

Second Reading Speech

Youth Justice (Miscellaneous Amendments) Bill 2012

Mr Speaker

I am very proud to bring this Bill before the House. The Bill is the product of a number of years' work, and I would like to thank all those involved throughout its creation, especially Steering Committee Members, past and present.

The purpose of this Bill is to ensure that the Youth Justice System in Tasmania is operating in line with contemporary best practice. The Bill provides the legislative framework required to achieve this. Before I proceed to explain the main features of the Bill I would like to outline the background to its development in some detail.

The *Youth Justice Act 1997* commenced on 1 February 2000. The proclamation of this Act significantly changed the way that we dealt with young people who offend, moving from a welfare based model to a restorative justice based model. Encouraging the participation of victims, recognition of the role of parents and guardians, opportunities for diversion and rehabilitation are all strong themes which underpin the philosophy of enabling young people to reach their full potential.

Since the Act's proclamation some 12 years ago, there have been a number of reviews that have recommended changes to parts of the legislation.

The Legislative Council Select Committee conducted a comprehensive review into Ashley, Youth Justice and Detention in 2007. During this review the Committee received evidence about the operations of the Act. The Committee noted that it "did not receive any evidence to suggest the Act was intrinsically flawed"

It was on this basis that the Government decided not to rewrite the Act in its entirety, but to focus on key areas. Initial consultation occurred with people across the Youth Justice System who worked with the legislation on a daily basis and were familiar with its operation.

They raised a number of issues and as a result of this feedback the Government released a public consultation paper, requesting additional feedback in relation to the following areas:

- the underlying policy when dealing with young offenders
- bail and remand
- diverting young people from the Court system
- matters prior to sentencing
- sentencing orders of the Court
- matters after sentencing
- additional sentencing options and
- a range of other specific issues, including but not limited to:
 - Illicit drug testing

- Prescribed offence provisions
- Confidentiality and publishing of information and
- Sentencing of offenders over 18 under the Act

Mr Speaker, this consultation paper also reconfirmed the underlying principles of the Act which are accountability and restorative justice, encouraging young people who offend to take responsibility for their acts and restore the harm done to victims and the community.

Mr Speaker, the response to this initial round of consultation was fantastic, feedback was received from young people, members of the public and a range of additional stakeholders who either work with the Act, or with young people who are engaged in, or are at risk of becoming engaged in the Youth Justice System.

The feedback provided throughout this initial consultation process, assisted us to identify a range of underlying concepts and reinforced some existing principles in the Act. These concepts and principles have informed the amendments being considered here today; and include:

- that some young people will only engage with the system once and should be assisted with minimal intervention to move out of the system
- there must be an increased focus on rehabilitation for those who are repeat offenders; and as many opportunities for change as possible should be incorporated into the system
- the level of intervention provided for young people should be accessible during different stages of the system, to ensure that we do not inappropriately criminalise behaviour
- that young people that have entered the Youth Justice System should be provided with a holistic, therapeutic approach to addressing offending behaviour
- that detaining a youth in custody (which includes remand), should only be used as a last resort and should only be for as short a time as necessary
- there was a fundamental belief that the community would be better protected if these underlying concepts were addressed.

After careful consideration of the feedback and recommendations generated throughout the consultation process, Cabinet endorsed the drafting of the Bill.

Drafting of the Bill commenced, and the Bill was nearing completion when the Global Financial Crisis hit; it should come as no surprise to members here that this resulted in the rapid decline in Tasmania's GST revenue. Regrettably this meant that some of the original amendments that had costs associated with them needed to be reconsidered, and a new round of targeted consultation was required.

The basis of this new round of targeted consultation was to provide a strategic review of those amendments. The feedback generated from this revised consultation process assisted the Youth Justice Steering Committee to determine the impact of removing those amendments; and to assess whether alternative (cost neutral) measures were required to promote good practice which was sustainable.

The Bill that I am presenting today is the culmination of both the original consultation feedback and recommendations, and the revised consultation feedback and subsequent recommendations received from the Steering Committee.

The Government believes that this Bill represents what can be done in the current economic circumstances, and still deliver some outstanding and much needed reforms across the Tasmanian Youth Justice System.

I would like to now detail some of the main features of the *Youth Justice Amendment Bill 2012*.

