Young Offenders Amendment (Reform of Cautioning and Warning) Bill.

Second Reading

Mr STONER (Oxley—Leader of the National Party) [10.03 a.m.]: I move:

That this bill be now read a second time.

It is with great pleasure that I introduce the Young Offenders Amendment (Reform of Cautioning and Warning) Bill, which was originally introduced in late 2001. However, due to the Government's control of the legislative agenda to the detriment of private members, this important bill still has not been properly debated. The bill has a number of objects. The first object is to amend the Young Offenders Act 1997 to provide that young offenders who have been previously convicted or found guilty of an offence by a court, or who have been previously dealt with under the Act, ought not be warned or cautioned under the Act. The second object of the bill is to require that a parent of a young offender be given notice when the offender is warned or cautioned under the Act.

The third object of the bill is to provide for a more expeditious application of the scheme established by the Act. The bill would provide for a more expeditious application of the scheme in four ways. First, it would require that a warning, caution, or conference be given or held as close as possible to the date when the offence to which it relates was committed. Second, it would deprive the child of the opportunity to delay the matter by refusing to choose an adult to be present at the time of admission, caution, giving of explanation, or conference. Third, it would give investigating officials the power to appoint a respected member of the community to be present if the child refuses to choose an adult. Fourth, it would remove the discretion of conference administrators and others to overturn referrals for conferences in favour of cautions.

Juvenile crime is a huge issue in rural New South Wales and throughout the State. Just two weeks ago a delegation of community representatives from Dubbo visited State Parliament and presented to me, which I, in turn, presented to the Parliament, a series of petitions containing 11,000 signatures, which is significant when we are talking about a population of 39,000 people. Mr Leo de Kroo, a radio announcer, and Tom Watkinson, a small business proprietor whose business was almost ruined by juvenile offenders, were amongst that delegation. Those petitions highlighted the seriousness of juvenile crime in Dubbo and the extent of concern in that community about lawlessness, young people roaming the streets at night, and a lack of parental responsibility. I was proud to have been able to assist by presenting those petitions to the Parliament.

Time and again I have been approached in my electorate of Oxley by residents, business people, victims of crime, community groups and even police officers who are concerned about seemingly unabated juvenile crime. I know that other honourable members share this experience. These repeat young offenders are holding our towns and suburbs to ransom. The message that we, as parliamentary representatives, are getting is that a core group of young offenders is repeatedly committing mainly nuisance crime with no fear of the consequences. Current legislation governing such crimes committed by young people, the Young Offenders Act 1997, was intended to give young people who had made a mistake by breaking the law, a second chance, that is, they would receive a warning or caution or, in other circumstances, participate in a youth justice conference without the opprobrium of a court appearance or a police record hanging over their heads in future years.

Whilst this is an admirable objective, the Young Offenders Act as it stands is full of loopholes in relation to young recidivist offenders who are making life hell for many law-abiding citizens in our communities. The reality of this legislation almost six years since its implementation is that hardened juvenile criminals are receiving multiple warnings, often for similar crimes, because there is nothing in the Act to prevent that. Similarly, many young offenders are receiving repeated cautions which, although slightly more formal than a warning, can convey many rights to the young person, including the right to determine who is present. There is no requirement for parents to be told that the child has been apprehended for committing a crime for which he or she received a warning. So we have the ludicrous situation in which some hardened young thugs repeatedly commit crimes in the knowledge that they are likely to get off virtually scot-free without their parents ever knowing.

The Act also gives young offenders enormous rights, for example, to choose which adult or adults are to be present when making an admission or receiving an explanation in relation to an offence and to give consent to the giving of a caution. These rights, aside from representing significant red tape for investigating police, effectively enable those in the know to manipulate the outcome, which usually results in a warning rather than a caution or youth justice conference. So again we have a situation in which these repeat young offenders well know their rights, which they can use to manipulate the system without ever being forced to acknowledge their responsibilities to the community. The Act also places time restrictions on the giving of cautions. Of most concern is that under section 26 the caution must be at least 10 days after a notice of caution is given.

In this time many of the problem offenders we are talking about have committed a string of other crimes. Surely commonsense dictates that the caution ought to take place as soon as possible after the commission of the offence and apprehension by police in order to provide a stronger link between the undesirable behaviour and the consequences of a formal caution. By the time they receive the caution some of these kids have forgotten which offence they have committed. One feature of the current Act that I support is the provision for youth justice conferences, which involve the offender and the victim or representatives of the victim and usually result in some type of restorative justice such as repairs to damaged property and an apology. However, youth justice conferences occur too infrequently as young offenders who know their rights under the Act are able to avoid them. Additionally, conference conveners currently have the power to refer cases back for cautions or warnings against the wishes of investigating police, and this often occurs.

