



Policy Framework on Law and Justice Issues

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Executive Summary

The continued use of anachronistic sanctions to control and deter criminal behaviour rests upon a general historical misunderstanding of the actual effectiveness and appropriateness of the criminal justice system. The current criminal justice system and the more recent and sensationalist 'get tough' initiatives by governments have previously enjoyed widespread support in South Australia as both politicians and the media ponder our survival within populist perceptions of a crime wave. Citizens have previously been confident in the efficacy of our punitive criminal justice system, and there has been support for harsher penalties to be introduced that contributed to a safer society by increasingly incarcerating people who commit criminal offences. Conversely there is growing and palpable acknowledgement of the failures of this system to address both the sociological contributors to criminal behaviour and in developing early prevention strategies that identify and address risk factors for future criminality (Sanson et al. 1995).

Currently through legislation, South Australia has been afforded appropriate sanctions within our criminal justice system (especially in regard to juvenile offending) that are based upon diversionary principles and include a cognizance of sociological and developmental antecedence. Where the system has failed is that resources have not been allocated effectively to enable the commission of restorative and diversionary processes in sentencing. In addition, resources have also not been forthcoming to develop and implement early intervention strategies that target the complex sociological contributors to offending.

We know that social exclusion has been consistently identified as a contributor to feelings of alienation, mistrust, and increased criminality. Early childhood physical and psychological development as well as familial and social experiences can have considerable effects in the way that children and youth connect with education and the community. Disconnection from education and the community is known to be a significant predictor of experiences and behaviour in their adult life. Through research the link has been established between truancy, exclusion from education and the likelihood of becoming involved in drug use, anti-social behaviour and criminality. Statistics regarding social and developmental predictors have shown that the issues related to poverty and disadvantage accounts for a 56% higher chance of participating in offending behaviour later in life. Child neglect explains 57% of juvenile participation in crime, 58% of property crime and 49% of the participation in violent crime (Cashmore, et al 2002).

There has been much debate regarding proposed legislation particularly in regards to juvenile crime in South Australia. This debate has been perpetuated by the non-government sector, which has been inspecting these proposed changes and responding to inadequacies and inappropriate legislative provisions. Independent Law Reform Commissions in New South Wales, Victoria, Queensland and Western Australia have been developed to inspect existing and proposed legislation for adequacy, legitimacy and appropriateness (Victorian Law Reform Commission 2005).

In order to protect the rights of the already disadvantaged, SACOSS recommends that an Independent Law Reform Commission be created in South Australia that can review and respond to legislation and other inadequacies in the justice system. The development of an independent law reform authority, while appearing within the South Australian Labor Platform, as yet has not come to fruition (South Australian Labor Platform 2005).

It cannot be overstated that crime statistics do not reflect the increases in crime regularly reported by the media. It is clear, however, that the current system in which the State Government has promised harsher and more punitive sanctions is not acting as a sufficient deterrent to crime, recidivism or in addressing the sociological contributors to criminality.

SACOSS recommends that the criminal justice system needs to include the following elements:

- An independent and adequately resourced office of crime statistics that provides accurate and responsible statistics for the government and the public. Further, these statistics should be better publicised and readily available to all who wish to access them.
- Accurate and responsible reporting of the incidences of crime and crime rates by both the government and the media.
- The willingness of government and mainstream society to acknowledge that punitive sanctions (in isolation and in every instance) do not contribute to the prevention of crime or recidivism.
- The development and implementation of early intervention strategies that are targeted at 'at risk' groups.
- Community capacity-building and crime prevention through community programs, education, training and programs such as crime prevention through environmental design.
- Appropriate and fully resourced alternative sentencing sanctions that include an emphasis on restorative processes and rehabilitation. In addition, these processes should be rolled out across the entire justice system and include victims' services that offer victims a greater opportunity to participate within the justice system and respond better to individual needs.
- An independent Law Reform Commission, as is operational in other states, that examines and responds to proposed and existing criminal justice legislation.
- And finally, that the government consult meaningfully in partnerships with the community sector to help shape and develop a law and justice strategy that explores and includes the upholding of rights for victims, offenders and their families.