Removing the term punishment and replacing this with sanction:

- In the broadest sense, a sanction is a penalty for wrongful action; however, unlike a punishment, which is only ever punitive, a sanction can be either reparative or punitive. A reparative sanction links the nature of the penalty to the offence to be sanctioned and can evoke responsibility from the young person for his/her actions.
- The use of the word 'sanction' under the Objectives and Principles of the Act encourages the use of sanction in its reparative form.
- In addition, the objectives have been broadened to include a more restorative justice focus.

Amending the powers of formal cautions regarding community service:

- This will be achieved by placing an age limit on youths who can be given community service undertakings, and placing limits on the number of hours, and types of community service activities they can perform based on age.

We are also inserting additional powers where undertakings in formal cautions are not substantially performed:

- A new section has been added to assist with this provision.
- This amendment will provide an appropriate legislative response should a youth fail to substantially perform an undertaking that he or she has entered into.
- It should be noted that this section only applies if the youth is aged over 13 or more at the time of entering into the caution.

Addressing serious child sex offences appropriately

- The Director of Public Prosecutions recommended this change, and prosecution under this offence will only be initiated with his approval.
- Prescribed offences are the most serious offences a youth can commit under the Act; these offences are heard in the Supreme Court not the Magistrates Court.
- Currently the charge of 'maintaining a sexual relationship with a young person' as defined under the *Criminal Code Act 1924* is not included as a prescribed offence; This is a most serious offence as it may include allegations of rape or aggravated sexual assault, such serious crimes are compounded under this provision because the accused must have committed an 'unlawful sexual act' on the young person on at least 3 occasions to be charged with this offence.

- Under the current Act, unlike the related charges of rape, this charge would only be heard in the Magistrates Court. Making this serious charge a prescribed offence will mean that it will be heard in the Supreme Court in line with all other prescribed offences.
- This will allow for sentencing under the *Sentencing Act 1997* which removes the restrictions imposed under the *Youth Justice Act 1997* when sentencing.
- The intent of this amendment is to not punish young people who are in a consenting sexual relationship; this provision will be reserved for the most serious offending and will provide greater protections for the youngest and most vulnerable children in our society, by applying harsher sanctions on older youths that commit these types of offences.

An increased focus on rehabilitation in Sentencing:

- The *Youth Justice Act 1997* will be amended to ensure that the Court gives more weight to the rehabilitation of a youth over any other individual matter; the Court will also be required to consider the impact of orders on a youth's chances of finding or retaining employment.
- Currently young people who commit a motor vehicle stealing offence may be unable to obtain a learner's licence until 12 months after they reach the age of eligibility; under these amendments a young person will be able to apply to the Court to revoke the disqualification of licence, where there is sufficient evidence of rehabilitation.
- These amendments will be facilitated through consequential amendments to the *Police Offences Act 1935*.

The collection of monies by the Monetary Penalties Enforcement Service:

- The *Monetary Penalties Enforcement Act 2005* and the *Youth Justice Act 1997* will be amended to mandate that the Monetary Penalties Enforcement Service will be the collector for all financial restitution undertakings from Community Conferences.
- Mr Speaker, the Monetary Penalties Enforcement system is the most effective and efficient way to ensure victims receive financial restitution agreed to at a community conference.
- These changes will also assist young people in accessing a reliable and sustainable fine and financial restitution collection system that is easy to use.
- The Director will continue to provide a collection, rather than enforcement service, other than for court-ordered payments that are still outstanding when a youth turns 18 – enforcement can be considered in that scenario.

The introduction of Victim Impact Statements:

- Will provide the victim of an indictable offence with an opportunity to provide a written statement, once the youth is found guilty.
- This will help the Court consider the impact on the victim, ensuring that the voices of victims are heard during the judicial process.
- This will also ensure that young people hear, understand and are encouraged to empathise with, and take responsibility for the impact of their crime on the victim; reinforcing the principles of restorative justice.