In the almost six years since the Carr Labor Government introduced the young offenders legislation, juvenile crime has skyrocketed. The Attorney General reviewed the operation of the Act and made some minor and inconsequential amendments only last year. He did not go far enough in terms of restricting the numbers of warnings and cautions that can be given to young people. We have had six long years of people suffering bag snatching, house break-ins, vandalism, property theft and standover tactics.

In country communities such as Dubbo, Taree, Kempsey, Coonabarabran, Macksville and Narrandera, people have had a gutful of lawlessness that sees citizens, especially the elderly, living in fear. People are afraid to leave their homes in the knowledge that they are likely to be the victim of break and enter or assault. Today's *Daily Telegraph* contains a report about Tahmoor, near Picton, with the headline, "Town where youths rule the streets". The article refers to a lady having been forced to confront delinquents—all local boys and girls. During a standoff outside her home in March she used a garden rake to fend off youths assaulting her husband. She has been assaulted and her grandson has been subjected to death threats because of the family's campaign. The article states:

> ... she decided to set up her own posse because she believed she could turn the local hooligans away from violence using skills she learned in a youth counselling course.

Among incidents plaguing the township are window breaking, graffiti, verbal and physical intimidation and drunkenness. Another article in today's *Daily Telegraph* refers to "Bob's big gun told to clean up Maroubra". It refers to the enlistment of former Superintendent Clive Small to tackle roving gangs of youths who congregate near the Lexington Place shopping centre less than one kilometre from the Premier's Maroubra house. The article states:

> Residents living around this 13-shop centre, in the middle of a public housing estate, are afraid of groups of local youths aged 10-18 who are involved in underage drinking, vandalism, shoplifting and assault.

This problem affects communities throughout the State. I wonder if communities other than Maroubra are able to attract the attention that the Premier can attract for his electorate. If they are, we might go a long way to resolving these issues. However, while the young offenders legislation remains in its current form, these issues will arise again and again. We can put more police on the streets and the problem will subside, but it will be back because the legislation does not provide sufficient consequences for young offenders to be deterred from a life of crime. I have received petitions from thousands of people from the country towns I mentioned who are disgusted with the system that has allowed young criminals to wreak havoc and to walk away with nothing more than a weak slap on the wrist.

The system can also be demoralising for police, who put a great deal of effort into apprehending juvenile offenders only to be effectively laughed at by the young criminals who get off with yet another warning or caution. Another outcome is that non-juvenile criminals may be getting younger friends or siblings to take the rap in the knowledge that they will get off with a weak slap on the wrist. That was certainly the case for a friend of mine in Kempsey—a dear lady who has had her bag snatched twice. In the first instance, an adult offender took her bag, but his 14-year-old relative admitted the offence when police found the perpetrator. Of course, the 14-year-old was let off with a warning or caution.

We must not forget that during the recent bushfire crisis many of the fires were deliberately lit by juveniles. While grandstanding during the crisis the Premier intervened to ensure that young people apprehended for lighting fires would not receive a warning or a caution. That is precisely what had been happening. The amendment to the Young Offenders Regulation 1997, introduced by the Government following the Premier's tough talk, does very little to address the fundamental problems with the Act. It simply requires that youth justice conference outcome plans arising from arson or bushfire offences include visits to burns units and victims and payment of some reparation for the offence. That was the probable outcome under the Act without the amended regulations. On 4 January last year the Director of Public Prosecutions stated:

> The mechanism already exists for that to be done. There's no need for any change to the law to enable that to happen. It can happen now.

