

Review of the Young Offenders Act 1997 and the Children (Criminal Proceedings) Act 1987

Tamworth Regional Council Response to Consultation Paper

1)

a) Does NSW's legislative framework take the right approach to offending by children and young people?

- There is a concern that the current approach to young offenders is too lenient and does not effectively deter re-offending. There is also a concern that in cases where magistrates impose an alternative to court proceedings in contradiction to suggestions by police that the authority and effectiveness of the police is being eroded.
- Children are currently given too many opportunities to avoid court proceedings. There should be a three strike rule in place resulting in mandatory control orders for repeat offenders and penalty provisions for parents of repeat offenders including heavy fines and loss of welfare benefits.

b) Are there any other models of approaches taken by other jurisdictions that this review should specifically consider?

- Currently no responses.

Young Offenders Act 1997 (NSW)

2)

a) Are the objects of the YOA valid?

- While it is appropriate to provide alternatives to court proceedings, care must be taken that these alternatives are not applied in instances where they will be ineffective, or when court proceedings would be more appropriate. Public opinion voiced at the recent Public Meeting on Crime and Anti-Social behaviour was of the view that too often offenders are not appropriately sentenced and are given too many chances to avoid court proceedings.

b) Are any additions or changes to the objects of the YOA needed?

- The YOA must make provision for dealing more severely with repeat offenders and should also review whether the alternatives offered under the YOA are too lenient to offer effective deterrence.

c) Should reducing re-offending be an objective of the YOA?

- Re-offending should be a major objective of the YOA. There is no point in offering alternatives to court proceedings if they do not deter offenders from re-offending. A three strike rule should be included resulting in mandatory control orders for re-offenders.

3)

a) Are the principles of the YOA valid?

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- It is of concern that the principles of the YOA are too heavily focused on diverting offenders from court proceedings regardless of whether this will have the appropriate effect regarding re-offending or the perception of justice of the victims.
- b) Are any additions or changes to the principles of the YOA needed?
- The principles should be reviewed to better reflect a focus on reducing re-offending and effectively deterring young offenders.
- c) Should reducing re-offending be addressed in the principles of the YOA?
- Re-offending should be addressed in the principles of the YOA. The alternatives to court proceedings that the YOA provides will only provide benefit if they deter re-offending. This should be a major focus of the principles of the Act.
- 4) Are the persons covered by the YOA appropriate?
- Currently no responses.
- 5) Should the YOA apply to all offences for which the Children's Court has jurisdiction, unless specifically excluded?
- Given public opinion that the sentencing of offenders is too lenient, to apply the YOA to strictly indictable offences, thus allowing for such offences to be dealt with through cautions, warnings and youth justice conferences as a preference to court proceedings would be inappropriate.
 - The offenses currently excluded from the YOA are of a serious nature, which the community would reasonably expect to be dealt with via court proceedings and not diverted through alternative processes. This is in direct conflict of the objects of the YOA.
- 6)
- a) Is the current list of offences specifically excluded from the YOA appropriate?
- Yes, due to their more serious nature.
- b) Is there justification for bringing any of these offences within the scope of the YOA?
- Due to the more serious nature of the offences currently excluded it would be inappropriate for offenders to be offered alternatives to court proceedings and as such should not be included in the scope of the YOA.
- 7) Should warnings be available for a broader range of offences, a more limited range of offences, or are the current provisions of the YOA appropriate?
- It is suitable that warnings are limited to summary offences and the Act should be reviewed to limit the range of offences where a warning can be applied to better reflect the expectations of the community and provide more effective deterrence to re-offenders.
- 8) Are the current provisions governing children's entitlement to warnings appropriate?
- The entitlement to a warning should be reviewed to exclude other anti-social behaviours as well as violence. There should also be provisions regarding re-offending including a three strike rule resulting in mandatory control orders for re-offenders.
- 9) Are the provisions governing the giving of warnings appropriate and working well in practice?
- There is concern in the community that warnings are being issued by magistrates in cases where the police have favoured more serious sentencing. This is seen to undermine the authority of police and inhibit their ability to deter offenders.
- 10) Are the provisions governing the recording of warnings appropriate? Are there any concerns with their operation in practice?

