Courts and Other Legislation Amendment Bill 2007

About this Item
Speakers - Sharpe The Hon Penny; Ajaka The Hon John; Rhiannon Ms Lee; Nile Reverend the Hon Fred

Business - Bill, Second Reading, Third Reading, Motion

COURTS AND OTHER LEGISLATION AMENDMENT BILL 2007

Page: 5033

Second Reading

Debate resumed from 4 December 2007.

The Hon. PENNY SHARPE (Parliamentary Secretary) [2.55 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Courts and Other Legislation Amendment bill 2007 provides for miscellaneous amendments to court related legislation and is part of the Attorney General's regular legislative review and monitoring program.

Coroners Act 1980

Schedule 1 of the bill makes some important clarifying amendments to the Coroners Act 1980.

Coroners are responsible for investigating the circumstances surrounding reported deaths, fires and explosions.

They are required to investigate deaths and establish the identity of the deceased, the time and place of death and the cause and manner of death.

Coroners are also required to establish the cause and origin of fires or explosions.

Section 19 of the Coroners Act 1980 provides that if a person is charged with an indictable offence in relation to a death, fire or explosion, the coroner may decide not to commence an inquest or inquiry until criminal proceedings are concluded.

Similarly, if the coroner forms a view during an inquest or inquiry that a person should be charged with an indictable offence, the coroner will terminate the inquest or inquiry and refer the case to the Director of Public Prosecutions to consider initiating criminal proceedings.

The purpose of section 19 of the Act is to ensure that any criminal proceedings take precedence over coronial inquests and inquiries.

Once criminal proceedings are either concluded or a decision has been made not to prosecute, then section 20 of the Act was intended to permit a coroner to commence or continue an inquest or inquiry.

However, the recent decision of the Supreme Court in *Innes & 2 ors v New South Wales Senior Deputy State Coroner [2007] NSWSC 1209* held that section 20 did not achieve this objective.

Prior to this decision, the view was held that section 20 enabled coroners to recommence an inquest or inquiry once proceedings for an indictable offence were finalised.

Coroners relied on section 20 as authority to continue proceedings for the purpose of making findings in relation to the cause and manner of deaths or the cause and origin of fires and explosions, and to make any recommendations when handing down these findings.

Accordingly, the proposed amendments in this bill are intended to clarify provisions relating to the termination of inquests and the subsequent continuation of an inquest or inquiry and restore the legislative interpretation that existed prior to the Supreme Court's decision.

The proposed amendments will confirm that the role of the coroner has not concluded when an inquest or inquiry is terminated and that it is open to the coroner to continue proceedings at a later stage to complete the proceedings.

In some instances, it will be unnecessary to do so, for example, where criminal proceedings have fully exposed issues relating to the cause and manner of death.

However, in other instances there may be issues relating to the death that have not been fully canvassed in the criminal trial and the coroner may therefore wish to continue the inquest or inquiry.

The proposed amendments will make it clear that the inquest or inquiry may be continued either by the original coroner who terminated proceedings or, if that coroner is unavailable, by another coroner who is informed of the case.

They will also create an express right for persons who had a right of appearance at the original inquest or inquiry to request that the inquest or inquiry continue.

Amendments to the land and Environment Court Act 1979

The bill also makes some amendments to the Land and Environment Court Act 1979.

Under section 34 of that Act, a commissioner can meet informally with the parties on-site to discuss the issues in a case and help them to reach an agreement.

Legal representatives, experts and objectors can also attend this conference.

If an agreement is reached at or after a conference, the commissioner must dispose of the proceedings in accordance with the agreement.

If an agreement is not reached, then the case will proceed to a hearing.

Evidence cannot be adduced about what occurred in a section 34 conference without the parties' consent.

Section 34 conferences are similar to mediations in that both are designed to bring about agreements between the parties in a less formal environment.

There is currently a prohibition on the disclosure of information about section 34 conferences, which is similar to the prohibition that applied to court ordered mediations before the Civil Procedure Act 2005.

Prior to the Civil Procedure Act 2005, evidence could not be called and was not admissible about what occurred in the mediation.

However, the recent Courts Legislation Amendment Act 2007 amended section 34 of the Land and Environment Court Act 1979 to allow evidence to be called and to be admissible: about an agreement or arrangement that IS reached following a mediation; and in circumstances where the court is being asked to make an order to give effect to the agreement or arrangement.

