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CRIMINAL CASE CONFERENCING TRIAL BILL 2008

Bill received from the Legislative Council and introduced.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [4.30 p.m.]: I move:

That this bill be now agreed to in principle.

As the Criminal Case Conferencing Trial Bill was introduced in the other place on 2 April 2008 and is in the same form, I refer members to the second reading speech of the Attorney General, which appears on page 40 of the *Hansard* galley for that day. I commend the bill to the House.

Debate adjourned on motion by Mr Greg Smith and set down as an order of the day for a later hour.

CRIMINAL CASE CONFERENCING TRIAL BILL 2008

Agreement in Principle

Debate resumed from an earlier hour.

Mr GREG SMITH (Epping) [4.31 p.m.]: The Opposition does not oppose the Criminal Case Conferencing Trial Bill 2008, which is a very important piece of long-overdue criminal justice legislation. This bill amends the Crimes (Sentencing Procedure) Act 1999 in order to establish a 12-month trial scheme commencing on 1 May 2008 limited to certain indictable offences being heard in the Local Court at the Downing Centre or at Central Local Court, Sydney, to encourage early pleas of guilty. This will be achieved by providing for a trial scheme of compulsory pre-committal conferences and codification of sentence discounts for guilty pleas.

This bill limits the maximum discount for defendants pleading guilty to criminal charges to the first available opportunity at the Local Court stage of criminal proceedingsthat is, before the actual committal hearing. About four years ago the Government agreed to fund extra staff for the Director of Public Prosecutions [DPP] and Legal Aid for criminal case processing, but then failed to enact the essential and necessary legislation to give the process real teeth. As a result of the Government's procrastination, the criminal case processing scheme was only partly successful. This caused much wrangling between the Government and the Director of Public Prosecutions over budget money.

Clause 17 of the bill provides, in most cases, for a discount of 25 per cent, which must be given if the offender pleads guilty before committal. The bill contains provisions to allow the Director of Public Prosecutions or the Crown Prosecutor to object to the matter being dealt with in this manner if the early guilty plea is an inevitable decision against an inevitable conviction and, therefore, a discount of that size should not be given. A discount of only up to 12.5 per cent will be allowed if the offender pleads guilty at any time after committal. When considering what discount applies, the court must consider the discount proportionate to the remaining benefit of the plea. Even after an offender has been committed for trial he or she may be able to establish entitlement to a discount of between 12.5 per cent and 25 per cent if it can be demonstrated that substantial grounds exist for allowing the greater

discount.

The burden of establishing substantial grounds lies with the offender on the balance of probabilities. Substantial grounds are limited to four circumstances as follows. First, if an offer to plead guilty to a lesser offence was made and recorded at the compulsory conference, which will be established under this legislation, and the offender subsequently is found guilty of that alternative offence. Secondly, if an offer to plead guilty to a lesser offence was made and recorded at the compulsory conference and refused by the prosecution, but later accepted before trial. Thirdly, if an offer to plead guilty to an alternative offence is made for the first time and accepted after committal, and the offender had no reasonable opportunity to plead guilty before committal. Fourthly, if the offender was found initially unfit to plead and later pleads after being subsequently found fit to plead.

There are a number of arguments in favour of this legislation. First, there is the saving of time and expense. The criminal justice system is expensive. Years ago criminal trials were assessed at costing $20,000 a day. The figure now would be much higher when all costs involved are taken into account. Secondly, there is recognition for early contrition. Thirdly, and probably most importantly to many, is early closure for victims of crime. Early guilty pleas will allow victims of crime to not have to worry or have the pressure of attending court to give evidence and be cross-examined. Often cases are not heard at the original trial date and are adjourned. Victims then often have to be interviewed several times, sometimes by different prosecutors, which can be quite distressing. Saving victims of crime suffering that stress is a great point.