- While the mandatory recording of warnings is supported there is a general concern relating to the level of administrative work currently required of police. It is felt that the level of administrative requirements is diverting police from frontline responsibilities.
- 11) Are the current provisions governing the conditions for giving a caution appropriate? Are there any concerns with their operations in practice?
- It is inconsistent that while the 2002 amendments to the POA state that a child can only be cautioned on three occasions there is no limit applied to the number of cautions that may be issued by a magistrate. This again relates to the public perception that magistrates are overruling the recommendations of police and offering soft sentencing. A three strike rule should be included resulting in mandatory control orders for re-offenders and penalty provisions for the parents of re-offenders including heavy fines and the loss of welfare benefits.
 - It has been voiced by the public that magistrates should be held accountable to the community for the sentences they impose in terms of leniency.
- 12) Are the provisions that govern the process of arranging and giving cautions appropriate? Are there any concerns with their operation in practice?
- There should be a limit to the number of cautions a child may receive. A three strike rule should be introduced resulting in mandatory control orders for re-offenders and penalty provisions for the parents of re-offenders including heavy fines and the loss of welfare benefits.
- 13) Are the provisions that govern the consequences of a caution appropriate? Are there any concerns with their operation in practice?
- The current provisions are inappropriate and do not serve as a deterrent to re-offending. Documents should not be destroyed and further proceeding should be pursued in the case of re-offenders.
- 14)
- a) Are the principles that govern conferencing still valid?
- There should be an increased focus on justice for the victim.
- b) Are any additions or changes needed?
- A focus on deterring repeat offenders should be included.
- 15) Are there any concerns with the comparative rate of conference referrals from Police and the Courts? If so, how should these concerns be addressed?
- There is community concern that in certain cases where police have suggested more serious sanctions that they are being overruled by magistrates. This undermines the effectiveness of the police and their ability to deter offenders.
- 16) Are the above provisions governing conferencing appropriate? Are there any concerns with their operation in practice?
- Reparation to the victim or community should have a higher priority within the provisions.
- 17) Should the YOA specify what constitutes an admission for the purposes of the YOA? If so, what form should an admission take?
- Currently no responses
- 18) Are the provisions governing the provision of legal advice to children under the YOA appropriate? Are there any concerns with their interpretation, or operation in practice?
- Currently no responses

19) Are the provisions that govern the disclosure of interventions under the YOA appropriate?

- There are concerns which relate back to the issue of sentences being too lenient, that there are too few consequences attached to young offenders receiving a warning, caution or conference. That there are restrictions on disclosure related to the alternatives provided by the YOA could be seen to support this.

20)

a) Is diversion still a legitimate aim of the YOA?

- It is acknowledged that diverting suitable offenders from court proceedings can assist workload levels of the courts while providing suitable outcomes, however there is concern that the alternatives provided by the act do not effectively deter offenders and that the alternative processes can be applied inappropriately in relation to the severity of the offence, or in situations regarding repeat offenders.

b) If not, how could court processes and interventions be structured so as to better address re-offending amongst children?

- There is concern that children receive too many chances to avoid court proceedings and that sentences are often too lenient and do not adequately reflect the severity of the offence. A three strike rule should be introduced resulting in mandatory control orders for re-offenders and penalty provisions for the parents of re-offenders including heavy fines and the loss of welfare benefits.

c) If so, is it still adequate and appropriate to divert children to warnings, cautions and conferences?

- There is a concern that offences are being diverted from court proceedings too often, in cases where the nature of the offence is such that it should be dealt with via court proceedings, and in cases of re-offenders.

d) What changes could be made to the interventions under the YOA, to better address re-offending amongst children and young people?

- It has been suggested that applying penalties to parents of offenders as well as the offenders themselves may improve the effectiveness of sentences in relation to re-offending. Penalty provisions for parents of re-offenders should include heavy fines and the loss of welfare benefits.

e) Do the interventions under the YOA adequately cater for the needs of victims?

