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2008 Public Defenders' Criminal Law Conference - Speech by The Hon John Hatzistergos MLC, Attorney General

Taronga Zoo
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I want to thank the Public Defenders' Office for the opportunity to speak to you today and for being the generous hosts of today's conference.

I wanted to first of all say to you that it's important to recognise the balances that are important in our criminal justice system, and the role that both defence advocates and indeed prosecution advocates play in ensuring that our system maintains that balance, as well as a level of fairness.

Very often the view that people, particularly in the defence bar, have of government is that we're fairly punitive in our approach in the criminal justice area.

It's therefore easy for disagreements to develop between defence barristers, and people who have a defence perspective, and Government, which is seen to have a broader role, not only, of course, in terms of social responsibilities, but also in responding to community issues.

Very often the work that the Government undertakes in the criminal justice system, particularly the work that I'm going to discuss here today with you, goes unnoticed.

The focus of the mainstream media tends to revolve around discussion about penalties, prisons and about how to demonise individuals, and the other work that we undertake gets very little focus.

So it's an opportunity for me here today to be able to present to you some important initiatives, which some of you may be aware of and others not.

Generally speaking, I doubt that you would be aware of the overall plan and approach that the New South Wales Government has for improving the criminal justice system in this state.

Can I begin first of all by saying that there are a number of points that need to be made quite clear in relation to this.

The first is that we recognise the importance of doing something about re-offending.

In 2006 the Government embarked upon the development of a State plan, which involved consultations with the community right across New South Wales.

It involved people making contributions on the net, it involved community meetings, it involved people coming and making presentations to a combination of ministers as to what they believed their government should be doing.

In the field of criminal justice, the community told us that they wanted us to do something about property crime, something about re-offending, and something about anti-social behaviour.

The plan that we settled upon addressed a variety of issues in that regard and committed the government to some very firm targets.

We committed to reduce property crime by 15%, to reduce violent crime by 10% and to reduce the rates of re-offending overall by 10%. These are set targets against which our policy responses will be ultimately assessed in determining whether or not we are successful.

There are, of course, a variety of ways that we can address re-offending.

One is just to have longer prison terms - incarcerating people and keeping them out of circulation will arguably have some effect on re-offending.

But as the Bureau of Crime Statistics and Research has shown, substantial increases in prison terms, whilst it may reduce crime through incapacitation, doesn't necessarily result in a longer-term reduction in the risk of re-offending.

The Bureau also tells us that supervision in itself, that is, court ordered supervision, does not necessarily result in a reduced rate of re-offending.

What we do know, however, is that supervision combined with program activity can have a reduction in re-offending.

So the focus of what I've been attempting to do as Attorney General and also as Minister for Justice is to take on those principles and to try and project them into some form of action.

I've done that first of all by focusing on exactly who it is who comes to court, who it is who goes to corrections and the rates by which those people continue to come before the courts and continue to come before corrections.

The interesting aspect of the statistics is that 80% of offenders who go to our courts don't actually come into contact with our Department of Corrective Services through either the prison system or probation and parole.

In other words, the agency which delivers the programs - anti-social behaviour programs, programs in relation to drink driving, programs in relation to gambling, violence and so on - doesn't have contact with 80% of the offenders that come before the courts.

We also know that there's a disproportionate amount of offending that occurs amongst a relatively small number of people.

To give you some sort of context, in 2004 the total re-offending rate for all offenders in New South Wales was 30%. The Bureau of Crime Statistics and Research has reported that approximately 40% of the court appearances were for offenders with three or more prior court appearances.

Other studies have suggested that around 9% of offenders with five or more appearances account for 30% of total court appearances and that 2.3% of offenders with ten or more appearances account for 15% of total appearances.

So you can see that there is a small group of people who are involved in re-offending and there's a very large group of people, around 80%, who never make it to corrective services for any form of program.

So one of the things that I think is very, very important is to bear in mind the need to be able to combine supervision and program activity, and to try to get some of that work out to those people who come before the courts with low level offending but who never make it into gaol, and also to target those people at the high end who are making repeat appearances, who will be incarcerated, but who will ultimately come out back into the community and just continue to re-offend.

