

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT (YOUTH CONDUCT ORDERS) BILL 2008

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Hatzistergos.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [5.02 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce this very important initiative in the fight against anti-social behaviour in New South Wales. Youth conduct orders [YCOs] recognise that young people engaging in antisocial behaviour, where they have been charged with a criminal offence, will benefit from an approach that integrates justice and welfare considerations. Youth conduct orders will place limits upon the behaviour of a young person who has been engaging in antisocial behaviour and who has been charged with an antisocial offence. Youth conduct orders will divert the young person from the mainstream criminal justice system through participation in a diversionary program that will focus on addressing the reasons for their antisocial behaviour. The Youth Conduct Orders Scheme will target young people aged 14 years to 18 years who have been charged with or convicted of antisocial offences. The same offences covered by the Young Offenders Act 1997 will apply to youth conduct orders.

Youth conduct orders provide a careful balance of law enforcement responses to the management of antisocial offences, together with social and family support for children and young people engaging in offending behaviour. Youth conduct orders have the capacity to restrict the behaviour and movement of a young person, and to direct them to perform certain tasks or activities identified as helpful in reducing the young person's risk of offending. The youth conduct order will direct young people to participate in intensive early intervention programs based on coordinated case management from human services and justice agencies. The intensive case management intervention available through the Youth Conduct Orders Scheme will help the young person to address some of the underlying causes of their offending, including issues such as truancy, drug and alcohol problems, mental illness and homelessness.

Young people will also have access to programs run within the antisocial behaviour pilot project [ASBPP] that was launched in September 2006. Under the project, different government agencies will work together in a coordinated and responsive way to help young people. These young people have multiple problems and complex needs, and are often engaging in antisocial behaviour rather than offences. The project is also a key part of the Government's goal of reduced levels of antisocial behaviour, reduced rates of violent crime, and reduced rates of re-offending. The Youth Conduct Orders Scheme and the antisocial behaviour pilot project will operate at the same time in the three pilot locations chosen for the Youth Conduct Orders Scheme. The scheme pilot will be trialled at three local area commands: Campbelltown, Mount Druitt and New England. It will be independently evaluated. The evaluation will be vital in ensuring that the rights of young people are not unduly impacted upon, and in informing the Government of ways in which the scheme can be improved.

There are a number of key steps in the process of ordering a youth conduct order. One, the young person must be charged, have pleaded guilty to or been found guilty of a relevant offence. Two, the young person must meet the eligibility criteria. This criteria includes: the young person was 14 years or older, but less than 18 years, at the time the offence was alleged to have been committed; the young person is under 19 years of age when it is proposed to make the youth conduct order; the young person permanently or temporarily resides in, or is a habitual visitor to, the area of the participating local area command; and the Children's Court has not yet imposed a penalty on the person concerned for the offence.

Three, if the young person has been charged with the offence, the police are required to consider a range of criteria and decide whether they believe that the young person is eligible and appropriate for referral for a youth conduct order. If they are, the police officer produces a scheme participation approval that must be presented to the court with the brief. Importantly, a scheme participation approval must be approved in writing by a senior police officer. This ensures accountability in the process and will safeguard children against being inappropriately nominated for a youth conduct order. Police will be provided with extensive training on how the Youth Conduct Orders Scheme operates in relation to the Young Offenders Act.

Four, once the matter is before the courts, the Children's Court can make a suitability assessment order by its

own accord or, on the application of the young person who has been charged with the relevant offence, a person on behalf of the young person, or any other person authorised by the regulation, such as the police. But, before making such an order, the young person has to be given an opportunity to get legal advice, and have had sufficient information by the time of the hearing on the order to enable the young person to make an informed choice—where the young person has consented to being assessed; namely, has not pleaded guilty or been found guilty.

Five, if the court decides to make a suitability assessment order, the criminal proceedings against the young person are suspended until a suitability assessment has been conducted. The young person may be placed on bail so a suitability assessment can be conducted. Six, if the court decided not to make a suitability assessment order, the criminal proceedings will proceed in the usual manner. Seven, where a suitability assessment is ordered, the young person is referred to the case coordination group in his or her designated area to be assessed for suitability to participate in the Youth Conduct Orders Scheme. The coordination group comprises senior representatives from health, justice and welfare agencies, including the Department of Community Services, the New South Wales Department of Health, Housing NSW, the Department of Juvenile Justice, and the New South Wales Police Force.