Costs to the court and the parties involved will be reduced because up to 50 per cent of criminal prosecutions turn into pleas of guilty on or just before the first day of trial. Costs incurred in the preparation of such trials are significant. The allocation of staff, whether by police, by representatives from the Division of Analytical Laboratories or other forensics services, and by the prosecution and defence, are quite significant. In those cases when a plea is made at an early stage there will be a significant cost saving. These new measures will help also to alleviate victims of crime and their families suffering the stress of the impending trial and will give them early closure. It will save lay people also from the stress, trauma and inconvenience of having to attend to give evidence at the trial.

There are some arguments against the process and there has been criticism that the whole system of plea bargaining or charge negotiationwhatever it is calledmeans that criminals often are given much less serious sentences for the crimes they have committed; that the punishment does not really fit the crime. Some people would say there should not be such an attraction in obtaining early pleas. I believe the majority of people would reject that and say that one could never be certain about what will happen in the criminal trial process. Very strong trials, sometimes with a perverse verdict, lead to a not guilty finding and a serious criminal walking free. It is good to get a guilty plea to then be able to say that at least justice has been done and it will help the healing process. The community will see that the criminal justice system is succeeding in finalising cases. Punishments will be imposed on criminals to discourage them from future criminal behaviour, to protect the community by putting them in jail on occasions and, further, by providing them the opportunity to be rehabilitated and leave their incarceration as decent citizens, which some do achieve.
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In my experience, in folklore and analogy judges have been criticised for being too willing to hand down sentences that are too light and this has caused considerable community outrage. The appeal system available to the Crown does not remedy that situation, because even if the Crown succeeds on an appeal against

inadequacy of sentence the court is limited to the bottom of the range available to the original sentencing judge. The House will hear more about that at a later stage.

Under the current system judges from time to time give a 25 per cent discount, even when it may not be warranted. Other judges give little discounts and some times appeal courts find they have been too hard and not generous enough. A plea of guilty certainly saves the community and the criminal justice system much money and inconvenience. Large discounts may be given because the prosecution was not prepared to accept a plea to a lesser charge at an earlier stage. This may be because witnesses seem ready to give evidence and seem credible, but as the trial approaches some lose their nerve and some get sick, die or disappear, while others are "got at" by criminal elements. Unfortunately, that happens and the Crown is often happy to cobble a plea of guilty to anything that is relevant to the criminal conduct to achieve a result that does some justice to the victims and the community.

The bill provides no guidance to the interpretation of the no reasonable opportunity test to offer an earlier plea under section 15 (5) (c). Indeed, judges may be inconsistent in their interpretation of the discount that should be proportionate to the remaining benefit of the guilty plea. Nevertheless, the bill will significantly improve the current system, which is not working. Four years age discussions took place, but the Government baulked at the eleventh hour and it did not introduce complementary legislation to make mandatory the allocation of the maximum discount at the pre-committal stage.

Negotiations have been done administratively through criminal case conferencing, which was not generally compulsory at the Local Court unless the defendant had legal aid, and attendance at a case conference was a condition for the grant of legal aid. It did not bind the defendant to a plea of guilty at that stage and often did not stop the defendant from being given rather large discounts at a later stage. I have researched case conferencing, and Annmarie Lumsden of the Legal Aid Commission produced an excellent paper in 2006 for the College of Law in which she highlighted the situation very well, when she said:

> Criminal Courts statistics for 2003 revealed that of the 2,102 matters committed for trial to the District Court, only 578 or 27.5% actually proceeded to trial. In 263 or 12.5% of those matters, no charges were proceeded with.

That is generally because the Director of Public Prosecutions no bills the case on the basis that there are no reasonable prospects of a conviction, or other discretionary matters cause him to no bill the matter. Ms Lumsden further found:

> Statistics also indicated that in 2002/2003 there was a plea of guilty on the first day of trial in 49% of State matters before the District Court and 40% of Commonwealth matters.
>
> In late 2003, Legal Aid undertook a comprehensive study of the impact of late pleas of guilty in matters listed for trial in the District and Supreme Courts in August 2003. There were two significant outcomes of the analysis. The first was that 87% of legally aided trials assigned to private practitioners resulted in a plea of guilty on the first day of trial.