This change was modelled on the Civil Procedure Act 2005 provision relating to mediation.

However, section 30 of the Civil Procedure Act 2005 also provides that the same privilege that applies to judicial proceedings with respect to defamation also applies to a mediation session and to documents produced for the mediation.

But there is currently no similar provision in relation to section 34 of the Land and Environment Court Act 1979.

Without the protection afforded by section 30 of the Civil Procedure Act 2005, parties involved in a section 34 conference might be less frank and less willing to make concessions to settle a dispute.

Accordingly, the proposed amendment to section 34 of the Land and Environment Court Act 1979 will apply the approach taken in relation to mediations under the Civil Procedure Act 2005 to section 34 conferences.

This will ensure that the same privilege that applies to judicial proceedings with respect to defamation also applies to section 34 conferences and to documents produced for these conferences.

Legal Profession Act 2004Legal Profession Act 2004

Schedule 3 of the bill makes some minor amendments to the Legal Profession Act 2004 in order to tidy up provisions relating to references to 'legal practitioners' in several older pieces legislation.

Many pieces of legislation refer to 'legal practitioners' in a variety of different senses.

The proposed amendments will help to clarify the intention of these older references to legal practitioners, and to have those intentions reflected in the Legal Profession Act 2004.

Young Offenders Act 1997

The bill also amends the Young Offenders Act 1997 to improve the operation of the system of warnings, cautions and youth justice conferences in New South Wales.

A number of these amendments have arisen as the result of a recent statutory review of the Young Offenders Act 1997 undertaken by the Attorney General's Department of New South Wales.

In addition, the bill contains amendments that implement recommendations made by the New South Wales Law Reform Commission in its recent Report Number 104, entitled Young Offenders.

The Young Offenders Act 1997 provides an alternative process to court proceedings for young people who commit certain types of offences.

The Act provides for the use of warnings, cautions and youth justice conferences to rehabilitate young offenders and to deter re-offending.

Very serious matters like murder, manslaughter, other offences resulting in the death of a person, sexual offences, drug trafficking, and apprehended violence matters cannot be dealt with under the Act.

In October 2006, the Bureau of Crime Statistics and Research released a report that found that the Young Offenders Act 1997 is succeeding in reducing juvenile re-offending in New South Wales.

The report concluded that juveniles who receive a caution or attend a youth justice conference are notably less likely to re-offend than those who are referred to the Children's Court.

Accordingly, the young offenders' scheme is playing an important role in achieving the Government's State Plan priorities of reducing reoffending and reducing anti-social behaviour.

By strengthening and improving the operation of the Young Offenders Act 1997, this bill will further contribute to these priorities.

I will now detail some of the key provisions in the bill concerning the Young Offenders Act 1997.

The first key amendment is to allow a broader range of victims of crime to confront young offenders at youth justice conferences.

Under the Act, a victim of crime is able to participate in a youth justice conference where they have suffered harm as the result of an act committed by a child in the course of a criminal offence.

The definition of harm in section 5 of the Act currently applies where the victim has suffered 'mental illness' or 'nervous shock'. Both of these concepts now have narrow medical and legal meanings.

The definition will therefore be expanded to include anyone who has suffered other sorts of psychological harm as a result of an offender's actions including fear, humiliation, shame or stress.

The definition of 'harm' will also be expanded to cover victims who have suffered purely financial loss, in addition to those whose property has been lost, destroyed or damaged.

By allowing a wider range of victims to attend youth justice conferences, this amendment will ensure an even greater role for victims of crime in the juvenile justice system.

And by allowing more victims to have a say in how a young offender is to be punished, the amendment will force even more juvenile offenders to face up to the consequences of their behaviour, and the effect that it has on the community.

The second key amendment in the bill will allow victims to have their voices heard as part of the cautioning process under the Young Offenders Act 1997.

Under the Act, both Police and the Children's Court have a discretionary power to issue a formal caution to a young offender.

Being given such a caution is a serious matter—the young offender must face a senior police officer at a police station, with their parents or guardian, and confront the offence they have committed.

Under the amendment being put forward in this bill, a young offender receiving a caution will also have to face up to the impact that their behaviour has had on their victim.

Victims will be allowed, in appropriate circumstances, to prepare a written Statement detailing the impact that the young offender's behaviour has had on them.

These Statements may then be read to the offender as part of the formal cautioning process.