It is clear that the Premier's statements and the subsequent amended regulation were nothing more than spin and rhetoric. It was an attempt to jump on the bandwagon of public opinion, which was running high following the bushfire crisis. Of even more concern is the fact that the amendments did nothing about juvenile arsonists being able to get away with a mere warning or a caution, never getting anywhere near a youth justice conference. In fact, they could be warned or cautioned on multiple occasions. The Premier's tough talk and the Government's legislative response were nothing more than window dressing and a cynical attempt to manipulate public opinion. I will relate the experience of

some of the many people who want something done about juvenile crime. I received a letter last year from a man from Kempsey, who states:

Violence is continuing to get worse here if you read the paper it is full of crime and home invasions. I have been threatened to be killed for bringing in the police to their hood and am extremely worried as are my family which the youngest child is 9 weeks old. The last couple of days my windows on the house have been completely smashed several times and in the last three months they have set fire to 2 houses because white people lived there and I'm worried I'm next. The police have been helpful in their advice but at the moment their hands are tied because nobody talks to the police here for fear of retaliation. My children do not sleep the whole night through anymore they wake up screaming and I'm forced to sleep during the day for short periods because I also can't sleep at night due to safety concerns for my kids. By the way the last attack happened in the middle of the day while my 9 week old baby was asleep and it is getting to the stage where my family can't go to the shop without harassment, some of the aboriginal families are using 10 year old kids to smash my house up as the kids can't be charged and the police are powerless. I have to sit up virtually 24/7 with a video camera to try to catch these people as this is the only way the police can do something.

That family was forced to leave their neighbourhood; they have moved away from the problem to get on with their lives. Who can blame them? I also received a letter from a lady in Sydney about the experience she has had with her young daughter. She wrote:

It is my misfortune to have a child that is caught up in the laxity of the current system. Due to the lack of police powers my child, and all those with whom she associates, have absolutely no respect for the police because they are aware that there is nothing that can be done to restrict their behaviour.

They carry around a Legal Aid booklet stating that the police cannot even ask their name unless they are actually caught doing something illegal. Therefore they just abuse the police either verbally or by gestures, and as soon as the patrol has passed they continue with their activities.

In order that there would be some power returned to the officers to control my child at least, she was charged with shoplifting (yes it was a legitimate charge) and went to court. (Incidentally, she only has to apologise and thinks it is a big joke.) The charging officer is aware of my commitment to protecting my daughter and went through hell & high water to get the backing for the charge. In another instance, she and her friends were given a warning for break and entry into a flat for the purposes of party/drug taking and attempted car theft. I wasn't informed. They again laughed it off. So two weeks later they did the same thing. They were at least taken back to the station and I told the arresting officer (different station) that they should be charged. I asked that he contact the other (shoplifting) officer and they are being charged. What is interesting to note here is that between the incident and the charging this particular officer was on leave. In the interim the police were contacted about having the kids charged, the reply was that they get wrapped on the knuckles for charging minors, and get "into trouble" from the magistrates.

This was my experience also, when the police wanted to take an AVO out on her to protect me. This was to enable them to have powers to remove her when she was going ballistic in the house (she has beaten me up and destroyed property, and I am not allowed to do anything other than protect myself, it is illegal for me to restrain her). The police went to the local magistrate and were told not to bother to apply. These are things of which I have had personal experience. However I do know of instances where the police have felt the futility of bringing charges of assault, she thinks it hilarious that she can beat people up and get away with it. She shoplifts, and is a pot user and drinks alcohol to excess. My daughter is 13. The police cannot charge the people who are supplying her with alcohol unless they are caught in the act. When she is listed missing, and I track her down, if the police go to the house where she is and a person over the age of 18 years tells them she is okay, they have no power to remove her. (Neither I nor DoCS are allowed to interfere)

My daughter and her cohorts get up to some unbelievable activities, and a lot of them involve taunting the police.

I really think that you could do with a lot more publicity with your bill. So many people have said to me that these "children" are getting away with too much, the parents/police should "do something". So many do not understand that the police, the parents and even DoCS have no powers to restrict, let alone punish, the behaviour.

Good luck in your endeavours.

There is a pattern here. Young repeat offenders are committing the majority of crimes in our towns because the system is essentially a revolving door: They are picked up, they get a slap on the wrist, they commit another crime, and so it continues. There is nothing to break the cycle of criminal behaviour. My bill, by limiting the number of warnings and cautions and the powers and rights available to these children, seeks to put us in a better position to intervene early in the process and to direct young offenders towards behaviour-changing programs. The youth justice conferences are just one example of a program that tends to break the pattern of offending behaviour and change it to help young people move on with their lives. But while ever young offenders go through the revolving door there is no incentive for them to change their behaviour because they are not forced to confront the consequences of their actions.

The experiences that I related of two of the many people who have contacted me illustrate the consequences of the Carr Government's lax stance on juvenile crime. Where has the Government been in the past six years—out to lunch?

