BAIL AMENDMENT (FIREARMS AND PROPERTY OFFENCES) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [11.51 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Bail Amendment (Firearms and Property Offences) Bill. The bill amends the Bail Act 1978 to strengthen the provisions in relation to property offenders and in relation to serious firearm offences. The bill also tightens specific administrative requirements within the Act. As announced by the Premier, these amendments form stage two of bail amendments this year. They build upon previous amendments in relation to serious personal violence offenders and address certain community concerns in relation to recent firearms offences. The amendments were substantially adopted from a report produced by an internal working party.

I turn now to the provisions of the bill. Schedule 1 [2] inserts proposed section 8B into the Bail Act and provides for a presumption against the granting of bail for persons accused of certain serious firearms and weapons offences. Currently there is only one exception to the presumption in favour of bail for firearms offences, namely, offences under section 7 of the Firearms Act 1996 that relate to prohibited firearms and pistols. There are, however, a number of other serious firearms offences, apart from those in section 7 of the Act, that relate to prohibited firearms, pistols and danger to the public. The Government wishes to send a clear message that the possession of prohibited firearms and pistols is an extremely serious matter.

The offences that fall within the definition of "serious firearm offences" include offences within the Firearms Act 1996 relating to prohibited weapons and pistols and to ongoing dealing offences, offences within the Crimes Act 1900 relating to using a firearm in a way that endangers the safety of the public, and the new offences created by the Firearms and Crimes Legislation Amendment (Public Safety) Bill 2003. The proposed section applies to offences including those in section 93GA of the Crimes Act 1900: firing at a dwelling house or building, with a maximum of 14 years imprisonment; section 93I (2), aggravated possession of an unregistered firearm in a public place, with a maximum of 14 years imprisonment; section 154D, stealing firearms, with a maximum of 14 years imprisonment; and section 51BB of the Firearms Act 1996, selling firearms on an ongoing basis, with a maximum of 20 years imprisonment.

Schedule 1 [2] also inserts proposed section 8C into the Bail Act to provide for a presumption against bail for a repeat property offender. A repeat property offender is defined as a person who has one or more convictions in the past two years, at least one of which is robbery or burglary related, and who has two or more outstanding charges which are robbery or burglary related. These provisions specifically target persons who commit more offences while on bail. The proposal is based on the strategy that by identifying certain categories of offences charged in combination with the criminal history of the person charged, high-risk persons may be identified and incapacitated, thereby preventing them from offending in the future. Criminology research has repeatedly shown that a small percentage of offenders are responsible for a large percentage of crime. This is especially the case in relation to property offences.

Repeat property offenders often have serious drug problems. That drug problem is usually the central cause of their offending behaviour where persons committed many property and theft-related offences in order to fund their drug habit. The relevant offences to which this new provision applies are offences under the Crimes Act 1900, relating to robbery or stealing from a person, armed robbery of a person, armed robbery and wounding of a person, demanding

property with menaces, breaking and entering a place of worship, breaking out of a dwelling house after committing an offence, breaking and entering and assaulting with intent to murder, entering a dwelling house with intent to commit a serious indictable offence, breaking and entering a dwelling house, stealing property in a dwelling house with menaces, stealing a motor vehicle, and car-jacking.

The two or more offences of which the person is accused must not arise out of the same circumstances. Incapacitation of repeat property offenders through remand in custody has the benefit to the community for the period that the offender is in custody. However, the Government also recognises that more long-term benefit can be gained if efforts are directed towards rehabilitating offenders once they have been identified. This may be achieved by addressing the cause of the person's offending, for instance a heroin dependency. Cabinet has given its imprimatur for the establishment of an inter-departmental working group to investigate the expansion or trialling of a range of evidence-based programs that are demonstrated as effective at reducing recidivism. The programs aim to reduce the number of repeat offenders and/or the number of persons receiving custodial sentences, potentially ameliorating an upturn in prisoner numbers. This will deliver long-term benefits to the community.