Eight, the assessment must also be carried out in accordance with the scheme's directions. Those directions will require the coordination group to consider a number of factors such as if there is a high risk that the young person concerned may harm himself or herself, or the community, or both; and if the young person has complex needs. Nine, if the coordination group decides that a young person is suitable to participate in the Youth Conduct Orders Scheme, it will prepare an interim youth conduct plan, which will contain recommendations on what conditions the court should impose on a young person when making an interim youth conduct order, and this plan will be reported back to the Children's Court.

Ten, the court, if it agrees that the young person is suitable, can place the young person on an interim youth conduct order that cannot exceed two months. During the two months the young person and his or her family, if appropriate, will be required to help prepare a final youth conduct plan. Importantly, once a young person is on a youth conduct order, bail is dispensed with. Eleven, once a final plan is completed it is to be provided to the Children's Court before the young person's next court appearance. At the next court hearing the court may impose a final conduct order that will require the young person to comply with the final conduct plan. Such an order can last no more than 12 months.

Twelve, a youth conduct order may include both positive and negative conduct provisions. Positive conduct provisions may include attending or completing a course of study, or meeting with health professionals, or participating in recreational activities. Negative conduct provisions may include prohibiting a young person from associating with specific persons or kinds of persons, or requiring a young person to reside in a specific place, or requiring a young person to report to a specific person or body.

Thirteen, if a young person fails to comply with an order, the court may administer a warning to the young person, take no action, or vary or revoke the order. Alternatively, if a young person has substantially complied with an order, he or she will benefit from doing so. It is important that there is an incentive for the young person to comply, and in the situation where there is no plea or finding of guilt, there is a presumption that the court will dismiss the offence and not record a conviction.

Fourteen, where there is a plea of guilty, or a finding of guilt and the young person has substantially complied with an order, the court will take this compliance into consideration before issuing any penalty. One of the penalty options available to the courts is to dismiss the charge and administer a caution. Failure to comply with a youth conduct order is not a criminal offence. The scheme offers a unique opportunity to young people in the pilot area to participate in a program that will provide them with interdepartmental support to address the underlying causes behind their antisocial behaviour. It is intended that the scheme will divert these young people away from the criminal justice system.

The bill includes a number of safeguard provisions to ensure the rights of the young person are respected. For example, the bill contains appeal provisions. A young person has a right to appeal to the District Court against the making of a youth conduct order. On appeal the District Court may confirm, vary, revoke or remit the matter to the Children's Court. The bill also requires the court, before placing a young person on a youth conduct order, to take into account any submissions and evidence put forward by or on behalf of the young person as to the appropriateness of the order. The bill also affords the young person the same protections and rights provided under the Law Enforcement (Powers and Responsibilities) Act 2002.

An independent evaluation will be conducted of the pilot to ensure that it is meeting its objectives. It will examine a number of issues, such as, the impact on indigenous young people; whether police are using the provisions and, if so, whether they are being used appropriately; whether reports to the court are being appropriately written and used; the interaction of the scheme and the Young Offenders Act; and whether the scheme is achieving its objectives. I do not propose to address each clause of the bill separately as many provisions are technical in nature. However, I will address those areas that are of the most importance in understanding how the scheme works and how it should be applied.

I now turn to the detail of the bill. Schedule 1 [1] inserts part 4A into the Children (Criminal Proceedings) Act 1987, the principal Act, to establish the Youth Conduct Orders Scheme. The new part contains the following provisions. Proposed division 2 contains a summary of the operation of the scheme, which is intended to make the large bill easier to understand and interpret. Division 3 concerns suitability assessments. The proposed division provides for the referral of a young person for an assessment as to the young person's capacity and prospects to participate in the scheme. Proposed section 48G provides that a young person may be referred for a suitability assessment by an order made by the Children's Court. The court may make such an order in respect of a young person if:

(a) the young person has:

- (i) pleaded guilty to, or been found guilty of, the relevant offence, or
- (ii) in any other case—consented to the making of the order, and

(b) the Court is satisfied that the young person has been afforded an opportunity to seek advice on the proposed order from an Australian legal practitioner, and

(c) in the case where the young person has not pleaded guilty to, or has not yet been found guilty of, the relevant offence—the Court is satisfied that the young person had sufficient information by the time of the hearing to enable the young person to make an informed choice about whether to consent to the making of the order, and

(d) the young person has been granted a scheme participation approval in accordance with the regulations for the potential participation of the young person in the scheme unless the Court considers that it was not possible in the circumstances for the approval to be granted in time for the hearing.