There might be a temptation for some counsel to milk the brief because in recent years the Bar has been squeezed as a result of the abolition of much of the tort law and workers compensation work. In addition, many accused persons do not come to the realisation that they are facing trial and perhaps conviction until very late in the process: until they see the whites of the eyes of the prosecutor, the judge, and the empanelling of the jury. Often it is not until the adrenaline is pumping and counsel says, "If you plead guilty, you will probably get only this amount and you will get a discount", that the accused decides to plead guilty. Accused persons are

often referred to as punters, not in the derogatory sense that it describes a gambler, but they gamble on the various reasons as to why cases do not proceed. As I said 263 cases, or 12.5 per cent, did not proceed in 2003. There is one chance in eight that the case will not proceed or that it will be adjourned, which postpones the final outcome. Ms Lumsden further found in the study:

> The second [outcome] was that in 68% of matters where a plea of guilty was entered, the indictment was changed on the day of the trial.

The reason for that is that often the Crown Prosecutor in the trial is not appointed until late in the process. The Crown Prosecutor holding the brief may be prosecuting another trial that runs for longer than anticipated and the brief may have to be passed on to another prosecutor at the last minute. A better system would be to determine who would prosecute earlier, but there are insufficient prosecutors to have the luxury of giving them a few matters each. They are all busy and briefs move around amongst solicitors and barristers for both the Crown and the defence, depending on commitments in other matters.

The figures set out in the study confirm what was common knowledge within the profession, that is, a significant number of matters committed for trial result in a plea of guilty or do not proceed because the Office of the Director of Public Prosecutions no bills or directs no further proceedings on the day or on the eve of the trial. The figures from the study also highlighted a significant resources issue for criminal justice agencies: a large number of matters were being prepared for trial that did not proceed. Both legal aid and the Crown not only brief in-house Crown prosecutors or public defenders but also they brief private counsel and private solicitors in the case of legal aid. Ms Lumsden paper continued:

> By about April 2004 there had been a 20% increase in matters committed for trial to the District Court, compared to the previous year, with pleas of guilty on the first day of trial approaching 58%.

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The situation was getting worse in the sense of wastage. I continue:

> In April 2004 the Attorney General established a Criminal Case Processing Committee [CCPC] consisting of senior representatives of justice agencies and the courts. The brief of that committee was to formulate a statutory model to reduce the number of matters that were committed for trial, prepared as a trial, but did not ultimately proceed as a trial. The purpose was to provide enhanced justice outcomes through greater charge and sentencing certainty and to significantly reduce the cost associated with late pleas. The model was to focus on improving four areas.

The first was to determine the appropriate charge at the earliest opportunity. The second was to provide the Crown brief to the defence expeditiously. The third was to introduce a formal process for negotiation of charges, facts and/or jurisdiction at an early stage of the proceedings. The fourth was to ensure that those who plead guilty early receive an identifiable discount for the utilitarian value of the plea.

> The policy intent was to shift matters that were committed for trial, prepared as a trial, but did not ultimately proceed as a trial, to an earlier stage in the timeline. Despite extensive consultation with a large number of stakeholders, at the 11th hour the New South Police Minister withdrew his support for the statutory model and the Criminal Case Processing Bill—

Which was a draft bill at the time, as I understand it—

> was not introduced into Parliament. The administrative model was formulated to substitute the statutory model. An advantage of the statutory model was certainty—

That is what this bill should achieve once enacted—

> However there are many that argue that the case conferencing model is a better one. Relying on the common law, it has the advantage of providing greater flexibility in that it maintains the prospect for the accused to be given the maximum discount for the utilitarian benefit of the pleas at common law, without the rigid sanctions of the statutory model. Significantly, case conferencing retains the improved disclosure by the New South Wales Office of the Director of Public Prosecutions.