The working group will be convened by the Attorney General's Department and will include representatives from the Department of Corrective Services, the Probation and Parole Service, NSW Police, NSW Health, the Department of Juvenile Justice and the Department of Ageing, Disability and Home Care. The working group will report to Cabinet within six months on a range of programs and proposals as well as any other programs targeted towards repeat offenders. These programs may include intensive supervision and case-management for repeat offenders, based on similar programs in the United Kingdom for parolees; fast-tracking the implementation of the Magistrates Early Referral Into Treatment Program at major Sydney Local Courts; and preparation of remanded repeat offenders for priority entry into the proposed drug treatment correctional centre and/or the Drug Court.

Items [1], [3] and [5] of schedule 1 make amendments consequential on the enactment of proposed sections 8B and 8C. Honourable members will recall that in the budget session this year the Government introduced the Bail Amendment Bill, which introduced new provisions into the Bail Act that ensured that repeat serious personal violence offenders would receive bail only in exceptional circumstances. There is some degree of overlap between the offences covered by the current section 9D relating to serious personal violence offences and proposed section 8C, which deals with repeat property offenders. That is because offences such as robbery have elements of both serious personal violence offences and serious property offences. In circumstances where both sections 8C and 9D apply the bill provides in schedule 1 [6] that the section 9D test of exception circumstances will prevail.

Schedule 1 [8] makes it clear that an authorised officer or court making a bail determination in relation to these new sections 8B and 8C can consider other matters they accept as being relevant in addition to the criteria set out in section 32 of the Bail Act. Schedule 1 [9] requires an authorised officer or court to record, or cause to be recorded, the reasons for granting bail to a person accused of an offence to which the new provisions creating a presumption against the granting of bail apply, as well as the provisions relating to exceptional circumstances.

Debate resumed from an earlier hour.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.36 p.m.]: Schedule 1 [11] removes the prohibition of persons who are convicted ex parte, or in their absence, from being charged with a fail to appear offence contained in section 52 of the Bail Act. Section 51 of the Act creates an offence of fail to appear, which carries a maximum penalty of three years imprisonment. A defence of reasonable excuse exists, the proof of which lies upon the person charged with the offence. The current section 9B of the Act already removes the presumption in favour of bail for those persons who have previously been convicted of the offence of fail to appear.

If persons fail to appear in answer to their bail, one option open to the court is to convict those

persons in their absence. That is done pursuant to section 196 of the Criminal Procedure Act 1986. Once a person is convicted the court orders that a warrant be issued for that person's arrest for the purposes of bringing him or her before the court so that a sentence may be imposed. That warrant is commonly called a conviction warrant. Those warrants are issued under section 25 of the Crimes (Sentencing Procedure) Act 1999. Section 52 of the Act currently contains a prohibition that prevents a person who has failed to appear and who has been convicted of the substantive offence in his or her absence from also being charged with the offence of fail to appear under section 51. This prohibition was based on a concept of double jeopardy, in that a person has received punishment for his or her failure to appear by way of being convicted for his or her substantive offence.

It is proposed that this prohibition be removed so that a sentence can be imposed for the conviction on the substantive offence and in addition the person can be charged with fail to appear as a separate charge. It is clear that the two instances of criminality should be dealt with separately. There is an expectation in our society that if someone is required to turn up to court, that person should do so. This amendment does not in any way prevent a person from making an application that the conviction be set aside under section 12 of the Crimes (Local Courts and Review) Act 2001 or from contesting the charge of fail to appear if he or she has a reasonable excuse for his or her non-appearance.

These amendments will build on recent procedural improvements made by police in relation to fail to appear matters. Since 7 July 2003 the Local Court has informed the Police Warrant Indexing Unit of all fail to appear matters. That enables New South Wales police to create a court attendance notice for the fail to appear charge, which is then stored in the Computerised Operational Police System [COPS]. If the person comes to the attention of police again in some other way, the COPS system will indicate that the person should also be charged with fail to appear. Previously police had no way of knowing that a person had an outstanding fail to appear matter. This procedure will now ensure that all persons who fail to appear in answer to their bail without a reasonable excuse will be prosecuted.