- Opinions expressed by the community suggest they do not feel that the interventions provide for victims appropriately and that offenders receive sentences that are too lenient and do not deter offenders.

21)

a) What changes to the YOA, or its implementation, could be made to ensure that Aboriginal and Torres Strait Islander children have equal access to diversionary interventions under the YOA?

- Currently no responses.

b) What changes to the YOA, or its implementations, could be made to better address the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system?

- Currently no responses.

22)

a) Are the interventions under the YOA adequate and appropriate for children with cognitive impairments or mental illness?

- Currently no responses.

b) If not, what changes could be made to better address offending by these children?

- Currently no responses.

23) Is there a need to reintroduce a body with an ongoing role to monitor and evaluate the implementation of the YOA across the state?

- Due to public concern about the effectiveness of diverting offenders from court proceedings it would be appropriate to re-evaluate the YOA especially with regard to its effect on re-offending.

Children (Criminal Proceedings) Act 1987

21) Should the age of criminal responsibility be changed? If so, why, and to what age?

- 10 is the appropriate age for criminal responsibility above this children need to understand the consequences of their actions and should be held accountable.

22) Could the structure of the CCPA be improved? If so, what other structure is recommended?

- Currently no responses.

23)

a) Are the guiding principles set out in the CCPA still valid and are any changes needed?

- The consideration of the victim should be of a higher priority. There is concern that too much focus is on the welfare of the offender, such that victims are left feeling justice has not been served.

b) Should the principles of the CCPA be the same as the principles of the YOA?

- It is appropriate that the principles of the CCPA differ from those of the YOA given that the CCPA is concerned more specifically with court proceedings, which are specifically avoided by the YOA.

c) Should the CCPA include an objects clause? If so, what should those objects be?

- It would be useful for the CCPA to have an objects clause to help clarify its purpose and to differentiate it from the objects of the YOA. The objects should include the aim of reducing incidents of re-offending.

24)

a) Are the processes for commencing proceedings against children appropriate?

- Currently no responses.

b) Is the different process for serious children's indictable offences and other serious offences appropriate?

- It is appropriate that serious offences should allow for young offenders to be detained or bailed. The CCPA should clarify circumstances where this is appropriate.

25)

a) Are the provisions for the conduct of hearings appropriate?

- It is inappropriate that a plea of guilty should not automatically result in a recorded conviction, especially as the failure to do so may result in a benefit for re-offenders in that their prior offences may not be used as evidence. This includes children under the age of 16.

b) Are the limitations on use of evidence of prior offences, committed as a child, appropriate?

- The limitations on use of evidence should be reduced to help deter re-offending. If the child is aware that prior offences may not be used as evidence there is no incentive not to re-offend. This includes children under the age of 16.
- c) Should the wording of section 15 be amended to make it easier to understand?
- The circumstances allowing for prior convictions to be used as evidence should be made clearer.
- 26) Is it appropriate for courts other than the Children's Court, when dealing with indictable offences, to impose adult penalties or Children's Court penalties?
- Adult penalties should be imposed.
- 27) Is there any need to amend the list of factors to be taken into account when deciding whether to impose adult penalties or Children's Court penalties where they have committed a non-serious indictable offence?
- There is concern that magistrates are out of touch regarding how they consider the issue of seriousness. The community feels that magistrates consider many cases to be less serious than is the opinion of the general public. This may be related to restriction of the use of prior offences as evidence. It is suggested that magistrates should be accountable to the community for the penalties they impose.
- 28) Does the list of special circumstances that can justify certain offenders aged 18 to 21 being placed in juvenile detention remain valid?
- No. If the offender was 18 or under at the time of the offence but is being brought before the courts aged between 18 to 21 they should be placed in adult detention. Mental disability should be the only deciding factor.
- 29)
- a) What should the content of the background reports be?
- Content of background reports should be limited to what the court decides is relevant for the case.
- b) Should the contents be prescribed in legislation?
- There should be flexibility regarding the contents of background reports such that information unnecessary to a case is not generated. Legislation should reflect this flexibility.
- c) Should other reports be available to assist in sentencing?
- The court should be able to request additional reports as required to assist in sentencing.
- 30) Should a court have the power to request a report from relevant government agencies in order to determine whether a young person is at risk of serious harm (and in need of care and protection) and/or whether they are homeless?
- Courts should be able to request such reports; however they should not be used as justification for leniency in sentencing.
- 31) Is the list of serious children's indictable offences appropriate? If not, what changes need to be made?
- It is appropriate that such serious offences should not be under the jurisdiction of the Children's Court.
- 32) Is the current approach to dealing with two or more co-defendants who are not all children appropriate?