Increased clarity around activities that can be performed as a Community Service:

- These changes will enable the Courts to attach special conditions to a Community Service Order and will remove restrictions on the type of Community Service Order work that can be performed, including broadening the administrative discretion in this area.
- These amendments will also ensure that sufficient options exist for the development of Community Service Order placements in the community which will allow for extended rehabilitative and restorative alternatives. Currently Community Service Order placements are limited to 'not for profit' organisations. This is unnecessarily restrictive and has inhibited the use of the Community Service Order sentencing options.
- In addition, amendments to Act will protect young people through appropriate worker's compensation cover conditions.

Increased protection of youth rights and amended arrest provisions:

- These changes reflect the inclusion of a statutory obligation to advise the young person's parent or guardian as soon as practicable of the young person's arrest, as well as advising the young person of their rights such as communicating with a relative or friend, legal practitioner and not answering questions that are put before them (unless required by statute).
- Police arrest powers are clarified to enable the arrest of a young person for a serious offence the youth has committed if the arrest is necessary to prevent the commission of another offence that is serious in nature. The current power of arrest for a serious offence is limited to where the arrest is necessary to prevent continuation or repetition of the same offence.
- This amendment brings us into a similar position with New South Wales, Western Australia, the ACT, Queensland, and Victoria.
- The amendment does not, and cannot, create any power to arrest a youth for future offending. It is always an arrest for the serious offence the youth is alleged to have actually committed. I note the confusion expressed in the media, however, and have taken further advice. I flag my intention to move an amendment to clause 17 of the Bill in Committee to clarify the amendment.
- The inclusion of new bail provisions will also prevent a young person from being charged for a breach of bail (with the exceptions of a failure to appear before a justice, or surrender to a court). Breaches of bail will be taken into account when sentencing, but will no longer be chargeable offences in their own right. This avoids the criminalisation of such conduct as breaching bail curfews, while keeping the conduct relevant to sentencing for the original offence.

- Police will still have the ability to arrest a young person under these provisions for the purposes of bringing the young person before a justice or court if they contravene a bail condition, so that bail can be reconsidered. Police also have the power to release a youth on bail if a Justice or court is unavailable within a reasonable time. Police have identified an operational issue in respect of ensuring youth in these circumstances can continue to receive police bail until they can be brought before a justice or the court in respect of the contravention. To address that matter, I also flag an amendment to clause 18 of the Bill.

The ability to request an Oral Presentence Report:

- Under this provision the Court may request a Youth Justice Worker to provide an oral presentence report.
- If this occurs the Court may ask the Youth Justice Worker questions which will eliminate the need for a written presentence report.
- If a presentence report is provided orally the youth, his or her legal representative or the prosecutor may:
 - dispute the whole or any part of the report during the hearing and
 - provide evidence on any disputed matters, and if necessary request that the matter be adjourned to enable this to occur
 - require a person whose opinion is referenced by the Youth Justice Worker to attend Court for the purpose of providing more information, and if necessary the hearing is to be adjourned to enable this to occur
 - ask the Youth Justice Worker or a person asked to attend questions and
 - must be allowed to cross examine the Youth Justice Worker regarding the contents of the report.

Conditions of Bail:

- The amendments ensure that the principles of the Act are considered when deciding whether to impose any bail conditions.
- The existing bail law ensures that conditions imposed under the *Bail Act 1994* are not more onerous than the court, justice or police officer, considers to be necessary in all circumstances.

Information sharing capabilities:

- The intent of these amendments is to provide increased clarity regarding the ability to share information between Information-Sharing entities, Government Agencies and/or the Commissioner for Children.
- These amendments highlight that information should only be shared for the purpose of rehabilitation and/or a related purpose; but do not increase the powers or functions of Information-Sharing entities, Government Agencies and/or the Commissioner for Children.
- In addition, there will be increased protection from prosecution in relation to disclosing certain information; and will override the *Personal Information and Protection Act 2004* or any other law relating to the confidentiality or privacy of information.

The introduction of Deferred Sentencing:

- This provision is expected to assist in breaking the cycle of young people within the tertiary end of the criminal justice system, assist in moving them onto pro-social pathways, thereby decreasing crime and increasing community safety.
- Under this provision Mr Speaker the Court will be given the statutory authority to defer sentence for a period of up to twelve months after a finding or plea of guilty.
- This will allow the Court to work more rigorously with young offenders through commitments made under an intervention plan. It is anticipated that this amendment will assist in reducing the amount of young people in secure detention.
- The intent of this amendment is to continue to support rehabilitation in the community.
- Unfortunately this amendment is likely to require additional youth justice workers to work intensively with the young person and the Court while the young person is subject to this program.
- While the Government is committed to this amendment, due to current budget constraints this amendment will be proclaimed at a later date.
- In the interim a trial of this amendment will be conducted in Southern Tasmania.

