MANSLAUGHTER LEGISLATION AMENDMENT BILL 2011

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [8.25 pm]: I move —

That the bill be now read a second time.

The Manslaughter Legislation Amendment Bill 2011 does two things. First, it amends the Criminal Code to provide that the maximum penalty for manslaughter is increased from 20 years' imprisonment to life imprisonment. This is the penalty that applied until 1981 and will allow the courts a greater range of penalties. Second, in certain cases where dangerous driving results in a death, the matter will no longer be able to be dealt with summarily in the Magistrates Court but must be dealt with on indictment in the District Court, leading to a higher penalty.

The Criminal Code as originally enacted in sections 280 and 287 provided that the maximum penalty for manslaughter was "imprisonment with hard labour for life". Because section 42(2) of the District Court of Western Australia Act 1969 provides that the District Court has no jurisdiction to try an accused person when the maximum penalty is life imprisonment, all manslaughter cases were heard in the Supreme Court. The Acts Amendment (Jurisdiction of Courts) Act 1981 deleted "imprisonment with hard labour for life" and substituted "imprisonment with hard labour for 20 years". The reference to "hard labour" was subsequently deleted, and following the enactment of the Criminal Law Amendment (Homicide) Act 2008, the maximum penalty for manslaughter in section 280 of the code is now 20 years' imprisonment. Therefore, manslaughter cases can now be dealt with in the District Court, though in practice the majority are still considered in the Supreme Court as an alternative to murder.

As a result of the reduction in the maximum penalty for manslaughter from life imprisonment to 20 years' imprisonment, the court has a limited range of potential penalties and, accordingly, is awarding guilty persons less jail time than might otherwise be the case. This has resulted in strong public responses in a number of high-profile cases as follows.

The first is that of Jack Benjamin Hall. In 2008, Jack Benjamin Hall was tried for the murder of Lawrence Dix following an argument over a $100 drug debt. Both were 19 years old at the time. When the trial ended with the jury unable to reach a decision, the prosecutor advised the Supreme Court that the state would accept the guilty plea to the lesser charge of manslaughter. In April 2008, Hall was sentenced to a minimum term of imprisonment of two years and three months. Hall was released on parole on 5 July 2009 and parole finished on 1 July 2011. The second case is that of Matthew Roy McDonald. In December 2008, Matthew Roy McDonald pleaded guilty in the Supreme Court to the manslaughter of William Rowe. Mr Rowe died after being hit over the head with a cricket bat on a beach in Geraldton on Christmas Day 2007. McDonald was sentenced to five years' imprisonment backdated to 28 December 2007. McDonald was eligible to be released on parole in September 2011, and parole will finish on 29 September 2013. The third case is that of Ian Samuel James McConkey. In December 2010, McConkey was sentenced in the Supreme Court to five and a half years' imprisonment for the manslaughter of Buddhist monk Buu Lieu on 10 January 2010. McConkey could spend just three years and four months in jail for the unprovoked attack on the defenceless monk. He is eligible to be released on 27 May 2013 and parole will finish on 27 May 2015.

The Manslaughter Legislation Amendment Bill 2011 will increase the penalty for manslaughter to life imprisonment, thereby providing the courts with a greater range of potential penalties; that is, it reverts to the position that applied before 1981. The effect will be that manslaughter will once again be in the sole jurisdiction of the Supreme Court.

I also note that the penalty for manslaughter varies from place to place. In the United Kingdom, Canada and New Zealand the maximum penalty for manslaughter is life imprisonment. In Australia, Queensland, South Australia and the Northern Territory have a maximum penalty of life imprisonment. In New South Wales the maximum penalty is 25 years' imprisonment, while in Tasmania it is 21 years' imprisonment. The remaining Australian states and territories—Victoria, the Australian Capital Territory and, presently, Western Australia—have a maximum penalty of 20 years' imprisonment.

I now turn to the issue of dangerous driving causing death. The Manslaughter Legislation Amendment Bill 2011 also amends the Road Traffic Act 1974. Section 59 of the Road Traffic Act provides a penalty equivalent to manslaughter in certain cases of dangerous driving causing death. If a person is driving a vehicle whilst under

the influence of drugs and/or alcohol or at an excessive speed and a death occurs, then they are guilty of dangerous driving causing death. In the event that death occurs in "circumstances of aggravation", then the maximum penalty is 20 years' imprisonment. Section 59B(3) provides that circumstances of aggravation are when the vehicle is being driven without the consent of the owner—that is, it is stolen—the speed limit is being exceeded by more than 45 kilometres an hour or the person is driving the vehicle to escape pursuit by WA Police. In cases in which there are no circumstances of aggravation leading to the death, the maximum penalty applicable is 10 years' imprisonment. Once again, the penalties imposed have led to a strong public reaction. I cite, for example, the case of Lee David Toplass. On 5 November 2009, Lee David Toplass was sentenced to two years and eight months' imprisonment for dangerous driving causing death in relation to a fatal accident on Kwinana Freeway on 29 July 2008. He was also sentenced to four months' imprisonment cumulative for a further charge of dangerous driving causing bodily harm. He was released to parole on 6 May 2011 and that parole term will finish on 4 November 2012.

Section 67(3a) of the Road Traffic Act is also amended by the bill. Section 67(3a) provides that when a person involved in an incident causing the death of, or grievous bodily harm or bodily harm to, another person is required to give a breath, blood or urine sample and refuses to do so after the consequences are explained to them, then they may be liable for imprisonment for 14 years. The section provides that the failure to comply by giving a sample may also be dealt with summarily. Therefore, when a death is involved, a person who gives a breath, blood or urine sample may find that they are charged under section 59 and liable to trial on indictment. However, if they refused to give a sample, they could be tried summarily. It is possible that it would quickly become the norm to refuse to give a sample, especially when a death was involved. This has been dealt with by also amending section 67(3a) to provide that if there is a death, there cannot be a summary penalty for refusing to give a sample. Therefore, the Road Traffic Act 1974 will be amended so that cases of dangerous driving causing death become liable for trial on indictment and are therefore vested in the District Court; that is, the "either way" penalties are to be deleted. The increased case load for the District Court will likely fill the gap left by the transfer of manslaughter to the Supreme Court. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.