- Proceedings against co-defendants heard in the Children's Court should incur the same penalties as they would have received had their case been heard in the Local Court.

33) Should the Children's Court hear all traffic offences allegedly committed by young people?

- There should be clear division regarding traffic offences. Offenders should not be heard by the Children's Court purely because they have committed additional offences.

34) Should the CCPA clarify whether a child can be sentenced to a control order for a traffic offence?

- Local Courts should have the ability to impose a control order for traffic offences under the CCPA and this should be made clear in the Act.

35)

a) Are there any concerns with these provisions? In particular:

i) Is it appropriate that Children's Court magistrates have such a discretion, rather than having the election decision rest solely with the prosecution and/or defence as is the case with the adult regime?

- It is appropriate that Children's Court magistrates should have such discretion for matters where it is deemed appropriate that they be committed to the District or Supreme Court.

ii) Should there be a more restricted timeframe for the defendant (or the Court) to make an election?

- Currently no responses.

b) Should the CCPA include any guidance about the circumstances in which the Children's Court may form the opinion that the charge may not be disposed of in a summary matter (as it does for indictable offences set out in s18(1A))?

- There should be guidelines in place regarding these circumstances with the focus taking into account community perspective regarding the seriousness of the offence.

36)

a) Are the penalty provisions of the CCPA appropriate?

- Penalty provisions should include a three strike rule which results in a mandatory control order. Heavy penalties should be included for the parents of repeat offenders including heavy fines and the loss of welfare benefits.

b) Are there any concerns with their operation in practice?

- There is concern that the current penalty provisions are too lenient, with the majority having no real consequence for the offender, and that they do not act as an effective deterrent to re-offending. There should also be penalties provisions for parents of repeat offenders and these should be outlined in the Act.

c) Should the penalty options be clarified or simplified in the Act?

- Penalty options should include clarification regarding matching the penalty to the seriousness of the offence and to matters of re-offending to avoid excessive leniency in sentencing.

37)

a) Are the provisions for the destruction of records appropriate?

- Records should not be destroyed especially in the case of offenders that are found guilty. The presumption that records should be destroyed automatically is inappropriate.

b) Are there any concerns with their operation in practice?

- The destroying of documents again reduces the deterrent to re-offend. Repeat offenders should have evidence of their previous offences available for use by the Court.

c) Should the presumption for destruction of records be reversed in relation to proceeding where a child or young person pleads guilty, or the offence is proved but the Court dismisses the charge with or without a caution?

- The reversal of this presumption would be inappropriate. Records should not be destroyed.

38)

a) Are the provisions for terminating and varying good behaviour bonds and probation orders, and for dealing with breaches of such orders, appropriate?

- What constitutes a trivial breach or a good reason to excuse should be clarified to avoid excessive leniency.

b) Are there any concerns with their operation in practice?

- There is concern that magistrates are not in touch with the opinions of the community in relation to the seriousness of offences and breaches of bonds.

c) Should there be a wider discretion to excuse a breach of suspended control order?

- Cases where a breach of suspended control order is excused should be tightly monitored and discretions regarding excusing breaches should be tightened.

39) Should the YOA and CCPA be merged? If so, what should be the objects of any new Act?

- The Acts should be merged with the resulting Act focused on clarifying the progression from diversionary options to more serious sanctions. The focus should also include an aim to reduce re-offending and penalties for parents of repeat offenders as well as making magistrates accountable to the community regarding their application of penalties.