As to the comment about the common law being less rigid, it seems to me that there was never a compulsion on judges to give a 25 percent discount. I notice in some of the media, and it may well be in the speech of the Attorney General in the other place, the suggestion was that it was up to 35 per cent. In Thompson's case the court said between 10 per cent and 25 per cent. I think 35 per cent was discussed in Thompson's case and some of the parties argued for that figure, but the court came down to a maximum of 25 per cent. Other factors can earn accused persons discounts, such as assisting the authorities in finding co-accused and giving evidence against co-accused who are higher up the criminal chain.

Another excellent paper on this subject was given by Sophia Beckett, a solicitor from the Legal Aid Commission of New South Wales, and issued by the Public Defenders Office. The paper repeats many of the matters I have already referred to and which I will not go over, but Sophia made some points that are worthy of mention. Looking at the case conference procedure she wrote:

> The scheduling of face-to-face conference prior to committal—

That is what is established in the bill: compulsory conferences, in many cases by the magistrate, before the actual decision on whether there will be a committal, where both the Crown and the defence are represented. She continued:

> The scheduling of the conferencing aims to shift the activity that usually occurs in the weeks before the trial, to the weeks before the committal.

It is often the days before the trial. In fact, it is often the day before the trial or the day of the trial, or sometimes during the trial.

> The factors needed to achieve meaningful negotiation at this stage are:
>
> The service of a complete brief of evidence—

I do not think that is happening under the bill. It will be a mini brief in a sense. It will have a lot of the necessary material, but it may not have all the supporting corroborating statements on matters of that sort. That is how the earlier negotiation was and it might still be the case. It is difficult, for example, to have all the transcripts of tape recordings, listening devices or telephone intercept evidence available quickly because it is labour intensive. It is often difficult to have certificates from the drug analytical laboratories available setting out exact quantities of material and percentages. Sometimes all you really need is the confirmation that something is methylamphetamine or heroin or whatever in a drug case. It is difficult to get DNA results quickly—

[*Interruption*]

Mr GREG SMITH: This family-friendly activity is getting a little bit over the top. She continue:

> That practitioners seriously analyse the brief and in the case of the defence obtain full instructions—

That was often a problem because the accused did not have any money and the Legal Aid Commission often did not come in to assist in committal proceedings.

Extra money was given to the Legal Aid Commission to assist and on occasions that involved public defenders and Crown prosecutors—

> That practitioners be of sufficient seniority, on both sides, to have the confidence to make an assessment of the brief and any prospective trial, and to be in a position to come to a bind agreement.

To that end both the Director of Public Prosecutions and the Legal Aid Commission recruited experienced practitioners at an appropriately high level who were able to satisfy that. The Chief Magistrate issued a practice note. The system worked as well as it could from an administrative basis, but without the carrot of having to plead at an early stage before achieving the full discount and with the leniency applied by many judges accused persons were procrastinating and the system did not work as well as it should have. The legislation will go a long way towards improving that situation. It has taken a long time for the Government to introduce the legislation, but I am pleased to say that the Opposition does not oppose it. I do not think the House will spend too much time in further debate of the bill.

Mr FRANK TERENZINI (Maitland) [4.57 p.m.]: I am extremely happy to speak in support of the Criminal Case Conferencing Trial Bill 2008. It is with much pleasure that I speak to the great initiative that formalises and gives structure to the improved workings of the criminal justice system. The bill will have the effect of bringing to the front end of the trial many criminal trial processes that happen one year or 18 months later, depending on the particular court. The advantage of such a change is that the prosecution and the defence now have the incentive of sitting down, focusing on the issues in dispute and having a conference to determine whether there is any prospect of early resolution. As the member for Epping would know, the prosecution guidelines for the Director of Public Prosecutions [DPP] explicitly say that the DPP is to actively take part in plea negotiation and a form of conferencing. The bill formalises that procedure.