Through this process, victims will be able to have their voices heard, and young offenders will be made to understand the impact their behaviour has on others.

The third key amendment in the bill will confirm that police officers, where appropriate, can notify the parents or guardians of a juvenile offender, either in writing or in person, that a warning has been administered to their child, or to a child in their care.

This amendment confirms current police practice, and will ensure that parents and guardians are aware of their children's offending behaviour, particularly where it involves risk of harm to the young person or other members of the community.

This will allow parents and guardians to playa greater role in monitoring the behaviour of their children.

Another key amendment in the bill will confirm that a young person who is cautioned or undergoes conferencing would have to declare that fact when applying for child-related employment later in life.

This is an important amendment because, while many young offenders are given the opportunity to rehabilitate and put their offending behaviour behind them, the New South Wales Government is not prepared to take any risks when it comes to people working with children.

The bill will also amend the Young Offenders Act 1997 to make it clear that the Act is consistent with the Children's (Criminal Proceedings) Act 1987 in relation to the age at which persons may be dealt with under the Act.

This clarification was recently recommended by the New South Wales Law Reform Commission in its Report Number 104, Young Offenders.

The bill will give effect to this recommendation and rectify the anomaly.

This bill also contains a provision to amend the Young Offenders Act 1997 to allow police officers to observe the administration of warnings and attend youth justice conferences for training purposes.

This will allow individual police officers to develop a first-hand appreciation of how cautions and conferences impact on both offenders and victims, and to appreciate the important role that the young offenders scheme plays in reducing re-offending in New South Wales.

The final key amendment that I wish to speak to is an amendment to repeal provisions in the Young Offenders Act 1997 relating to the Youth Justice Advisory Committee, which is also known as YJAC.

YJAC is a statutory body that was established under the Act to advise the Attorney General and relevant Ministers on its implementation.

Now that the young offenders scheme has been established for some 10 years and is operating well, YJAC has met the majority of its statutory terms of reference.

The Government has therefore decided to combine the functions of YJAC with those of the Juvenile Justice Advisory Committee, which is also known as JJAC, into a new single body.

This body would be able to provide independent and more co-ordinated advice to the Government on matters relating to juvenile justice.

We are currently considering terms of reference for this body to best reflect the priorities of the New South Wales State Plan.

By removing the statutory basis for YJAC, this bill will allow the Government to move forward with combining the two bodies, and thereby ensure that co-ordinated advice is provided to the Government on the full spectrum of juvenile justice issues.

> As I noted earlier, many of the amendments contained in this bill are based on the recommendations of a statutory review of the Young Offenders Act 1997, as well as those put forward by the Law Reform Commission in its Report Number 104, Young Offenders.
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> The amendments will make the young offenders' scheme even more effective at reducing anti-social behaviour amongst young people in New South Wales, and in reducing re-offending. I commend the bill to the House.

The Hon. JOHN AJAKA [2.55 p.m.]: The Courts and Other Legislation Amendment Bill 2007 seeks to amend the Coroners Act 1980 in relation to the suspension and continuation of inquests and inquiries, the Land and Environment Court Act 1970 in relation to privilege and conciliation conferences, the Legal Profession Act 2004 in relation to a transitional matter, and the Young Offenders Act 1997 in relation to miscellaneous matters, and to make consequential amendments to certain regulations.

The Opposition does not oppose the bill. I begin with the proposed amendments to the Coroners Act 1980. At present section 19 of the Act provides that if a person is charged with an indictable offence in relation to a death, fire or explosion the Coroner may decide not to commence an inquest or inquiry until criminal proceedings are concluded. Similarly, if the Coroner decides during an inquest or inquiry that a person should be charged with an indictable offence the Coroner will terminate the inquest and refer the case to the Director of Public Prosecutions. Section 20 was intended to permit the Coroner to commence or continue the inquest or inquiry upon the conclusion of criminal proceedings. However, the recent decision of the Supreme Court in *Innes and 2 ors v NSW Senior Deputy State Coroner*; *Commissioner of Police v NSW Senior Deputy State Coroner [2007]* NSWSC 1209 held that:

> Even though there is otherwise a prohibition on the commencement or continuation of any inquest, Section 20 provides that after the termination of the inquest, a further inquest may be conducted provided, relevantly, that any charges arising have been finally dealt with.
>
> Section 20 does not deal with who would conduct such an inquest, how it would be re-agitated and who, if anybody, would re-agitate it. The section overcomes of the restrictions imposed by Section 19 of the Act.
>
> A party must look to other sectors of the Act in order to find the specific power to require the holding of a further inquest upon application of a party. Section 20 does not carry that power.