It is also proposed that some priority should be given to the finalisation of sentences for persons arrested on a conviction warrant. Schedule 1 [7] removes the right of police officers to grant police bail to persons arrested on a warrant to bring them before the court for sentencing, except in exceptional circumstances. This will ensure that people are brought before the courts for sentencing rather than released on bail. Section 2 to the bill inserts a new section 317A in the Criminal Procedure Act 1986 that requires proceedings to be dealt with as expeditiously as possible when a person has been arrested on a conviction warrant. The intention of this amendment is for persons who are awaiting sentence to be dealt with as quickly as possible. It is in the interests of the community that a person receives punishment for matters for which he or she has been found guilty, and it will also reduce the opportunity of persons awaiting sentence to commit further offences while on bail.

It is proposed that, upon conviction on a charge of fail to appear, the full amount specified in any bail undertaking be forfeited. Once the automatic forfeiture order occurs the other sections relating to enforcement of a bail agreement in part 7A of the Act will apply. These provisions require that persons affected by the forfeiture order must be informed that the order has been made. They then have 28 days in which to lodge with the court a formal objection to the confirmation of the forfeiture order. The court must also hold a hearing if any objections are lodged to the confirmation of the forfeiture order. Division 3 of part 7A of the Bail Act creates a further safeguard in relation to forfeiture by providing that a person may make an application up to 12 months after the confirmation of the forfeiture order to set aside the forfeiture order.

Schedule 1 [26] inserts a new section 63, which relates to the disposition of sureties. When money is being held as security by the court the judicial officer should be required to consider making an order as to the disposition of the money at the finalisation of the matter—that is, that the money should either be forfeited or returned to the person who provided the security. Courts may decide not to make an order at this stage. For example, a person may be contesting a fail to appear charge and a court may decide that no order should be made until the finalisation of that matter. This addresses an issue raised by local courts when registries

are left holding securities for matters that have been finalised.

Local Court registries also often experience difficulty in returning security money once a matter has been finalised. At the time of the lodgement of the security and the provision of information, the surety should be asked to agree to a method to return the money at the finalisation of the matter—assuming of course that the security is not forfeited subsequently. Based on this undertaking to return the money at finalisation, the acceptable person should have the responsibility of informing the court of any change of address. In this way the court will be able to send a notice to persons at finalisation informing them that the money can be collected from the court registry or they can have the money returned to them by way of cheque to their present address. In future it may also be possible to return the money to them by electronic funds transfer.

Schedule 1 [9] therefore enables an officer or court with whom money or security is deposited pursuant to a bail condition to require the person who provides it to provide information, or to agree to a means of enabling the return of the money or security to the person if it is required to be returned. It is currently unclear as to which court shall hear appeals against forfeiture orders. The matter is complicated as a forfeiture order can be made by any court. Schedule 1 [14] confers jurisdiction on the Local Court to hear all objections to forfeiture orders made by any court. Currently an objection must be made to the court that made the forfeiture order. The amendments do not affect the right to object orally to the court that made the forfeiture order if the person affected by the order appears before that court.

The amendment will have a number of benefits. First, it will preserve an appellant's right of review. For example, it is presently unclear where a forfeiture order made by the Court of Criminal Appeal would be reviewed. Secondly, it will relieve the superior courts of a review of an administrative bail decision. Thirdly, it will make applications to set aside forfeiture orders more accessible to people in regional and rural areas where the Supreme and District courts may not sit. Section 53D of the Act requires that an appeal against a forfeiture order must be heard in the court in which the objection to the confirmation of the forfeiture order was made. It is proposed to remove this requirement. Sureties do not necessarily live near the court that made a forfeiture order and the removal of this provision will improve access to appeal mechanisms if people are adversely affected by forfeitures. I commend the bill to the House.