Criminal trials have become much more complicated over the years. Instead of trials taking two or three days—as they would have taken 10 years ago when I first started prosecuting—they are now taking up to five days. There are many more procedures and the judge has to give many more directions. In particular, sentencing now involves much more case law. The cost of criminal trials is rising all the time. At some stage we should have considered how we were going to make sure the criminal justice worked more efficiently, so that people got better value for their money. The idea of bringing parties together to discuss the issues is a great initiative.

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Many years ago the committal consisted of a process where any witness for the prosecution could be called, including victims. The matter would come before the court and the defence solicitor would write on the back of the service document "all witnesses". All witnesses were then required to appear and the committal hearing could take five or six days. Reforms ensured that the complainant in a criminal trial could be called only at committal under finite and defined circumstances. That reduced the committal procedure to perhaps one witness and the tender of a brief. These days the vast majority of committal proceedings involve the tendering of a brief of evidence. Previously parties would not hold a conference and talk about the matter. They would have the matter committed to trial and sort it out after the committal hearing. That was the practice for a long time, and to a large extent it is still the practice today. Matters are committed for trial and negotiations take place. Counsel are briefed after committal and hold a meeting with the Crown Prosecutor at the arraignment stage. By that stage, a great deal of preparation has been done by the Director of Public Prosecutions and Legal Aid. The matter has gone through many sets of hands at both those agencies, incurring huge costs, and no discussion has taken place.

The bill will bring the committal stage process forward and significantly improve the efficiency of the process. The most important part of the bill relates to discounts provided for an early plea. The benefits to all concerned are numerous. An early plea saves victims the trauma of having to relive their attacks in court and alleviates the need for victims to prepare themselves for a trial. As the member for Epping said, victims may have to attend up to six conferences and relive the events. By the time they get to court they have told eight or nine people about their experience. The bill has the potential to improve that situation. It will save the court, the Office of the Director of Public Prosecutions and Legal Aid time and money, and relieve police of administrative duties, such as, gathering evidence and rounding up witnesses. It will reduce the risk of wrong charges being laid, thereby ensuring meaningful plea negotiations are entered into at an early stage.

The bill produces three categories of discount. First, an accused who pleads guilty before the committal will receive a discount of 25 per cent. Second, an accused who pleads guilty after committal may be granted a discount of between 12.5 per cent and 25 per cent in certain circumstances. Third, an accused who pleads guilty after committal may receive a maximum discount of 12.5 per cent. I will address the issue of substantial grounds. A discount of greater than 12.5 per cent but no greater than 25 per cent may be allowed for a guilty plea after committal if substantial grounds exist for allowing a greater discount. The Government recognises that in certain circumstances it may be unfair to deny a person a greater discount because of the timing of the plea. The four substantial grounds are, one, where an offender offers a plea of guilty to an alternative offence and later is found guilty of that alternative offence. That includes the statutory and common law alternative counts and reflects the common law, as it stands. If an offender offers to plead to an alternative offence and is later found guilty of that offence, the judge will take that into account. That situation will obviously attract a larger discount than 12.5 per cent.

The second substantial ground is where an offender offers to plead guilty to an alternative offence before the committal and the offer is refused by the prosecutor but later accepted after the committal. That situation will obviously attract a discount. It may be that one prosecutor does not accept the plea but later another prosecutor does. As those factors are outside the control of the offender, in fairness the discount would prevail. The third ground relates to where an offender offers to plead guilty to an alternative offence for the first time and it is accepted after the committal trial and the offender had no reasonable opportunity to offer that plea of guilty before the committal. That covers the situation where the Office of the Director of Public Prosecutions has reviewed the case after committal and found that following the review it will accept the plea. In those circumstances it would be fair to offer a discount of between 12.5 and 25 per cent because it was beyond the control of the offender.