Accordingly, the bill seeks to annul the binding effect of this judicial decision with respect to its deviation from the meaning with which Parliament intended in regards to section 20 of the principal Act. The bill seeks to amend the Coroners Act 1980 to state that a Coroner may continue an inquest or inquiry that has previously been terminated. The bill also seeks to add provisions to authorise the State Coroner, or his or her agent, to resume or dispense with a suspended inquest or inquiry if the Coroner who adjourned it, or did not commence it, is unavailable. The proposed amendments will restore the legislative interpretation of section 20 that prevailed prior to the decision in Innes, bringing the trend of statutory construction of the section back into line with the initial parliamentary intention.

I turn now to the proposed amendments to the Land and Environment Court Act 1979. The bill seeks to amend the Act such that the same privilege that applies to judicial proceedings with respect to defamation applies in relation to conciliation conferences and documents produced in relation to such conferences. Under the Land and Environment Court Act 1979 as it now stands, a commissioner can meet informally with the parties to help reach an agreement, as with mediation proceedings. Currently, there is a prohibition on the disclosure of information in these conferences. Recently, similar provisions in the Civil Procedure Act were changed to provide that the same privilege that applies to judicial proceedings with respect to defamation applies also to mediation sessions. This will extend the provision to conferences in the Land and Environment Court. It has been argued that the protections offered by the proposed amendments will make parties more candid and open in their negotiations and more willing to make concessions to settle their disputes.

I refer, next, to the proposed amendments to the Legal Profession Act. Prior to the enactment of this legislation in 2004, persons were admitted as legal practitioners. Since the enactment of this legislation the Supreme Court admits those persons as lawyers. Some minor amendments are made to the Legal Profession Act in order to clarify and update provisions relating to references to legal practitioners in older legislation following the Legal Profession Act. The bill seeks to insert in the principal Act that a legal practitioner, where the term is not so expressed of a specified period of standing, is to be read as a reference to an Australian lawyer of that period of standing. The proposed amendments would bring consistency and uniformity to the relevant Acts.

I turn, finally, to the proposed amendments to the Young Offenders Act 1997. Having regard to the changes to this Act, the primary objectives of the bill include: first, to address the overrepresentation of Aboriginal and Torres Straight Islander children in the criminal justice system; second, to expand the definition of "victim" to include people who, as result of an act, suffer psychological harm that does not amount to mental illness or nervous

shock, and people who suffer financial harm than property loss; third, to expand the Act to apply in relation to a person who is or was a child when the offence was committed and is under the age of 21; and, fourth, to provide that an investigating official has at least 14 days to consider whether a child should be dealt with under part 3 or part 4 of the Act, or referred to a specialist youth officer under part 5.

The fifth primary objective of the bill is to provide that one of the circumstances in which an admission by a child of an offence is an accepted admission if he or she is aged over 14 and the admission takes place in the presence of an adult chosen by the child; and, sixth, to insert a new section to enable an investigating official who gives a warning to a child to give the parents of the child notice unless it would pose an unacceptable risk to the safety of the child. Furthermore, a requirement is inserted that the record of a warning made is destroyed or expunged once the person reaches the age of 21. The seventh primary objective is to insert a new section to enable a person arranging for a caution to be given to a child to seek a written statement from any victim, to give guidance to the victim as to this statement, and to provide such statement to the person giving the caution.

The eighth primary objective is to insert a provision that a person proposing to give a caution may defer doing so in certain circumstances and may choose to read out some or all of the statement; ninth, to confer on the court a power to give a caution with the requirement that, if a caution is given, the proceedings be dismissed; tenth, to enable one student or probationary police officer to be present for training purposes when a caution is given, with the consent of the child; eleventh, to insert a new section to require that any fingerprints obtained from or photographs taken of a child in connection with an offence are destroyed if a caution has been given; and, twelfth, to enable records of cautions and conferences to be divulged to authorised persons.

