of 25 per cent for a plea of guilty and requiring courts to openly state the percentage discount they grant in recognition of a plea of guilty. It demonstrates the state government's commitment to ensuring that the Western Australian criminal justice system is simple, transparent and understandable to both the general public and offenders facing courts, and produces results in sentencing that accord with community expectations.

Presently, an offender brought before a court and sentenced to a term of imprisonment may expect a discount of the sentence that he or she is likely to attract. That discount from the sentence that might otherwise be imposed can be granted for a number of reasons. The most significant discount tends to be that for the offender's plea of guilty. It is generally accepted that an accused person is entitled to a discount when pleading guilty, particularly when the plea is indicated or made at an early stage of the proceedings. The discount has been rationalised on various bases over the years. At the very least, a plea of guilty demonstrates the offender's preparedness to engage in the administration of criminal justice and facilitate justice being done. From time to time this has been reflected in the suggestion that the offender's plea of guilty may indicate "remorse" for his or her criminal conduct. However, although genuine remorse may be a factor justifying a mitigation of the punishment to be imposed on an offender, on the basis that it displays an offender's receptiveness to rehabilitation, it is an uncertain and subjective yardstick by which to calculate the extent of any discount that should be granted for a plea of guilty.

The government recognises that some credit should be given for a plea of guilty for essentially utilitarian reasons, against a background of the presumption of innocence and the entitlement of an accused to have the prosecution prove its case against him or her beyond reasonable doubt. A plea of guilty saves the state the cost, the expenditure of resources, and the uncertainty of a trial, possibly a lengthy one. It saves witnesses the inconvenience and expense of having to put aside their daily routines and attend court, and often the stress of giving evidence. In the case of witnesses to traumatic events, or witnesses who are also victims of crime, it also relieves them of the trauma of remembering and recounting their experience, often a considerable time after the event. Those who have not had to do so may not readily appreciate it but, for the majority of people who happen to be witnesses necessary to prove a case, the idea of attending court and giving evidence—even uncontroversial evidence—and being exposed to cross-examination testing their recollections, and perhaps calling into question their veracity and character, is a daunting prospect.

A plea of guilty on the part of an offender obviates this and enables a charge to be resolved conclusively without the need for a trial. Plainly it is in the public interest that such a plea should be made as early as reasonably possible, and, traditionally, the greatest discount has been given in cases in which the plea is made early rather than later in the course of a prosecution. However, although a discount for a plea of guilty should be sufficient to encourage such a plea, it should not be allowed to become too great in too many cases, nor should the full benefit of a discount be given to those who choose not to plead at the earliest reasonable opportunity.

Currently in Western Australia, cases suggest that an early plea of guilty may attract a reduction in sentence of between 20 per cent and 35 per cent depending on the circumstances. However, the trend has been for a standard discount of 25 per cent to be given for a plea of guilty, and not only for one at the earliest reasonable opportunity. Limiting the discount available for a plea of guilty will assist with addressing community disquiet about the sentencing process.

The Sentencing Amendment Bill 2012 addresses the issue by doing five things. It recognises that an offender can obtain a discount from the sentence that he or she might otherwise serve if the offender pleads guilty; it sets out

the rationale for the discount—namely, that it is to recognise the benefits to the state and to any victim of, or witness to, the offence; it limits that discount to a maximum of 25 per cent off the sentence that an offender would otherwise serve; it ensures that the maximum discount will only be granted if there is a plea, or an indication of a plea, at the first reasonable opportunity; and it requires the court to state the fact of, and the extent of, any reduction.

The “cap” on the discount does not prevent the court from reducing the head sentence by reason of other legitimate mitigating factors. For example, from time to time significant discounts may be awarded to offenders who voluntarily provide assistance and information to law enforcement authorities that result in the detection or prosecution of other offenders. Therefore, for example, a court may reduce a head sentence by more than 25 per cent in cases in which an offender enters an early plea of guilty and provides assistance and information to law enforcement authorities.

The bill promotes the objectives of making the operation of the sentencing process more transparent and understandable. Not only victims and other members of the public, but offenders, will know what they may expect from the sentencing process. It is a significant milestone in reducing some of the complexities and perceived leniencies in sentencing, and further demonstrates this government’s commitment to achieving truth in sentencing in this state.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.