The fourth ground is where an offender is found unfit to be tried for an offence by the District Court but subsequently pleads guilty to the offence when he or she becomes fit. This ground allows for the situation where a person is found unfit to stand trial after a fitness hearing but subsequently becomes fit and goes on to plead guilty to the offence. It is not the intention of the Government to punish people who cannot understand the nature of the proceedings or the charges preferred against them. Those four grounds cover the middle ground where factors outside the control of the offender are such that they are unable to plead guilty before the committal. However, in a situation where an offender is represented, in the majority of cases by Legal Aid, attends a conference and has a meaningful and constructive conference, one of several courses of action can occur.

One, the matter can proceed to committal for trial and the issues are focused. That means that the prosecution and the defence know more about the matter and can focus on the issues. Two, the offender pleads guilty to an offence, which means not only a secure plea and a discount, but also any dispute about the facts on sentencing can be resolved. I can say from experience that sentence hearings can go for days if the facts are in dispute. The complainant may need to be called to court to give evidence on a sentence hearing to resolve peripheral or major facts, but not the elements of the offence. I am pleased that the disclosure certificate contains an allowance to include any disputes on the facts on sentence. That means the sentence proceedings will be shortened, the complainant may not have to be called for sentence proceedings and the matter will proceed to finalisation earlier.

From my experience having worked in the criminal justice system for 12 years, I am particularly pleased with the bill. When I was on the local courts circuit I conducted a similar operation informally. The results were significant. If I held a conference with the Legal Aid solicitor or duty solicitor and the client, the potential for early resolution of the matter was significant. The matters committed for trial were the ones that generally ended up running as trials, not the ones that resolved themselves in the days leading up to the trials. Traditionally, serious negotiation and discussions between the prosecution and the defence have been carried out in the weeks leading up to the trial after the Crown Prosecutor has received a brief. That situation cannot continue. This bill makes provision for serious negotiation to occur at the beginning of the proceedings. The parties can sit down and attempt to resolve the matter. Matters that will be committed for trial are those that involve genuine disputes and differences, and where an accused exercises his rights and defends the matter.

The bill produces a significant cultural shift in the way the legal profession approaches matters when representing their clients. It will achieve that cultural shift by making sure that clients are advised that a criminal case conferencing system is in place to resolve matters earlier. In this way agencies such as the Office of the Director of Public Prosecutions and Legal Aid will not spend six months preparing for a trial, subpoenaing witnesses who may be interstate or overseas and preparing a matter for arraignment. Crown Prosecutors will not have to read the briefs to familiarise themselves with the case and police will not have to spend time rounding up extra evidence. All of those things will occur only if a matter goes to trial.
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I am very pleased to support this bill. I am very pleased that this initiative has finally come to fruition. I am very confident that it will achieve results in the three courts mentioned. From my experience, it is a significant improvement to the criminal justice system and I have great pleasure in commending the bill to the House.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [5.09 p.m.], in reply: I thank the members for Epping and Maitland for their very good contributions to the debate on the Criminal Case Conferencing Trial Bill 2008. They brought to the debate their experience as Office of the Director of Public Prosecution prosecutors—one as a Crown and one as a solicitor. I note the Opposition supports the bill.

The purpose of the bill is to establish a 12-month trial scheme commencing on 1 May that will codify the discounts on sentence to be allowed by the courts in respect of guilty pleas, will reduce the maximum amount of sentence discount that may be allowed for guilty pleas in those proceedings, and will require the legal representative of an accused person and the prosecution to participate in a compulsory conference. The Criminal Case Conferencing Trial Scheme applies to proceedings for indictable offences where committal proceedings for the offence

will be heard in the Downing Centre or Central Sydney Local Court and the accused is charged between 1 May this year and 1 May 2009.

A compulsory conference is to be held between the legal representative of an accused person and the prosecution when the accused is committed for trial. The conference is to determine whether there are any offences to which the accused person is willing to plead guilty. These are to be recorded in a compulsory conference certificate after the conference and filed with the court. Before the compulsory conference is held, a copy of a brief of evidence must be served on the accused person or his or her legal representative. The legal representative of the accused person and the prosecution are to be present at the compulsory conference. The compulsory conference certificate is admissible as evidence before a sentencing court only for certain limited purposes relating to the imposition of a lower penalty for a guilty plea.