The thirteenth primary objective is to create an exemption from limitations on the need for a person to disclose warnings or cautions so that such limitations do not apply in relation to an application by a person for employment in child-related employment; fourteenth, to abolish the Youth Justice Advisory Committee; and, fifteenth, to alter the provisions of youth justice conferences by clarifying that a conference administrator's obligation to appoint a conference convenor arises only when he or she is satisfied that a referral for that purpose has been made, and provided that a conference is convened within 21 days instead of the 21 days that are required at present, enabling a police officer to be present at a conference if consent is given.

The bill amends the Young Offenders Act to strengthen the operation of the system of warnings, cautions and youth justice conferences with a view to rehabilitating young offenders and deterring their reoffending. This scheme does not apply to very serious matters. The bill seeks to implement several recommendations made by two reportsnamely, the report of the Attorney General's Department, which was completed in 2002, and the report of the New South Wales Law Reform Commission, which was completed in 2005.

A 2006 Bureau of Crime Statistics and Research [BOCSAR] report found that, of the young people who received a police caution for the first time, 42 per cent reoffended within five years and the proportion of conference participants who reoffended was 58 per cent. Whilst those figures are high they appear to be lower than the figures for young persons who appeared in the Children's Court for the first time, which was approximately 63 per cent. The Government argues that this report shows that juveniles who receive a caution or attend a conference are notably less likely to reoffend. Accordingly, this scheme is important in reducing the rates of reoffending and the level of antisocial behaviour.

It must also be noted that the experience in New South Wales, as stated in the Bureau of Crime Statistics and Research report, has considerably higher reoffending rates than those found in other States. The Opposition deplores the Government's delay in addressing the apparent deficiency of New South Wales young offenders schemes with respect to reoffending and rehabilitative needs. More work must be done. The report also cautions that although there remains a difference in the rate of court appearances for those given a caution verses a conference, this should not necessarily be taken as an indication of the relative efficiency of cautions. It is likely that most—and possibly all—the differences reflect the fact that low-risk offenders are more likely to be given a caution instead of a conference.

The bill makes several changes to the current Young Offenders Scheme. First, a broad range of victims of crime will be able to confront young offenders at conferences. Second, victims will be able to have their voices heard as part of the cautioning process. Third, the bill will confirm that police officers, where appropriate, can notify the parents and guardians of an offender that a warning has been administered. Furthermore, the list of circumstances where applications for employment must disclose information on such intervention is expanded to include applications for employment in child-related occupations. It has been argued that it is both premature and rash to abolish the Young Offenders Advisory Committee, as proposed by the bill.

It is argued by the Government that this committee has met the majority of its statutory terms of reference and, under the proposed amendments, its functions shall now be combined with the Juvenile Justice Advisory Committee, and a new body formed at a later date. Given the relatively high rates of reoffending, it is a questionable proposition that the Young Offenders Advisory Committee has become redundant. It has been argued that there is a continuing need for this committee as a body separate from the juvenile justice committee. I note, however, that the proposed amendments make the granting of a caution more severe, afford a greater

opportunity for children to voice their concerns, whilst enabling parents to play a more significant role in monitoring their children. The Opposition advocates a grass roots approach to juvenile rehabilitation. It encourages parental responsibility and acknowledges the significance of the stable family unit in addressing the causes of youth crime. For the reasons stated earlier, the Opposition does not oppose the bill.

Ms LEE RHIANNON [3.07 p.m.]: The Courts and Other Legislation Amendment Bill amends a series of court-related Acts, including the Land and Environment Court Act, the Coroner's Act, the Legal Profession Act and the Young Offenders Act. Because of the way in which this Government has treated members in the last sitting week we have not had much time to consider this bill with the thoroughness that it deserves. We have not had time to consult with stakeholders. It is most unfortunate that this pattern is repeated year after year. It is important to note just how unsatisfactory current arrangements are. Rushing through legislation like this is no way to make and change laws in New South Wales. In fact, it shows very little respect for our democratic process.

The Hon. Greg Donnelly: Why don't you work a bit harder?

Ms LEE RHIANNON: I acknowledge the member's interjection because I am proud of how hard the Greens team has worked. Most people in this Parliament work hard.

The Hon. Greg Donnelly: I suppose you were asleep at 2 o'clock?

Ms LEE RHIANNON: I was not asleep at 2 o'clock; I was debating legislation in this Chamber. There is nothing wrong with people sleeping at 2 o'clock; that is what human beings should be doing, except for those few people who, for various reasons, have to do shift work. The member does his side no credit at all by interjecting in that manner. My office has been in contact with the New South Wales Environmental Defender's Office regarding changes to the Land and Environment Court Act. I understand the Environmental Defenders Office does not oppose this amendment.