Contents

Executive Summary	i
Introduction	1
The cost of crime	2
Focus upon the victim	3
Prevention and early intervention	3
Aboriginal and Torres Strait Islander justice issues.....	4
Juvenile justice.....	6
Restorative justice and non-punitive sanctions.....	7
Mental health issues and crime	7
SACOSS policy position on restorative justice principles and rehabilitation	8
Conclusion.....	9
References	10

Introduction

There is concern across many sections of the community at the 'get tough' approach that has been so popular with Australian legislators in recent years. Neo-conservative ideology has informed an approach in which legislators and some researchers have pondered the effect of a return to old fashioned family values and how that might reduce crime statistics, particularly within juvenile criminality. Unfortunately the foundations of this belief are exclusionary, Western, and Anglo-Saxon and make assumptions regarding the distinction between 'good people' and an invasive criminal element (Cashmore et al. 2002). This approach has historically failed in regards to the prevention of crime or in deterring recidivism.

Conversely, the central tenet of a developmental perspective includes a focus on inclusiveness – it explores and acknowledges developmental issues within the family setting while also exploring how the family of potential offenders is situated within wider society. It is recognised that the risk of crime increases within communities characterised by exclusion, intolerance of different cultures and a lack of respect for the diversity of individuals, families and youth. This negative social environment is further exacerbated by the disparity between these communities and the rest of society in income, appropriate housing, health services, education and welfare services (Cashmore et al 2002).

Over the last two decades the percentage of children living below the poverty line in Australia has nearly doubled (King 1998, cited in Cashmore et al 2001). This creates greater financial and social exclusion which works to deny full participation within social and economic life. Living in poverty has been recognised as a significant social determinant of health and wellbeing. Poor social and economic circumstances affect people throughout their life cycle, with those further down the social gradient having at least twice the risk of serious illness and premature death as those near the upper end of the social gradient (Marmot & Wilkinson 1999: Wilkinson & Marmot 2003).

Studies have supported the notion that the mental and physical health enjoyed during adulthood is greatly determined by the environments in which children are raised. Poor early experience and developmental problems during this period become ingrained within our biological processes and determine our ability to function effectively and in our overall physical and mental health (Health Evidence Network 2006).

This emphasis on the effects of early development and the denial of access to positive and essential social infrastructure, as well as a focus upon more appropriate sentencing and community corrections, has formed the central tenets of a targeted policy framework on criminal justice issues.

Policy Framework

The policy framework will centre itself on:

- *The cost of crime*
- *Focus upon the victim*
- *Prevention and early intervention*
- *Indigenous justice issues*
- *Juvenile justice*
- *Restorative justice and non-punitive sanctions*
- *Mental health issues and crime*

The cost of crime

According to the Australian Institute of Criminology (2003), the overall cost of crime in Australia amounts to a staggering \$32 billion per annum. This figure equates to approximately \$1,600 per person and 5% of National GDP. Violent offences amount to the largest proportion of the cost of crime in Australia, with the cost of homicide amounting to \$930 million dollars per annum, assaults amounting to \$1.4 billion per year and sexual assault accounts for \$230 million per annum. The total cost of burglary is \$2,410 million, robbery accounts for \$600 million and thefts of vehicles costs \$880 million overall per annum.

Between 1993 and 2003 the Australian prison population increased by 50%, taking the number of prisoners incarcerated in Australia (by June 2003) to 23,555. In 1994/95 the Australian national expenditure was \$883 million; by 2002/03 this figure had increased to \$1.7 billion. This equates to each prisoner costing \$159 per day to incarcerate (ABS 2003, cited in Heggie date unknown).

However, the financial cost of incarceration is only one facet of the cost to the community. There is also the human cost of denying liberty, disconnection from the family and the community and focusing upon punishment rather than societal change (Heggie date unknown). Further, the families of offenders are often forgotten within this process; a greater emphasis on supporting these families should take place, in order to decrease the inevitable escalation of disadvantage that occurs when family members are sent to goal.

In addition, the growing problem of unacceptable delays in the criminal courts must be addressed expediently. While justice is delayed the impact of crime upon all participants, whether they be victim, witness or offender, is exacerbated and may become more deeply entrenched, harder to correct and therefore more costly to resolve.

