

22<sup>nd</sup> November 2011

Public consultation process for the review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*.

Herewith my personal submission as an interested citizen.

The following basic principles should be paramount - that

- the process provides JUSTICE for the child/juvenile AND the victim
- whenever possible RESTITUTION is achieved for the victim
- the outcomes are in the future BEST interest of the child/juvenile
- the objective is to MINIMISE repeat offending

### **Key Issues:**

#### **Ages of responsibility –child/juvenile and PARENTS\***

Under 10 - child - the current law considers children under the age of 10 are “incapable of any wrongdoing”.

This does not negate the responsibility of the parents to control their children and it is my opinion that including , wherever possible, full restitution to the victim.

The Justice system needs to address this issue and establish laws to enable enforcement of parental responsibility and liability.

10 -18 - need to consider two categories in this age break as.

0 -16 - child/juvenile - still under the responsibility of parents and should be treated under the law jointly with their parents (joint responsibility) hence while restitution may be impossible by the child offender it may be possible when parents are directly enjoined in the process

17-18 - juvenile/adult - able to hold a driving licence then must be responsible for own actions and defined under the law as such and essentially dealt with as adults.

\*”Parent” encompasses any guardianship arrangement. Involving parents in the process is not enough, make them a key part of the legal process enjoining them as responsible for the crime that has occurred.

In my dealings with the police I have heard expressed the view that there is no point in trying to seek recompense from the parents as they commonly have no financial resource etc. There are ways to “encourage” parents in such an inconvenient way that they take some responsibility to control their children – community work, cleaning graffiti, cancelling their driving licence until community work completed etc even if they do not have money to pay for stolen property etc.. It is a matter of finding the right button to push in each case.

The current process is not adequate and we need to seek other possible solutions to move progress in the right direction. Parental accountability and liability is one such approach.

## **Help and Support the Police**

Again in discussion with police officers there is a sense of their frustration with:

- the time and paperwork involved in dealing with juvenile offenders
- the inadequacies of the process in deterring repeat offending and
- the leniency of the courts when cases are prosecuted

Weighting should be given to submissions received from the Police in this review process. They are at the battle front and their recommendations deserve every consideration.

## **Detention**

Reported evidence suggests that detention is not a deterrent to future offending in child/juvenile cases. It is also a burden on the community at the cost of \$600/day. Nor is exposing offenders to other offenders over time a positive influence.

However, nor is it acceptable for offenders to repeatedly receive slaps on the wrist and be released into the community to offend again. We then have communities under siege as has been the case in the area in which I live.

There has to be some effective deterrent to what is essentially and largely petty and nuisance crime. This is not to say that the deterrent should be applied in isolation. It is appropriate that the offending individual receive other suitable situation / family / community type interventions to support them but equally such support activity without some deterrent discomfiture is unlikely to be effective.

How effective is community service – I notice that compliance monitoring does not appear to be effective in reducing reoffending but does that mean allocated community service is not carried out?

Is having Graffiti”artists” clean off graffiti deterrent ?

Is having the offender do general gardening / cleaning work for the victim deterrent?

If we do not have the answer to what offenders see as deterrent then this is an area needing focussed research.

Having lived for a number of years in Singapore I know that petty crime is minimal there, in part because of the controlled community structure but also because the punishment of the cane is an effective physical deterrent. I am not supporting its use. I am just illustrating that having removed the power of a physical deterrent in our system we have failed to replace it with an effective alternative. I also know from spending time in Japan that the culture and community structure virtually alone has limited petty crime to a minimum. Unfortunately it is in part the disintegration of our social structure that has exacerbated the problem in our community.

## **Aboriginal crime**

The disproportionate representation of young offenders from the Aboriginal community (should be less than 5% but actually 45%) may well be a reflection of the breakdown of the community based culture in a foreign urban environment.

This issue has to be addressed separately. Within the legal system these offenders must be considered in exactly the same way as the non aboriginal offenders. The welfare based approach component to supporting them will no doubt be significantly different.