I know that the criminal infringements notice scheme was the subject of some controversy late last year.

However, the reality is that the concept of being able to divert people out of the court system, and into a form of punishment which is appropriate for their particular circumstances, means that we are freeing up court time to deal with people who actually need more assistance, who actually need more supervision, and who actually need more case management.

And if you read the ombudsman's report about the trial of the scheme, you will see that the criminal infringements notice scheme actually works.

The trial involved a large number of first time offenders and it involved people who were elderly in many instances. The case of people, for example, who shoplifted first time aged 50 or so on, and for whom just the interaction with the police, the interaction with the justice system in getting that notice was a sufficient deterrent for that person not to repeat that behaviour.

So taking those people out of the court system - and I might add that the police supported that - taking those people out of the court system was important in being able to reprioritise our time within the court system to ensure that we focused on those people who really needed attention.

There are other initiatives that the government has undertaken. Some years ago we introduced a system of youth cautioning and warnings, which was aimed to divert again offenders at the very low end of the spectrum into an alternative stream by which their offending conduct would be addressed, but not necessarily bring them into the mainstream court system.

The young adult conferencing scheme for 18 to 25 years old, which is a court ordered conferencing scheme that the government has committed to expanding across the State from the two pilot sites that we've got at Liverpool and Tweed Heads, has also been a very effective means of ensuring that those younger offenders who come into conflict with the law do not become permanent mainstream, frequent flyers of the court system. It has 80% satisfaction rating amongst the victims who are part of those conferences.

Other initiatives that we have taken on have also been very important. The MERIT scheme, that is the Magistrates Early Referral Into Treatment Scheme, targets those people with mental illness issues to get them into treatment. It has been an effective means of ensuring that we do not end up having people with mental illnesses becoming frequent flyers and not being able to get appropriate treatment.

That scheme has also had an aspect to it which resulted in two pilot schemes being conducted in Bathurst and Wilcannia, which are aimed at diverting those people who have alcohol issues into treatment.

We've ensured that there's ordered supervision in relation to compliance and so on with these initiatives, but the focus is getting these people to address their offending behaviour.

Recently I announced another new local court program. Many of you would not have heard about it – it's called CREDIT, or Court Referral of Eligible Defendants Into Treatment.

CREDIT is modelled on a program from the United States. It is aimed at those offenders who are at high risk of re-offending.

These are people who come before the justice system and invariably have a lot of contact with other support agencies. However, they are not always identified at an early stage of being at high risk of re-offending. They are instead treated by the court system, with five minute pleas in some cases, and then sent back into society without having their underlying issues addressed.

And they keep coming back. This is part of the 80% that I referred to earlier.

What we're proposing under the CREDIT scheme is really a first for Australia - a screening process, which will be developed by the Bureau of Crime Statistics and Research, to accurately identify persons who are at high risk of re-offending.

We will use available information about the defendant, using such variables as age, the nature of the offence, the gender, the prior criminal history, and thereby predict the likelihood of that individual re-offending with a high degree of accuracy.

We will then focus on those high-risk re-offenders, and get them into programs and treatment to address issues like drug and alcohol problems, mental health, a lack of education and unemployment, as well as accommodation needs.

We are proposing that this program will operate firstly in one metropolitan and one regional location, before being eventually rolled out across the State.

It is important to also recognise that while doing this work, we are not ignoring those high risk offenders who end up in custody and who also have particular issues that need addressing.

I want to refer here to the compulsory drug treatment centre that has been established at Parklea, and which is again is another unique initiative for New South Wales.

We are acutely aware of the capacity of drugs and alcohol to make a significant disruptive effect to people's lives, to prevent them from being contributing citizens in the community, and moreover, to be a part of a re-offending cycle.

The program involves three stages. A stage, firstly, of strict detention which is for a minimum of six months, leading to a second stage which involves works release, again of six months. There is then a third stage, which is a form of community custody very akin to home detention, where the person will be subject of electronic surveillance, but effectively will be the subject of curfews but able to go to work and to other activities which are approved by probation and parole staff.