Proposed section 48H provides that a suitability assessment is to be conducted in accordance with the regulations. Proposed section 48I provides that bail may be granted to a young person in relation to a relevant offence on condition that the young person submits to a suitability assessment. Under division 4, which relates to the preparation of conduct plans, proposed sections 48J and 48K provide for the preparation of interim and final conduct plans in accordance with the regulations for submission to the Children's Court for its consideration and approval when framing the terms of interim and final youth conduct orders. A conduct plan may contain only the kinds of provisions specified by proposed section 48C. The Children's Court cannot make a youth conduct order unless an appropriate conduct plan has been submitted for the consideration and approval of the court. An interim conduct plan needs to be submitted for an interim youth conduct order while a final conduct plan needs to be submitted for a final youth conduct order.

Proposed division 5 contains provisions relating to the making and review of and appeals against youth conduct orders. Proposed section 48L enables the Children's Court to make interim and final youth conduct orders, subject to certain preconditions. Proposed section 48M requires the Children's Court to explain to a young person the young person's obligations under a youth conduct order and the consequences of failing to comply with the obligations. Proposed section 48N enables the Children's Court to review a youth conduct order. Proposed section 48O enables a young person to appeal to the District Court, with the leave of the court, against a youth conduct order made in respect of the young person or against the variation or revocation of such an order. Proposed division 6, relating to the enforcement of youth conduct orders, provides for the consequences of the revocation of youth conduct orders and of complying, or failing to comply, with such orders. Proposed section 48P enables the Children's Court to require a young person to appear before it if the young person fails to comply with a youth conduct order. If satisfied that the young person has failed to comply with an order, the court may:

(a) administer a warning to the young person, or

(b) decide to take no action with respect to the failure to comply, or

(c) vary the order, or

(d) revoke the order.

Proposed section 48Q provides for the consequences of the revocation of a youth conduct order. If the young person concerned did not plead guilty to or had not yet been found guilty of a relevant offence before the order is made, the court may proceed to determine whether the young person is guilty and, if so, deal with the young person under division 4 of part 3 of the principal Act, which provides for the imposition of penalties for offences. If the young person pleaded guilty to or was found guilty of a relevant offence before the order is made, the court may deal with the young person under division 4 of part 3 of the principal Act. In determining penalties, the court will have to take into account the extent to which a young person complied or failed to comply with a revoked youth conduct order.

It is important that when the court is taking into account the young person's failure to comply the court does not punish the young person for failing to comply, but rather sentences the young person according to established sentencing principles. A young person's compliance with the order, of course, can be taken into account in mitigation. Proposed section 48R deals with the consequences of a young person successfully complying with a final youth conduct order for a relevant offence. If the young person did not plead guilty to or had not yet been found guilty of a relevant offence before the order is made, the court may dismiss the charge for the offence. If the young person pleaded guilty to or was found guilty of a relevant offence before the order is made, the court may deal with the young person under division 4 of part 3 of the principal Act, having regard to the young person's compliance with the order.

Proposed division 7 contains various miscellaneous provisions. It also contains a provision that limits the use of certain evidence obtained as a consequence of participation in or assessment for the scheme or the anti-social behaviour [ASB] pilot project, as proposed in section 48S. This provision is intended to provide a very limited exception to the rule that no admission made in the course of participating in or being assessed for the scheme or the ASB pilot project is admissible in any criminal proceedings. The exception is that any admission or document may be admissible in criminal proceedings but only where those criminal proceedings are in respect of the offence for which the young person was referred to the assessment or participation and/or the disclosure relates to mandatory reporting provisions under the Children and Young Persons (Care and Protection) Act 1998. This is a necessary exception because if the young person is alleged to have failed to comply with the order, the court needs to be able to receive evidence of that alleged failure and that may well include admissions made and documents that were prepared during the course of the assessment or scheme. Additionally, in the event that the order is revoked and criminal proceedings commence, there needs to be an avenue for that evidence to be tendered to the court. That said, of course, all evidence is subject to the rules of evidence and would have to satisfy the tests of admissibility before being admitted.

Schedule 2 [2] creates a new part 2 in the Children (Criminal Proceedings) Regulation 2005. The new part in the regulation contains the following provisions relating to the administration of the scheme. For example, it covers things such as eligibility criteria, suitability assessments and the establishment and functions of Case Coordination Senior Officers' Groups. The eligibility criteria prescribed by clause 5 also provides that a young person must be aged 14 years or over but less than 18 years old at the time that the offence or alleged offence occurred, but less than 19 years old when it is first proposed to make a youth conduct order with respect to the young person. Clause 5 also provides for the continued participation in the scheme of persons who are 18 years old or older but less than 21 years old in relation to relevant offences committed or alleged to have been committed by such persons while they were aged 14 years old or older but less than 18 years old. The Youth Conduct Order Scheme is an important step in the process of addressing antisocial behaviour in New South Wales, but at the same time ensuring that young people are diverted away from the criminal justice system. I commend the bill to the House.