



# Legislative Assembly

## Crimes Amendment (School Protection) Bill Hansard

### Extract

31/10/2002

#### Second Reading

**Mr WATKINS** (Ryde—Minister for Education and Training) [11.39 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes Amendment (School Protection) Bill, which makes specific provision under the Crimes Act 1900 for the protection of school premises and premises being used for school purposes from intruders who may seek to harm staff or students. The legislation has been developed in the context of two very important consultative meetings chaired by the Minister for Police and myself in April and August this year. It was also developed in consultation with the criminal law experts from the Attorney General's Department. The Community, Parents and Police Forum was convened in April to canvass concerns about how violence sometimes spills into our schools and disrupts the vital everyday role of teaching children.

Arising from the two meetings was a number of initiatives that have been implemented. These included the creation of a Safety and Security Directorate in the Department of Education and Training. The directorate is headed up by former Assistant Commissioner of Police, Ike Ellis, and is charged with the task of improving the physical and personal safety of our schools. The bill represents the implementation of another initiative supported by the Community, Parents and Police Forum. Following the first forum in April I proposed that new offences for assaults on staff or students be inserted into the Crimes Act 1900 to secure the special place all schools have in our communities.

The proposed offences focus on the status the community gives to schools as places of education and learning. A school should be a sanctuary for students and staff to learn, teach and work in a safe environment. School communities have become legitimately concerned about intruders entering school premises to assault or intimidate a person working as a staff member or a student on the school site. Schools across both the government and non-government sector are introducing measures such as requiring visitors to report to the front office to obtain a visitor's tag. Such measures complement the legislative changes proposed in the bill, and they have my full support.

The Crimes Act 1900 has numerous general assault provisions. Just as schools are subject to requirements that those working in their communities be subject to working-with-children checks, the unique nature of a school will benefit from specific laws to discourage criminal activity on school premises. Schools are special places and deserve special protection. Already the law offers legislative protection from assault and guides the courts when passing sentence for criminal behaviour. For instance, the Crimes (Sentencing Procedure) Amendment (General Sentencing Procedures) Act, which was enacted on 15 April, inserted a new provision, section 21A, to guide courts on sentencing offenders when the victim is particularly vulnerable.

On 23 October, the Attorney General introduced the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill, which further amends section 21A to provide an aggravating circumstance when the victim is a teacher exercising a public function and the offence arose in the course of the victim's occupation. The section also reinforces the circumstances of aggravation when a victim is vulnerable due to age, as in the case of a young student. The existing and proposed new section 21A will apply in circumstances when schools are the venue for criminal activity that either directly or indirectly targets students or staff.

Although such a provision is of significant benefit, without a specific offence with an appropriate tariff reflecting the value the community places upon school locations, I remained concerned that the message should be unequivocal: intruders will be subject to harsh penalties if they enter schools to assault the people working and learning therein. Across the community, children are recognised and protected from harm when they are perceived to be at risk. Although schools are statistically one of the safest places for children, there are still incidents of particularly alarming invasions of school property.

The community will send the message in this legislation by stating clearly through the Parliament that incursions into schools will not be tolerated. We reiterate that we cherish the safe environment that schools should provide for children and young people. The Inclosed Lands Act 1901 provides for monetary penalties for unauthorised entry onto government school property. However, these Crimes Act reforms, along with sentencing procedure principles, will enhance the security of the school environment across the board.

The existing suite of measures, complemented by the bill, will put us in the best position ever to ensure that the message resonates throughout the community that schools are special places, and should be sanctuaries of learning. The bill provides that a person who assaults, stalks, harasses or intimidates staff or students on school property without causing bodily harm is guilty of an offence with a maximum penalty of five years imprisonment; a

person who assaults, stalks or harasses a member of staff or a student entering or leaving school property for school work or duty is guilty of an offence carrying a maximum penalty of five years imprisonment; a person who assaults staff or students on school property causing actual bodily harm is guilty of an offence with a maximum penalty of seven years imprisonment; and a person maliciously wounding or inflicting grievous bodily harm on a teacher or student on school property is guilty of an offence that carries the significant penalty of 12 years imprisonment.