This bill will amend section 34 of the Land and Environment Court Act and will provide protection against defamation regarding documents or comments made during conciliation mediation in the Land and Environment Court. This will make Land and Environment Court mediations consistent with other proceedings in New South Wales under the Civil Procedure Act. The Greens support this amendment as it will make parties more comfortable in negotiating during conciliation. In turn, this will make settlements more likely because parties will not be fearful of defamation proceedings if what went on in conciliation is not used in court. This amendment is in keeping with court as a last-option approach.

The bulk of this bill deals with changes to the Young Offenders Act supposedly to improve the operation of the system of warnings, cautions and youth justice conferencing in New South Wales. The Greens support diversionary measures to keep young people out of jail. It is documented clearly that shunting people into juvenile detention centres at a young age chiefly breeds further crime and disadvantage. I am sure we all agree that young people deserve better, and hopefully we agree also on the means to achieve that. I am pleased that the Government admitted in the agreement in principle speech that a youth who is cautioned or attends a youth justice conference is notably less likely to reoffend than those referred to the Children's Court. This was confirmed in the October 2006 report of the Bureau of Crime Statistics and Research.

It is refreshing and unusual for the Government to make this admission, given that most times a Minister talks about young people and crime usually it is in the context of laws that seek to lock up young offenders more often and for longer periods, or just generally to vilify young people in the law and order context. The Greens congratulate the Government on seeking to extend and improve the system of warnings, cautions and youth justice conferencing. We support amendments to allow a broader range of victims of crime to confront young offenders at youth justice conferences. This will mean that the youth justice conferencing system is extended, which is very welcome.

We support also the amendments that flow from the recommendations of the New South Wales Law Reform Commission's Report No. 104 on young offenders. Unfortunately, this bill does not go very far in implementing the recommendations of the commission. In particular, the commission would like to see the scope of the Young Offenders Act extended. It advises that "the only reason why an offence should, in principle, be excluded from the operation of the Young Offenders Act is that it is so serious that, even in the case of a young offender, it cannot appropriately be dealt with by a diversionary option."

The Greens are concerned that the amendment confirms that a young person who is cautioned or undergoes conferencing would have to declare that fact when applying for child-related employment later in life. Surely this is a serious invasion of privacy. It is important that young people are given the opportunity to rehabilitate, to turn over a new leaf. They should not be subject to ongoing discrimination because of a one-off or minor offence committed while under 18 years of age. Clearly, if a young person has committed a serious offence, he or she would be subject to an actual charge and this would be on that person's record for employers to access in the future. Clearly this is an unnecessary aspect of the changes.

An unintended consequence of this bill is that young offenders are more reluctant to admit their crimes due to the long-term impacts on their employment prospects and, instead, we see more young people ending up in front of the Children's Court defending charges. Needless to say, this change does not flow from the Law Reform Commission's recommendations. We need to ask the Government: Where is the money coming from? This bill seeks to extend youth justice conferencing, which does not come cheap. I see no reference in the bill to provide extra funding to accommodate this extension. Resources for youth justice conferencing already are stretched to the limit. Often the reports talk of limitations because of lack of resources. These amendments will end up being little more than words gathering dust on the statute book unless we see money flowing from the New South Wales Government. The advanced and beneficial aspects of this bill actually then can become reality. I look forward to the Minister's comments in reply.

Reverend the Hon. FRED NILE [3.14 p.m.]: The Christian Democratic Party supports the Courts and Other Legislation Amendment Bill 2007. The bill contains a number of amendments to other Acts. It amends the Coroners Act 1980 in relation to the suspension and continuation of inquests and inquiries, the Land and Environment Court Act 1979 in relation to privilege and conciliation conferences, and the Legal Profession Act 2004 to clarify the term "legal practitioners" in regard to the more current usage of "barrister" and "lawyer". The most important aspect of this bill is to amend the Young Offenders Act 1997 in relation to miscellaneous matters, and to make consequential amendments to certain regulations, which we support.