Recognition of Youth Justice Workers attending Community Conferences:

- Youth Justice Workers currently attend the majority of Community Conferences; this amendment will legislate that they must be invited to all Community Conferences.
- This inclusion will allow Youth Justice Workers to monitor the processes and the outcomes agreed on at community conferences; this amendment is anticipated to provide greater certainty that young people will receive realistic and achievable outcomes from their conferences.

The introduction of Controlled Substance and Alcohol Testing:

- This will allow the Court to place conditions on a young person's order requiring them to submit to controlled substance and alcohol testing.
- This in turn will assist Youth Justice Workers in working with young people whose alcohol and other drug use is underpinning their offending.
- It is hoped that this will deter youths from a cycle of substance abuse, leading to a reduction of offending.

Amendments to the sentencing of offenders that are over 18:

- This amendment has been included to provide increased flexibility when sentencing an offender that is 18 years old or more, this provides the Court with the ability to exercise the powers of a court of petty sessions in addition to, or instead of any powers under the Act. If this occurs:
 - the Court must take into consideration the age of the youth when they committed the offence and
 - if an order is made through this provision the responsible department in relation to the *Sentencing Act 1997* will be responsible for all matters relating to the administration of the order.

- This amendment will also prevent people who have committed offences when they were children entering the Youth Justice System as adults, such as when charged and convicted after a sometimes lengthy period of time has passed since their youth. This is a particularly important amendment as the expertise and skills required when dealing with young people are not the same as those required when dealing with adults.

The Bill provides for the regulation of personal searches on young people:

- The Government acknowledges that serious concerns exist in the community regarding the searching of youths, and believes that significant additional work is required to get this right.
- Rather than continue to delay all of the important amendments outlined today by developing detailed search requirements for the Act, the Bill provides for search requirements for searches of youths in custodial settings to be prescribed in regulations.
- In developing the regulations, additional consultation must occur in an attempt to ensure that community expectations and operational objectives are met.
- It is anticipated that at a minimum these provisions will ensure that the types of personal searches and methods of conducting personal searches on youths are regulated across all custodial settings including Ashley Youth Detention Centre, Police Stations, Remand Centres and Risdon Prison.
- It may be determined through this consultation process that these provisions should be extended further than custodial premises, across all searches conducted on young people.
- Consultation around these provisions is expected to commence shortly.

Facilitating proceedings

In addition, the Bill addresses a range of procedural issues to facilitate proceedings.

These include amendments so that proceedings in relation to contraventions of probation orders can be expedited both where the youth has received notice of the hearing but the Court is satisfied the youth is unlikely to appear; and also where the youth is actually before the Court so the usual 7-day notice period is not required.

Similar amendments are made in relation to community service order, suspended detention order, and rehabilitation program order proceedings,

All of those types of proceedings in the Act already allow for the notice period to be dispensed with where reasonable efforts have been made to serve notice on the youth but were unsuccessful.

A recent operational issue has highlighted that a similar allowance needs to be made in relation to supervised release orders. That is, the Secretary can only suspend a supervised release order after giving notice to the youth. If the youth cannot be found, the order cannot be suspended, which prevents the issue of a warrant to ensure the youth is quickly returned to safe custody when found.

I therefore flag an amendment I will move in Committee to insert a new clause in the Bill to amend s.117 of the Act, so that the Secretary must take reasonable steps to do the things required. This will accommodate the scenario where reasonable efforts to serve notice on the youth are without success.

As I have outlined here today the amendments contained in this Bill are far reaching and will encompass a range of very important reforms that will greatly strengthen the Youth Justice System in Tasmania.

These amendments will provide greater opportunities for victims of crime to be heard during the judicial process, will reinforce the importance of rehabilitating our young people once they come into contact with the Youth Justice System, will assist front line staff in performing their day to day roles and will pave the way for youth search provisions.

It is with great pleasure that I commend this Bill to the House.