Last year the Government attempted to pinch some of the policies enshrined in this bill and in other Coalition law and order policies. However, the Government's Young Offenders Amendment Act did not go nearly far enough. It restricted the number of cautions to three but still allowed unlimited warnings and failed to address the other weaknesses inherent in the Young Offenders Act. Under the Government's amended Act, young repeat offenders can still get away with warning after warning, with no requirement for notification to parents or guardians. They must commit four cautionable offences before they are dealt with in a more serious manner. The system is still a revolving door for repeat juvenile offenders. There is still no early intervention aimed at breaking the cycle of offending behaviour and engaging these young people in behaviour-changing programs, such as youth justice conferences or the Coalition's proposed second chance camps, which would involve effective community organisations such as the Salvation Army, Youth off the Streets or Youth Insearch running camps for young offenders, away from the environments in which they became habitual offenders.

I turn to the specific amendments that will tighten the Young Offenders Act to ensure that young criminals, particularly repeat offenders, are dealt with properly. Items [3], [4], [6], [7] and [8] of schedule 1 will amend the Act to preclude a child from being given a warning or caution if the child has been previously convicted or found guilty of an offence by a court or dealt with under the Act. This amendment gives effect to the intention to remove the option of warning or caution for young repeat offenders. Hence, young offenders will be dealt with by a conference or by a court. Subsection (2A) of section 6 would allow some discretion for investigating officers to give one warning, then one caution in certain circumstances when a conference would not be appropriate for the second offence. In essence, in certain circumstances a young person could get two chances: a warning escalating to a caution. This is in line with community expectations that, with the third strike or subsequent strikes, a conference should be held to reinforce the young person's responsibilities to society. This is certainly the view of victims groups with which I have consulted about this legislation, such as Enough is Enough. I cannot speak too highly of Ken Marslew, who is doing groundbreaking work with offenders to get them to acknowledge their actions and to change their behaviour.

Item [16] of schedule 1 provides that a child is entitled to be dealt with by conference if the offence is one for which neither a warning nor a caution may be given. Items [5], [11] and [15] require that parents be notified in the event of a warning or a caution. Items [1] and [12] require that warnings, cautions and conferences occur as close as possible to the commission of the offence and, in the case of a caution, occur no more than seven days after the offence. At present police are unable to give a caution until at least 10 days, and up to 21 days, after the offence. Some repeat juvenile offenders would have committed several other offences during this time and might not even remember the offence for which the caution is given.

Items [2], [9], [13], [14], [19] and [24] allow admissions, explanations and cautions to be administered in the presence of a respected member of the community. This will limit the ability of young offenders to stall matters by refusing to choose an adult to be present. This reduction in red tape will be welcomed by police and will provide for valuable community involvement in the process of managing juvenile crime, for example, by involving an Aboriginal community elder. Items [17], [18], [20], [21] and [22] remove the discretion of specialist youth officers, conference administrators and the Director of Public Prosecutions to overturn referrals for conferences in favour of cautions. This has been a major source of frustration for both police and victims of crime. Items [24], [25] and [26] contain savings and transitional provisions. I sincerely hope that the Government will not play politics with this important issue, and will support the long-overdue changes in this bill. Last year in an address to the New South Wales Press Forum the former Minister for Police Michael Costa said:

_ Frontline police believe youth justice conferencing works. It is not a soft option. Making young offenders confront their victims in the presence of families and police is both tough and effective. And making young offenders perform work for the community such as graffiti removal makes them take responsibility for their actions. What police are concerned with is the numbers of cautions young offenders are receiving prior to conferencing.

_ That's why the Government is drafting plans to limit the number of cautions that can be granted before conferencing.

_ Once the limit is reached that young offender has to be conferenced or dealt with by the courts.

_ We will also ensure the actual arresting officer has a role in deciding if a youth justice conference is appropriate.

_ Changing the Act in this way will entrench the sensible and tough option of youth justice conferencing as a way of dealing with non violent, non serious offenders.

_ It means habitual young offenders face the consequences of their actions.

On the record, Minister Costa seems to agree with my proposition that the Young Offenders Act needs to be substantially overhauled, particularly in the areas of warnings and cautions. Therefore, I expect the Government to support my bill. In summary, this bill seeks to make long-overdue changes to laws dealing with young offenders in this State. Because of the Government's laxity, many hardened juvenile criminals have been getting away with a slap on the wrist while victims of crime have suffered loss, fear and distress caused by young thugs who commit crimes in the knowledge that the consequences will be trifling if they are caught. This bill will restore the balance to policing crime that the law-abiding citizens of this State want so desperately. I commend the bill to the House.