The bill provides rate discount of 25 per cent if the offender pleads guilty at any time before committal. A discount of up to 12.5 per cent may be allowed if the offender pleads guilty at any time after committal. However, a discount greater than 12.5 per cent but not greater than 25 per cent may be allowed if substantial grounds exist for allowing a greater discount. Certain offences are excluded from the trial, such as life sentence offences, which presently include the offence of murder, certain serious heroin or cocaine trafficking offences and an offence under section 61JA of the Crimes Act 1900, as well as offences under Commonwealth law.

The bill is an important milestone in the development of criminal law procedures in New South Wales and makes fundamental and important reforms to the laws concerning sentencing. It must be remembered that this scheme has always been about pleas of guilty and the value that comes from that plea being entered at the earliest possible stage. It was never intended that the scheme would apply to people who always intended to plead not guilty and wish to go to trial. Going to trial is the right of every person charged with an offence in New South Wales and the law in this State does not punish a person for exercising their right to defend themselves against criminal accusations.

Some people have said that this is going soft on criminals, but that is not so. The proposed amendments are designed to provide a person who wishes to plead guilty with a real opportunity to do so prior to committal for trial. The amendments are also designed to encourage the prosecution to increase the accuracy of the charges laid and ensure they have the available evidence to support the charges at an early stage. To that end, there will be greater consultation between the police and the Director of Public Prosecutions at the time of charging the person to encourage accuracy of the charge and appropriate preparation of evidence to support it. There will be clear involvement of more senior and experienced practitioners early in the process to engage in meaningful negotiation while the matter is still at the local court level.

The need for such a scheme as this is quite clear. Of the 1,839 cases committed for trial to the District Court in 2006, fewer than 500 actually resulted in a trial. Of the remainder, approximately 1,000 resulted in a plea of guilty and almost 300 were no-billed by the Director of Public Prosecutions. The two main components of the present trial are the compulsory conference and the mandatory discounting regime on sentencing. Both of these initiatives are expected to result in savings in time and resources to the agencies involved in the criminal justice system, such as the Director of Public Prosecutions and the Legal Aid Commission, and will save victims the trauma of having to wait, often for months and sometimes years, until the eve of the trial only to hear that the offender has pleaded guilty. Also, the trial

will save police time. Whilst the police will still need to prepare a brief of evidence prior to the conference, it will save time later in the process. The trial will reduce the time spent in preparing matters for trial, including late requisitions, attending conferences with the Director of Public Prosecutions, marshalling civilian witnesses, responding to subpoenas, handling and transporting exhibits, investigating alibis and attending mentions and listings for trial. The police will also benefit from not having to roster police officers and detectives off duty for trials for lengthy periods of time—usually weeks but sometimes months—only to find that the trial does not proceed after a late plea of guilty.

A significant part of the trial involves the Director of Public Prosecutions providing police with pre-charge advice as to the appropriateness of the charge. That will help ensure the correct charges that fit the evidence are laid in the first place. The bill provides for the Director of Public Prosecutions and the Commissioner of Police to enter into a memorandum of understanding in relation to requests for advice by police officers to the director on any matter that could be the subject of a compulsory conference.

What is significant in bringing forward this bill is the support of groups that deal with victims of crime on a daily basis. Mr Ken Marslew, AO, from Enough is Enough, said of the proposed trial:

> It is simply a better way to deal with the process. It will cut down on some of the anxieties suffered by the victims as a guilty plea will speed up the process and with the discounts clearly defined hopefully bring greater consistency to the sentences.

Mr Howard Brown from the Victims of Crime Assistance League said:

> There are clearly times when discounts are appropriate, to save Victims and Witnesses the trauma of giving evidence being one, but, unless this is done at committal, when all the Crown evidence is laid out for the accused to be able to make a rational decision to plea, then we are not serving Justice.