These initiatives, all supervised by the Drug Court, are again about using programs and program activity combined with the court system to be able to effect change, to be able to bring about a difference to a person's life.

Last year I had the NSW Sentencing Council undertake a review of the periodic detention scheme.

This scheme, which only operates in New South Wales and the ACT, is based essentially on the old Maoist principle that you reform yourself by doing work. The statistics, however, do not show that people just reform themselves by doing work. So again the emphasis on what we want to achieve is to ensure that underlying offending issues are addressed.

The profile of people who have been going to periodic detention has been transformed radically from when that program was first initiated 40 years ago.

Periodic detention is not available universally around the State - there are many communities, particularly in rural and regional New South Wales, where periodic detention is simply not available as an option.

And as a result of a variety of reforms and changes to sentencing attitudes, the number of people who are on periodic detention has dropped significantly now to around 500, compared, I think, to about 1,000 ten years ago.

And a recent study undertaken by the Bureau of Crime Statistics and Research has shown that in those parts of rural and regional New South Wales where periodic detention is not available, rather than people going into full-time custody, the tendency is that those people go to other community based sentencing orders such as bonds.

What I am trying to do here, and what I have initiated as part of the reform through the Sentencing Council, is to develop a new form of order which can take the place of periodic detention in relation to some offenders.

The proposal that the Sentencing Council has put out, and which is out now for consultation with various groups, is to have a new order called a Community Corrections Order, which for a maximum of two years will involve a person being on a suspended prison term whereby, as a condition of that order, they are required to undertake participation in programs.

There could be a residential component in a transitional centre or there could be a home detention component with curfews and a variety of other directions, aimed again at ensuring that that person has the best possible opportunity of being able to rehabilitate themselves and be able to live their life in the community as a contributing citizen.

I want to address one further thing before I conclude, and that is the issue of fines.

I am very concerned about the secondary and repeat offending that often occurs because people who have fines are unable to pay them.

While it is important that we deal rigorously with people who deliberately refuse to pay fines, I also am concerned about drawing large numbers of vulnerable people, and they're part of the 80% that I referred to earlier, into the criminal justice system.

This issue was also examined in some detail by the Sentencing Council, who highlighted areas where fine enforcement can be improved, particularly in relation to disadvantaged people.

The government is therefore currently examining a range of strategies to provide more flexible and effective options for the imposition and enforcement of fines.

For example, options that include the capacity to be able to be given an extended time in which to pay fines or penalty notices and different other payment options, including capacity to pay them in instalments.

The aim of these changes would again be to reduce the risk of those people, particularly on low incomes who often are drawn into these penalties, defaulting on the payment of their fines and getting caught in a vicious cycle of re-offending.

The broader issue of mental illness is also important and cannot be ignored.

There is a review that being undertaken by Mental Health Review Tribunal in relation to forensic mental health patients who are currently invariably placed in the criminal justice system by being placed in the hospitals at Long Bay. This is a practice, which I might add, will shortly end with the opening of the new forensic hospital.

The review, however, is looking at a different system of determination for those persons to get them out of the criminal justice system and into the health system. We also have a review currently being done by the Law Reform Commission in relation to criminal procedures and mental illness and that will be a report that will come out later this year.

In conclusion let me just say that the government has established itself a very ambitious program over the next ten years to reduce crime and reduce the rates of re-offending.

To meet these objectives we're putting in place a range of innovative programs and initiatives that get to the root of the problem, that make repeat offenders confront the causes of their criminal behaviour.

We have a long and a very proud record of pursuing a reform agenda that gets on top of crime and we remain committed to that agenda, but also to one which is balanced.

The community often demands that the government get tough in punishing criminal behaviour. But we also want to be able to use the criminal justice system to intervene in people's lives to get them to address the causes of their offending behaviour.

In pursuing this approach I'm committed to working closely with all the key stakeholders, including the criminal defence community. Your expertise and experience is important in further shaping this new framework, in making sure that we put in place initiatives that work, that have a real impact on reducing criminal activity and re-offending.

Thank you very much for the opportunity to speak to you today.