Specific Questions raised.

Many of the questions raised are answered in kind in the key issues above.

- Q2. b. enjoin parents/guardians directly in responsibility and reparation process
  - c. absolutely - surely reducing reoffending should be fundamental to and implicit in the whole process hence a stated primary objective of the YOA
- Q3. b. where is the deterrent element?
  - c. reducing reoffending must be addressed in the principles of the YOA
- Q7 current provisions (minor offences only – not theft etc) & discretionary powers of officer to remain
- Q8 build in 3 strikes and not entitled to a warning
- Q9 static crime data suggests YOA having little or limited effect and community is looking for improvement – here police opinion should drive change
- Q10 should keep records but destroy after 5 years if no reoffending. Also no differentiation – indigenous status should NOT be recorded.
- Q11 As I read it if the child does not admit to committing the offence they cannot be given a warning. What happens then? Does this work in practice???
- Q13 Where is the reparation for the victim or consequence of the crime addressed? Is there evidence that cautions have a deterrent effect? Need to be addressed in provisions
- Q14 b. add “need to minimise chances of reoffending”
- Q15 if dependence on admission of the offence and agreement to a Conference by the offender the reason why the police referrals are low then changes need to be made if court and police time is not to be wasted.(see Q11). Needs investigating and resolution.
- Q16 if conferencing is working effectively (?) then **courts should be prepared to accept outcome plan** – again need to minimise waste of time involved – if court does not accept outcome plan the further conference etc!!
- Q17 may be better to have admission open to some leeway in interpretation than being too specific and limiting
  - understand need to assume innocent but have difficulty when process becomes dependent on admission of guilt (see Q11 and 15). Should admission be expanded to include for example strong balance of or irrefutable evidence?
- Q19 disclosure of interventions within the previous 5 years should be on the record
  - In any further case considerations
- Q20 a. Yes but police should retain discretionary power to elect best approach in individual cases. The problem appears in part to be that there is no clear evidence that interventions are more effective in reducing reoffending than court appearances and vice versa.
  - As 6% of offenders are reported to account for 50% of offences there needs to be greater focus on the reoffender and efforts to identify effective deterrents in these individuals in particular.
- e. is an apology adequate must be one question. Only victims can adequately answer this question

- Q21 a. In principle Aboriginal offenders should be treated no differently to any other offenders. If there are evident differences in the way they are being treated then there is a need to understand how and why there is this bias and address the problem itself not make changes to the act.
- b. This is a social and cultural problem beyond the scope of changes to YOA and one that Australia as a society needs to be address and not throw money at!!
- Q22 There is a broader issue here – should children with defined mental impairment even be dealt with under this legislation – hopefully the LRC consultation will make recommendations on this.
- Q23 The successful management of young offenders to create honest and productive citizens in our society is of critical importance. There should be one single body with terms of reference covering all aspects of related legislation providing advice to the Minister of Juvenile Justice and Attorney General. I support the main focus being to reduce reoffending.
- Q21?!!!!
- Q21 Addressed in key issues above. Important issue – parental enjoining in particular
- Q23 c. yes much as for YOA with emphasis again on minimising risk of reoffending
- Q24 b. yes
- Q25 b. believe history of prior offences within 5 years should be admissible
- Q30 yes
- Q33 if offender under age to drive – should be heard in Childrens court  
As suggested in key issues above – once old enough to drive should be treated as adult.
- Q36 b. penalty provisions appropriate and discretionary for magistrate but there appears to be pressure on magistrates to minimise detention sentences because of cost and facility limitation pressures. There is also a perception that offenders are let off too lightly and too often much to the frustrate of the police who have gone through all the effort to bring the case to court.
- Q37 records of offenders either admitting guilt or found guilty, even if dismissed or only cautioned should be kept on the record ( court should not be able to order destruction unless not guilty)
- Q38 support status quo
- Q39 It is the implementation of the acts and the outcomes that matter. If there is strong argument for **real benefit** flowing from merging then OK.

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