But it is not only the victims of crime who support criminal case conferencing as proposed in this bill. The Law Society of New South Wales also welcomed the proposal when it was announced. President Hugh Macken said:

> The requirement for an early compulsory case conference between the prosecution and defence will greatly streamline the criminal law processes and allow early attention to focus on the real issues between the parties and the speedy resolution of matters.

In fact, this bill has been developed through a significant consultation process. Late last year consultation was undertaken based on a draft bill. This included consultation with the key stakeholders such as the Chief Magistrate of the Local Court, the Chief Judge of the District Court, the Director of Public Prosecutions, the Legal Aid Commission, the Aboriginal Legal Service, the New South Wales Bar Association, the Law Society of New South Wales, the Hon. James Wood, AO, former judge of the New South Wales Supreme Court, and the New South Wales Police Association. Victims groups consulted include the Homicide Victims Support Group, the Victims Of Crime Assistance League [VOCAL] and Enough is Enough, who all support the scheme.

I will now summarise the benefits of this trial. By encouraging early pleas we are saving victims the trauma of having to relive the attacks in court. We are alleviating the need for victims to prepare themselves for trial only to find that the accused pleads guilty on the first day of the trial. As the member for Epping said, often it is only when the accused arrives at the door of the court and the jury is being empanelled that suddenly the penny drops that the trial day has arrived and the accused realises that he or she is on trial. It will save the court, the police and the

Director of Public Prosecutions time and money and it will reduce the risk of the wrong charges being laid in the first instance, thereby ensuring meaningful plea negotiations are entered into early.

The member for Epping raised the issue of section 17 (5) (c) in relation to substantial ground. That section relates to reasonable opportunity, and that reasonableness is a well understood concept of law. Of course, what is reasonable in one situation may not be reasonable and another. The special ground in section 17 (5) (c) that allows an accused person to receive a discount for a plea entered after committal only applies in rare circumstances where there is another charge that could not originally have been contemplated that may arise at a later stage due to the changed circumstances. This could be, for instance, an ex officio indictment on a charge that was not related to the original charge. It is important to emphasise that it should only apply where the offender had no reasonable opportunity to enter a plea to a charge before committal and can only do so after committal. It should only apply for a charge that could not reasonably have been within the consideration of the accused at the time of the conference.

It is anticipated that if the accused expects to benefit from the criminal case conferencing scheme he or she will have to demonstrate full and forthright cooperation in the case conference. If an accused choses not to cooperate, he or she cannot seriously expect to receive the benefits of a large discount at a later stage.
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The member for Epping also raised the issue of the nature of the brief, suggesting that it may well be a mini brief. I am advised that it is not a mini brief. I refer the member to clause 8 of the bill, which provides that a brief of evidence is to consist:

> (a) any written statements taken from persons the prosecutor intends to call to give evidence in proceedings for the offence or offences, and
>
> (b) copies of any document or other thing identified in such a written statement as a proposed exhibit or advice as to where any such document or thing may be inspected.

The legislation goes on to provide that a copy of the brief evidence must comply with any requirement applicable as prescribed by the regulations. We are looking at a full committal brief being provided to the defence. As I said, it involves everything, and particularly the evidence that the prosecutor intends to adduce to prove the commission of the offence or offences. That is all the documents and material that the prosecutor will put before the court to prove each element of the offence or offences as the case may be.

This is a significant milestone in the development of the criminal justice system in New South Wales. As a person who practised criminal law with both the Legal Aid Commission and the Office of the Director of Public Prosecutions as a solicitor, I know that this bill will save time and effort and it will assist victims. I have great pleasure in commending the bill to the House.

Question—That this bill be now agreed to in principle—put and resolved in the affirmative.

Motion agreed to.

Bill agreed to in principle.

Passing of the Bill

Bill declared passed and returned to the Legislative Council without amendment.