COURT JURISDICTION LEGISLATION AMENDMENT BILL 2017

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.38 pm]: I move —

That the bill be now read a second time.

The Court Jurisdiction Legislation Amendment Bill 2017, together with recently announced increases to the resources of the District Court, aims to improve the timeliness, efficiency and effectiveness of the criminal justice system for all Western Australians. It does this by adjusting the jurisdictional boundaries between the Supreme Court, the District Court and the Magistrates Court in their criminal jurisdiction, to ensure that offences can be dealt with in a timely manner and in the most appropriate jurisdiction. The amendments proposed follow a review of the jurisdictional boundaries of the courts conducted by the Solicitor-General. In conducting the review, consultation occurred with the Chief Justice of the Supreme Court and the Chief Judge of the District Court, on behalf of their respective courts and the Director of Public Prosecutions. Data was also provided by the Department of Justice on the performance of the superior courts.

The first part of the bill deals with the jurisdictional boundary between the Supreme Court and the District Court. The original jurisdiction of both courts relates to indictable offences. Traditionally, the division between the two courts has related to offences that carry a term of life imprisonment, and other offences. Although the Supreme Court has jurisdiction over all indictable offences, the District Court, generally, does not have jurisdiction over offences for which a sentence of life imprisonment may be imposed. This is the consequence of section 42(2) of the District Court of Western Australia Act 1969.

As the maximum penalty for certain offences—for example, arson—has been increased to life imprisonment, this has meant that offences previously tried in the District Court have become part of the exclusive jurisdiction of the Supreme Court. The nexus between life imprisonment and the exclusive jurisdiction of the Supreme Court was, however, removed with the passage of the Misuse of Drugs Amendment (Methylamphetamine Offences) Act 2017, which enabled offences involving the trafficking of methylamphetamine, for which a life sentence is now provided, to be tried in the District Court. This bill enables other life sentence offences to be tried in the District Court, including perjury in relation to life imprisonment offences, arson, criminal damage by fire, armed robbery and assault with intent to rob. It does this by confining the Supreme Court's exclusive jurisdiction to those offences that are essentially homicide offences. These offences are section 279, murder; section 280, manslaughter; section 283, attempt to unlawfully kill; section 288, procuring, assisting suicide; and section 290, preventing birth of a live child. In addition, the bill provides that regulations may be made enabling other offences to be within the Supreme Court's exclusive jurisdiction. This is necessary to deal with commonwealth offences, jurisdiction for which is conferred on the state courts by reference to subject matter. There are a number of commonwealth offences punishable by life imprisonment, involving homicide, for example, that should remain with the Supreme Court. Other commonwealth offences, particularly those dealing with the trafficking of drugs, are better dealt with in the District Court.

There are a number of reasons why it is preferable for the District Court's jurisdiction to be increased in this way. The District Court is, predominantly, a criminal trial court, with a far greater proportion of its judicial resources being devoted to criminal matters than is the case in the Supreme Court. The overall number of lodgements in the District Court is much higher than in the Supreme Court and the average length of each trial is shorter—a matter that is largely a function of the complexity of homicide trials. This has meant that there are efficiencies that may be employed in the District Court, including the significant over-listing of trials, which currently is at between 40 per cent and 50 per cent. The same cannot be done in the Supreme Court. The District Court's jurisdiction also means there is a substantial accumulation of expertise in criminal matters, particularly drug offences, which raise similar issues in both state and commonwealth offences. The proposed division is also consistent with the approach in other states where the Supreme Court is, essentially, a homicide court. To meet the additional jurisdiction, and also to take account of these efficiencies, the government, in the recent budget, made provision for an additional two judges to be appointed to the District Court. These judges, who are due to commence in the new year, are intended to address the court's already increased workload and the additional jurisdiction proposed by this bill. At the same time, this bill makes reforms to a number of offences that can be tried in either the District Court or the Magistrates Court as "either-way" offences. The first set of changes relates to property offences that are each-way offences and for which a summary conviction penalty is provided. In relation to a number of such offences, there is a monetary value of the property, above which the charge is not to be dealt with summarily. These offences include section 401, burglary; section 409, fraud; section 426(2), stealing and related offences; and section 527, fraudulent dealing with a judgement debtor.

For each of these offences, the monetary limit, above which the charge is not to be dealt with summarily, is $10 000. This amount was set in 1996 by the Criminal Law Amendment Act 1996 and has, therefore, not been increased for over 20 years. It is well overdue for reform and updating. By increasing that amount to $50 000 there will be more flexibility to allow the Magistrates Court to determine a matter, where it would otherwise have to transfer the matter to the District Court. The final changes relate to unlawful threats, contrary to section 338B of the Criminal Code. Currently, when an unlawful threat is a threat to kill, the offence may be tried only in the District Court, whereas all other unlawful threats may be finalised in the Magistrates Court. The Director of Public Prosecutions has advised that although a charge of threat to kill sometimes accompanies sexual offence charges, most frequently it is charged with associated domestic violence charges. Often, the associated charges can be dealt with only in the Magistrates Court, such as common assault or breach of a violence restraining order, or they are either-way offences that could be dealt with in either the District Court or the Magistrates Court. Frequently, the count of threat to kill is the only charge that must be dealt with in the District Court.

As a result, the Director of Public Prosecutions advises that many matters that could otherwise be finally determined in the Magistrates Court are committed to the District Court together with the threat to kill charge. In addition, because charges under this section are difficult to prove and can be discontinued as a result of insufficiency of evidence or because they are an inappropriate complication in an already difficult matter, the final result is that matters are unnecessarily committed to the District Court, with consequential delay in finalisation. The DPP advises that these issues cause impediment to the early resolution of domestic violence cases. It also means that often there may be a multiplication of proceedings for a single incident, which is undesirable, particularly for victims of domestic violence. For this reason, it is proposed that, in an appropriate case, a charge of threat to kill can be determined in the Magistrates Court by imprisonment for three years and a fine of $36 000. It should be stressed that none of these changes require that the case be finalised in the Magistrates Court. The Criminal Code already requires that when, in a particular case, an appropriate penalty could be given only in the District Court, the case must be committed to the District Court. These changes simply provide more flexibility to enable the matters to be determined in the most appropriate forum.

The Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate have all agreed that these changes are sensible and appropriate. Although efficiencies are expected, precisely how the changes impact on the workload of the courts will require analysis once the changes are in place. The government has committed to each of the courts that it will keep these resourcing issues under review so as to continue to improve the delivery of criminal justice in this state.

I commend the bill to the house.

Debate adjourned, on motion by **Mr Z.R.F. Kirkup**.