Focus upon the victim

SACOSS recommends that a community response to offending and criminal justice should adhere to victimisation as part of the solution. Victims should be given appropriate involvement in the process of justice, support, compensation and rehabilitation.

Victim compensation was generated through the advent of the welfare systems in the United Kingdom and the United States. South Australia adopted the *Criminal Injuries Compensation Act 1969* in 1969. This act provided monetary compensation for people who had been the victims of crime. During the 1970s and 1980s the legal landscape surrounding the victim began to change to demand that the voice of the victim be heard throughout the processes of the criminal justice system.

South Australia now has a Victims of Crime Act (2001) which clearly describes victims' rights and legislates to ensure government and statutory bodies respect and respond to victims. Gradually the traditional criminal legal system is changing to give further recognition to victims.

Victims of crime have been the focus of the adoption of Restorative Justice processes in Australia. Restorative Justice processes have been found to substantially increase the level of satisfaction felt by the victim throughout the criminal justice process. The use of Restorative Justice allows victims to feel that they have been involved and become empowered by regaining the control of their lives from the offender (Marshall 1999, cited in Cook et al 1999). The continued use of alternative sentencing and restorative justice principles is an established recommendation within SACOSS's *Blueprint for the eradication of poverty in South Australia* (2007) and we support the State Government in the adoption and expansion of these processes.

Prevention and early intervention

The roots of criminal offending are complex and compounding, firmly entrenched within the developmental and social narrative of the offender. In order to identify the complex set of contributing factors that can influence criminality, policy makers need to focus upon the life and social factors of potential offenders and how these elements impact upon the development of young people (Cashmore et al 2002).

Social exclusion has been consistently identified as a contributor to feelings of alienation, mistrust, and increased criminality. Early childhood physical and psychological development as well as familial and social experiences can have considerable effects on the way children and youth connect with education and the community. This in turn affects the level of engagement or disengagement from education and the community as the child reaches the teenage years. Disconnection from education and community is known to be a significant predictor of experiences and behaviour in adult life. Through research the link has been established between truancy, exclusion from education and the likelihood of becoming involved in drug use, anti-social behaviour and criminality.

Additionally, there is an established link between juvenile offending and offending later on in life, contact within the justice system and particularly corrections. Overseas studies have shown that between 30 to 60 per cent of juvenile offenders brought before the Children's Court later come into contact with the adult criminal justice system (Blumstein, Cohen, Roth & Visser 1986, cited in Chen, et al 2005). A recent Australian study — which studied a cohort of 5,476 juveniles who appeared in the Children's Court in 1995 and followed their activities until 2003 — added to this research by demonstrating that 68 per cent of juvenile offenders who appeared before the Children's Court re-appeared in an adult court on at least one occasion within eight years of the

original appearance (Chen et al 2005).

It is vitally important to break the cycle between juvenile offending and adult offending. An increased and significant focus on a developmental perspective calls for a realistic analysis of an individual's life and social contributors in relation to offending or possible offending. This analysis provides the basis for interventions that not only centre upon the criminal behaviour but also address the features of that person's life which has contributed to that criminality. Groups of 'at risk' individuals can be the subject of meaningfully targeted interventions (Cashmore et al. 2002).

Aboriginal and Torres Strait Islander justice issues

There is increasing evidence that many people come into contact with the criminal justice system (including incarceration) through inadequate community based health and social services, particularly in regards to housing, basic health care, substance use care, issues with disability or family violence and abuse. The New South Wales Inmate Health Survey identified that two thirds of the inmates within the NSW prison system had substance abuse concerns and in addition it was found that 74% had mental health issues within the 12 months preceding their conviction.

Within Australia, Aboriginal and Torres Strait Islander prisoners represent 22% of the total national prisoner population (Krieg 2006). The Aboriginal and Torres Strait Islander population comprises just 2.4% of the total Australian population (ABS 2004). SACOSS states that this disproportionate number of Aboriginal and Torres Strait Islander people within the prison system is unconscionable and we have to look more deeply into the sociological factors that create this disparity. SACOSS seeks to halve the number of Indigenous offenders in South Australian prisons and redress this disparity (SACOSS 2007).