This same penalty applies if the wounding occurs whilst a staff member or student is entering or leaving school premises. These offences and penalties represent a significant new level of protection for schools. Last week I wrote to the representatives of school bodies who were in attendance at the forum in August and forwarded to them an advance copy of the bill. I have asked for the comments of the participants. I expect to hear from them over the next two weeks while the bill lies on the table prior to the debate. Those consulted include parent and student bodies, government and non-government school bodies and teacher representatives, as well as representatives of support and administrative staff in schools. Already I have received input from more than one group.

I thank Sue Walsh from the Public Service Association [PSA] for being quick off the mark in expressing the concerns of her organisation. She contacted my office on Monday 28 October about the draft bill and canvassed the definition of a school. She pointed out that proposed new section 60D (1) may be cast too narrowly and does not expressly include all the different types of schools that are in existence, such as distance education centres, schools for specific purposes and senior colleges. The proposed new section states:

**school** means:

a primary or secondary school, or

(b) a child care facility for pre-school age children.

Section 29 of the Education Act 1990 gives the Minister the power to create an array of different types of government schools. The kinds of schools that may be established include infants schools, primary schools, secondary schools, composite schools where both primary and secondary education are offered, schools for education of specific age groups, and schools for children with disabilities, as well as specific secondary schools such as senior campuses, selective schools, specialist schools and single-sex schools. It is certainly the intention of the Government that all of those kinds of schools are covered by the legislation. I have taken on board the concerns of the PSA and will seek the advice of the Parliamentary Counsel as to the need for amendment for the sake of clarity.

I make it clear that the consultation on this bill is ongoing. Where amendment is needed, it will be brought forward by the Government. The PSA also pointed out that for clarity the term "pre-school" at proposed new section 60D (2) (c) in the draft as circulated should be replaced with the term "before school" to ensure that a technical reading of the legislation does not exclude the higher tariff for a crime perpetrated when a victim is on the premises of a school for before-school care rather than at a preschool. This has been changed in the first print before the House.

I also thank Dr Brian Croke from the Catholic Education Commission [CEC], who wrote to me on 24 September with a number of recommendations concerning the then proposed draft bill. I met with the CEC on Monday 28 October to provide them with a response. I expect further input will be forthcoming. Dr Croke raised an issue that will be of interest to honourable members. The CEC was concerned that the bill not be drafted in such a way as to create unnecessary litigation in the school environment. This is taken into account, and I reiterate that this is not the intention of the legislation. There should be no scope for anyone to find in this bill a possibility that did not already exist of opening a door to some form of litigation against an education institution.

The bill as drafted clearly states that the proposed law reform will not impact upon reasonable disciplinary action. I also reiterate that the clarification in the bill in no way re-introduces or condones forms of discipline such as corporal punishment in schools. Rather, the bill ensures that the day-to-day operation of the school is not disrupted by vexatious students claiming that it somehow excuses them from appropriate disciplinary action for infringements of legitimate school requirements. The CEC also suggested that the terms of the proposed offences be extended to an assault upon a student waiting for a bus, or teachers in their homes. Both the CEC and the PSA questioned the scope of the protection provided by the bill when a staff member or a student is outside the school grounds. As drafted, the scope is not limited to school property but includes property used for school purposes.

However, I emphasise that it does focus on place, and includes playing fields and excursions to specific locations like school camps outside of the school grounds. However, due to concerns about certainty it cannot include movable activities such as bus stops and excursions to, for example, the Royal Botanic Gardens or the public areas of a zoo. The offences must attach to the locus of the school to reinforce the message that schools are special places deserving of special protection, but more importantly providing for certainty in prosecution and sentencing. Existing assault provisions protect students outside of school who may or may not be in school uniform. An attempt to apply specific provisions such as these may fail in court due to lack of certainty as to the offender being aware that the victim was in a special category.

As far as a school is concerned, a higher tariff applies with these very specific offences. I emphasise that for clarity and certainty the bill focuses upon school locations to better protect all members of school communities. I re-emphasise that these provisions in this new division of the Crimes Act complement existing criminal law. Where these provisions would not apply, normal assault provisions remain the law. I look forward to the next two weeks of consultation and welcome the input of all interested parties, including the Opposition. It is my view and the view of the Government that the bill offers a degree of protection the community expects for schools in our community. I

commend the bill to the House.