I note also that in seeking to help young people in youth justice conferencing, the bill adds a new object to the Act to address the overrepresentation of Aboriginal and Torres Strait Islander children in the criminal justice system through youth justice conferences, cautions and warnings. This adds the same terminology to the principles of the scheme that will apply in the Act as amended by this bill. Urgent action should be taken to rectify the overrepresentation of Aboriginal and Torres Strait Islander children in the criminal justice system. Youth justice conferences, cautions and warnings certainly should be more widely used in that particular community because of its successful outcomes.

I urge the Government to ensure that Aboriginal and Torres Strait Islander adults are involved in the youth justice conferencing system. It is no good having a conference of six white or European people trying to deal with a young Aboriginal person in trouble with the law. The conference should include someone to whom that young Aboriginal person can relate. Ideally, every effort should be made to have an Aboriginal representative on the youth justice conference. That is not impossible to achieve and certainly should be the aim of the Government. The bill also will improve the whole judicial system dealing with young offenders. In October 2006 the Bureau of Crime Statistics and Research released a report that found the Young Offenders Act 1997 had succeeded in reducing juvenile reoffending in New South Wales. The report concluded that juveniles who receive a caution or attend a youth justice conference are noted to be less likely to reoffend than those referred to the Children's Court.

I was involved with the parliamentary standing committee that worked on those recommendations. I am very pleased that the work of that committee has resulted in this progressive result of less juvenile reoffending. Certainly problems were encountered when some young people were placed straight into the Children's Court and justice centres. Often they learnt more about crime in those places than they knew already and sometimes became quite hardened by the experience. It is desirable for youth justice conferencing to help prevent a young person going into the justice system. The whole purpose of this bill is not to be soft on crime.

The key amending provision of the bill will allow a broader range of victims of crime to confront young offenders and youth justice conferences, and I believe that this is an improvement. The definition therefore will be expanded to include anyone who has suffered other types of psychological harm as a result of an offender's actions, including fear, humiliation, shame or stress. The bill also will allow victims to have their voices heard as part of the cautioning process under the Young Offenders Act 1997.

The wording of that provision seems to imply that in appropriate circumstances victims will be able to prepare a written statement detailing the impact upon them of the young offender's behaviour. I wonder whether an alternative process may be considered whereby an oral statement may be made so that the young offender is presented with the victim instead of a written statement merely being handed out during the youth conferencing procedure and read. I think there would be greater impact if the victim could be involved in the process. I understand that over the years that has been attempted at some youth conferencing meetings.

I recommend that the provision not be restricted to written statements but instead be expanded to allow face-to-face meetings between the victim and the young offender within the youth conferencing process. In other words, I am asking for provision to be made for statements to be in either oral or written form. The Christian Democratic Party is pleased to support the bill before the House.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.21 p.m.], in reply: I thank all members who participated in the debate for their contribution and note that the bill has broad support. I will respond to a couple of issues raised during the debate. The Hon. John Ajaka expressed concerns about the bill's proposals to remove reference to the Youth Justice Advisory Council from the Young Offenders Act, and I will provide some more information.

The Youth Justice Advisory Committee [YJAC] was established as part of the 1997 Act. The Government's view is that over the past 10 years it has met the majority of its statutory terms of reference but that, at this point at the crossover between the functions of the Youth Justice Advisory Committee and the Juvenile Justice Advisory Council and in view of the fact that there is a similar membership and expertise in both groups, the Government feels that basically it is more effective to bring them together instead of having two separate groups.

The Government does not feel that any loss of expertise will arise and confirms that this change in no way indicates any loss of focus on reoffending. The entire juvenile justice system is based on youth justice conferencing. The system is focused on reducing incidences of reoffending by young people. Ms Lee Rhiannon raised concerns about funding the implementation of the bill. I advise the House that the Department of Juvenile Justice is of the view that implementation of the bill will result in negligible resource impacts. The bill actually streamlines the number of ways in which youth justice conferencing, warnings and cautions operate. The department has advised that the bill can be implemented within the current resources of the department, and that the cost of implementation is not a matter of serious concern.

Ms Lee Rhiannon also raised concerns about the Government's rejection of the Law Reform Commission's recommendation 4.2 in relation to young offenders. I refer the honourable member to the Government's response to the Law Reform Commission's report setting out why it does not support extending the Young Offenders Act to all offences, including that it would allow serious offences, such as the supply of drugs, to be dealt with by way of conference. Section 8 of the Act allows a conference to be prescribed in the regulation as an offence. This approach is preferable to expanding the scope of the Young Offenders Act. I thank all honourable members who participated in the debate for their contribution. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.