A culturally responsive criminal justice perspective will acknowledge and take into account the stories and experiences of Aboriginal and Torres Strait Islander people. Patterns of criminal behaviour are often the result of the deep-seated pain and anger that is felt by Aboriginal and Torres Strait Islander people on a daily basis not only from the cultural effects of dispossession but also from the effects of marginalisation and subjugation. Forced separation through incarceration intensifies the feelings of exclusion, oppression and dispossession for many Aboriginal and Torres Strait Islander people. This separation also places increased pressure, both financially and personally, particularly on the families of the incarcerated (Krieg 2006).

Aboriginal and Torres Strait Islander participation within sentencing procedures has been occurring informally within remote communities for years. The process began to be considered an important tool in making sentencing more culturally relevant, lessening the impacts of sentencing for individuals and their families as well as giving the victim and the community a voice within the justice system. The process began to be formalised during the 1990s by the formulation of Aboriginal Sentencing and Circle Courts.

Aboriginal Courts, Circle Courts and other justice principles and practices have the potential to transform our adversarial justice system for Aboriginal and Torres Strait Islander offenders and others alike. These justice principles create an environment in which the offender is still embraced by their family and community and all have a voice within the process. The foundation tenets of these processes are increased communication, inclusiveness, citizen knowledge/control and appropriate and considered penalties that have changing attitudes and destructive social environments in mind rather than further retribution and punishment (Marchetti & Daly 2004).

All criminal justice responses should be based upon the principles of access and equity. Services need to listen to Aboriginal and Torres Strait Islander people about what these terms mean for them. Efforts need to encompass access and equity for all people including children and the elderly, Aboriginal and Torres Strait Islander residents, people from diverse cultural and linguistic

backgrounds, women and minority groups.

In the 2005 SA Labor Party Platform Document the Rann Government expressed a commitment to providing recognition for Aboriginal Customary Law in addition to creating a process by which victims are diverted from the traditional justice system and sentencing options. While attempts have been made in legislation that offers restorative sentencing options for the Courts, adequate resourcing and Government support is still needed for the Courts to use these sentencing options.

SACOSS recognises that the ideals of reconciliation and restoration are powerful for all Australians but have particular meaning for Aboriginal and Torres Strait Islander people. The primary harm done to Aboriginal and Torres Strait Islander people through the history of colonisation and alienation from society is deepened by contemporary experiences of crime and violence and systemic discrimination that further damages peoples' sense of connection, trust, respect and belonging. The ideals of restoration and healing at the historical and contemporary levels have a profound and abiding meaning.

Dispossession, racism and discrimination have systematically disadvantaged and marginalised Aboriginal and Torres Strait Islander communities in Australia, and that access to justice and services in contemporary society is affected by this experience. The effectiveness and sustainability of programs to address access to justice and services works best when communities have a significant role in the design, implementation and governance of the programs. SACOSS encourages Government to work in partnership with Aboriginal and Torres Strait Islander communities. Consultation, negotiation and dialogue are an integral part of the reconciliation process in Australia. Consultation, negotiation and dialogue are also critical elements to engaging Aboriginal and Torres Strait Islander people in justice processes.

Juvenile justice

The State Government has made consistent statements signalling their intention to reform the criminal justice system in South Australia as a priority. The government has sought to make radical changes throughout the legal system including creating tougher penalties, increased sentences, cracking down on repeat offenders and an increased focus upon restorative justice principles (SA Labor Platform 2005). However within this continually evolving legal environment, hurried, archaic and populist 'crime prevention' measures often rear their heads to mass acclaim and media sensation — particularly in relation to youth crime. Youth curfews are again being floated as an idea to curb an arguable increase in youth crime. Disengagement from society is linked to increased criminality therefore a measure that serves to decrease connectedness while also criminalising behaviour that is not actually criminal serves the dual purpose of reaffirming society's mistrust of youth and also creating further alienation and exclusion.

