

Community Views in Sentencing Jurors and Sentencing Young Adult Conferencing Program

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Speakers - [Tsang The Hon Henry](#); [Hatzistergos The Hon John](#)

Business - Questions Without Notice

COMMUNITY VIEWS IN SENTENCING JURORS AND SENTENCING YOUNG ADULT CONFERENCING PROGRAM

Page: 3736

The Hon. HENRY TSANG: My question is directed to the Attorney General. What is the latest information on community involvement in the sentencing process?

The Hon. JOHN HATZISTERGOS: I thank the honourable member for this important question. It may surprise some members of this House to know that there is extensive involvement of communities' views in the sentencing process. For instance, the Young Adult Conferencing Program is a forum that brings together the offender and the victim with a facilitator, support people, a police officer and other relevant people to discuss what happened, to talk about the harm caused by the offence and to prepare an intervention plan for the offender. A recent evaluation by the Bureau of Crime Statistics and Research found overwhelming support from victims, with 91 per cent who participated saying they were satisfied with the intervention plan and that the outcome was fair to them.

There is also the circle sentencing initiative that allows greater Aboriginal involvement in the criminal justice process. It involves Aboriginal elders, the magistrate, prosecutor, defendant, legal representatives, victim, and various support people discussing the offence and the offender. We have also ensured that the voices of victims are heard in the criminal justice system by including victims' representatives on the New South Wales **Sentencing Council** and enabling victim impact statements to be read in court. We are also introducing new laws to have victim statements read to young offenders receiving police cautions.

Following a suggestion by the Chief Justice the question of jury involvement in sentencing has also been raised. The Government sent a reference to the New South Wales Law Reform Commission to examine whether judges should consult the jury before a sentence is handed down. On 17 October 2007, I tabled the commission's report on the matter and the Government's response. The Government supports the commission's recommendation that jurors should not be involved in the sentencing process to any greater extent than they are at present. The report notes the danger of increased appeals and delays for victims if the jury's role is expanded in the way envisaged in the Chief Justice's proposal. It states:

The lack of transparency in the discussions between judge and jury could lead to a greater number of appeals on sentence decisions. Should the discussions uncover flaws in the jury's verdict, additional costs and delays would occur in rectifying the error.

The report raises concerns that jurors' views on appropriate penalties or the severity of offences would be based on their personal views and experiences, rather than being decided according to law. The report also raises concerns about the secrecy of the discussions that would take place between the judge and jurors: the accused, and the community, are entitled to know the basis on which sentencing decisions are made. Involving the jury in secret consultations goes against the traditional concepts of openness and transparency in our justice system.

The report also highlights practical difficulties such as the timing of jury consultations, which would need to take place at the sentencing hearing, often weeks or months after a trial is complete. Recalling juries in those circumstances would be expensive and difficult to coordinate, particularly in regional areas. Finally, the report makes two other recommendations that the Government also

supports. The report says a two-pronged approach is needed to address the issue of public confidence in the criminal justice system. The first approach is to have more research into the true nature of public sentiment and opinions about sentencing in New South Wales. The second aspect is the need to recognise that community education about current sentencing practices and procedures is the key to improving public confidence.

The Government has already taken action in this area, asking the New South Wales **Sentencing Council**, in conjunction with the Bureau of Crime Statistics and Research, to investigate the level of public confidence in the criminal justice system. The council is conducting research on this and it will report to the Government next year. As noted in the commission's report, the Government recently released a public sentencing information package. On 5 October this year the Chief Justice launched a publication entitled *Judge for Yourself* that provides information for the public on the facts and processes around sentencing. It covers public perceptions of crime, the role of the Government, the Parliament and the courts, sentencing options and how sentencing decisions are made.

The Government is addressing the important issue of public confidence in the administration of justice by a range of means, keeping the people of New South Wales well informed about the criminal justice system and making sure their concerns are reflected in the way the accused is tried and sentenced. It is doing so in a responsible way that upholds the integrity of jury deliberations.