

FACT SHEET

Youth Justice (Miscellaneous Amendments) Bill 2012

The Bill has been prepared to amend the *Youth Justice Act 1997* (the Act) in relation to a range of matters. Key areas of amendment are discussed briefly below.

The term ‘Punishment’ replaced 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 replacement of ‘punishment’ with 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 strengthen the restorative justice focus.

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.
- One of the specific amendments relates to the current scenario where a young person who commits a motor vehicle stealing offence might be disqualified from obtaining a learner’s licence until 12 months after they reach the age of eligibility to hold a driver licence. The *Police Offences Act 1935* will be amended to allow a young person to apply to the Court for a revocation of this disqualification, where there is sufficient evidence of rehabilitation of the youth.

Harsher sanctions for child sex offences

- Prescribed offences are the most serious offences a youth can commit under the Act. Prescribed offences are heard in the Supreme Court rather than the Magistrates Court.
- Currently the charge of ‘maintaining a sexual relationship with a young person’ as defined under section 125A of the *Criminal Code Act 1924* is not included as a prescribed offence.
- This is a most serious offence as it may include an allegation of ‘rape’ or ‘aggravated sexual assault’. Such crimes are compounded under this charge 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, this charge would be heard in the Magistrates Court. Upgrading this to a prescribed offence will mean that this charge 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 is intended for the most serious offending and will provide greater protections for the youngest and most vulnerable children in our society, by allowing for harsher sanctions on older youths that commit these types of offences.

Youth Justice Workers Attending Community Conferences

- Youth Justice Workers currently attend Community Conferences in the majority of instances.
- This amendment will legislate that they must be invited to all Community Conferences.
- The aim of this amendment is to provide greater assurance that young people receive realistic and achievable outcomes from their conference.

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 include the Monetary Penalties Enforcement Service (MPES) as the collector for all financial restitution undertakings from Community Conferences. As is currently the case for existing payments, MPES will only collect, not enforce payments; other than outstanding court-ordered payments where the youth turns 18.
- These amendments will assist young people in accessing a reliable and sustainable fine and financial restitution collection system that is easy to use.
- Using the MPES system is the most effective and efficient way to ensure victims receive financial restitution agreed to at a community conference.

Oral Presentence Reports

- The Court may order a Youth Justice Worker to provide a presentence report orally.
- If this occurs the Court may ask the Youth Justice Worker questions which will eliminate the need for a written presentence report or disclosure of the presentence report.

Victim Impact Statements

- Will give Courts the authority to receive a Victim Impact Statement from a victim for any indictable offence, helping the Court to fully consider the impact of crime on the victim.
- The victim impact is one of the factors that will be taken into account by the Court; however the rehabilitation of the young person will still be the prime consideration.
- This amendment will ensure the voice of the victims is heard during the judicial process.
- This amendment 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.

Conditions of Bail

- The intent of this amendment is to ensure that any conditions imposed under the *Bail Act 1994* are not more onerous than the Court, Justice or Police Officer, considers necessary in all circumstances, by requiring the principles of the Act to be considered when deciding whether to impose any bail conditions.

Community Service Order (CSO) Program

- These changes:
 - Will enable the Courts to attach special conditions to a CSO.
 - Will remove restrictions on the type of CSO work that can be preformed and broaden the administrative discretion in this area.
 - Will remove any confusion surrounding the word “program” in relation to the use of community service hours for education and health.
 - Will protect young people through appropriate worker’s compensation cover conditions.
 - Will ensure sufficient options exist for the development of CSO placements in the community which allow for extended rehabilitative and restorative alternatives. Currently CSO placements are limited to ‘not for profit’ organisations. This is unnecessarily restrictive and has inhibited the use of a CSO as a sentencing option.

Youth Rights & 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 will be able to arrest a young person if the arrest is necessary to prevent the continuation or repetition of the offence or the commission of another offence if committed by the youth, would be sufficiently serious to warrant the youth being arrested in relation to the commission of that offence.
- 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 can be taken into account when sentencing, but are not chargeable offences in their own right.
- Police will still have the ability to arrest a young person under these provisions if they contravene a bail condition, for the purposes of bringing the young person before a justice or court. Police will also have the power to release a youth on bail if a magistrate or justice is unavailable.

Deferred Sentencing

- The main outcomes of this amendment include breaking the cycle of young people within the tertiary end of the criminal justice system, moving them onto pro-social pathways, thereby decreasing crime and increasing community safety.

- 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.
- The intent of this amendment is to continue to support rehabilitation in the community.
- This may lead to a decrease in the number of admissions to Ashley Youth Detention Centre.
- 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. A trial of this amendment will be conducted across Tasmania with a proclamation planned for a later date.

Information Sharing

- 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.
- These amendments do not increase the powers or functions of Information-Sharing entities, Government Agencies and/or the Commissioner for Children.
- The insertion of section 167A provides appropriately increased protections in relation to disclosing certain information, overriding the Personal Information and Protection Act 2004 or any other law relating to the confidentiality or privacy of information.

Controlled Substance and Alcohol Testing

- This amendment will allow the Court to place a condition on a young person's order requiring them to submit to controlled substance and/or alcohol testing.
- The intent of this amendment is to assist Youth Justice Workers in working with young people whose alcohol and other drug use is underpinning their offending behaviour.
- This is expected to deter youths from a cycle of substance abuse, leading to a reduction of offending.

The sentencing of Offenders over 18 under the *Youth Justice Act 1997*

- 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 an increased ability to exercise the powers of a court of petty sessions in addition to or instead of any powers under this 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 will prevent adults who have committed offences when they were children entering the Youth Justice System. 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 adult offenders.