In 2002 the Australian Institute of Criminology published a report entitled *What works in reducing young people's involvement in crime?*, in which 155 texts about youth crime prevention or intervention programs were analysed. The findings suggest that the principles that programmes should contain to impact positively on offending and recidivism rates should include:

- Programmes addressing many risk factors rather than those that address only one form of intervention.
- Programmes that work across social settings – within the family, school, peers and the community – can impact on the whole of the young person's life. These are more effective in reducing offending than concentrating on one area of influence.
- Behavioural programmes that work to challenge and change offending behaviours.
- Programmes containing skill-based components to increase educational attainment, and improve employment prospects to help the offender reintegrate back into the community.
- Programmes should be culturally specific.
- Programs should be targeted and specific – a risk/needs assessment of the youth would determine the type of programme that would be most effective for them.
- Target those with the highest risk of potential offending and employ a minimal interventionist approach for first time offenders, for example by using cautions and conferences.

The Select Committee on the Youth Justice System (2005) concurred with a majority of the findings from the AIC report and suggested a way forward for the criminal justice system in South Australia. The recommendations suggested by the Select Committee focused upon a raft of common themes. These included:

- The need to for the justice system to provide appropriate custodial and residential facilities for young offenders.
- Providing targeted, behavioural support to assist children and young people to affect change.
- The need to provide early intervention through targeted care and protection strategies.
- A strong focus on reducing the over-representation of Indigenous young people by increasing their access to diversional justice processes, as well as supporting family and community participation in developing holistic solutions to youth offending.
- Constructing education and training that limits truancy and leads to increased connectivity and engagement to community.
- Emphasizing collaboration, information exchange and partnerships across all parts of the Youth Justice System.
- Providing sources of information to enable increased understanding of court processes to increase efficiency and case flow.
- Providing appropriate and sufficient post-release support.

SACOSS strongly recommends that the government address the Select Committee on the Youth

Justice System report (2005) that emphasises the strong need to minimise young people's engagement with the Youth Justice System, and for intervention and prevention strategies to be targeted in the youth's formative years. The Select Committee has recommended that the principles of minimal involvement of young people aided by diversionary processes and early intervention should be a top priority and should govern the structure of the South Australian Youth Justice System.

Restorative justice and non-punitive sanctions

Restorative justice principles have been born out of three main issues. Firstly, the criminal justice system has been facing increasing pressure through the reduced willingness of the public and legislators to spend the escalating sums of money needed for the burgeoning prison and corrections system. Secondly, policy makers and those who work within the criminal justice system are becoming increasingly dissatisfied and frustrated by the inability of current strategies and theories to reduce overall crime rates. Finally, in recent years the move to involve victims, the offender, family and the community within the justice process is gathering momentum and beginning to shape the way that the criminal justice system can work in the future (Lemley 2001). An increased use of restorative justice processes and options as part of an integrated and flexible system is more likely to achieve acceptance with justice professionals, policy makers and the community.

Restorative justice can take several forms but the most popular within South Australia has been the 'conferencing' used within juvenile justice matters (Daly & Hayes 2001). Canberra's reintegrative shaming experiments (RISE) project began in 1995 and sought to measure the impact of restorative policing on the perception of procedural justice and on the rates of recidivism subsequent to the process. The experiments demonstrated that youth who had been charged with violent offences and were assigned to a conference subsequently offended at substantially lower levels, 38 fewer offences per year per 100 offenders, than the youth offenders who were assigned to court (Sherman, Strang & Woods 2000).

The 2005 SA Labor Party Platform Document expresses a commitment to exploring restorative justice processes for youth, and expanding those processes to adult offending. As expressed earlier, resources have not been forthcoming in order for this to occur.

SACOSS recommends that the current raft of restorative justice principles be adequately resourced in order for the laws to work effectively and provide juvenile offenders with appropriate alternative sentencing processes. SACOSS further recommends that these restorative processes be comprehensively expanded across the entire justice system to provide alternative and appropriate sentencing for adult offenders (SACOSS 2007).

Mental health issues and crime

Historically there has been energetic debate regarding the relationship between mental health and criminality that can be traced back well over a century. In recent years researchers have highlighted the correlation between the social dislocation that often accompanies mental disorders as the main impetus for criminality amongst this group. It is anecdotally and empirically recognised that people with mental illnesses are certainly overrepresented within prison populations (Mullen 2001; Krieg 2006).

There is an irrefutable link between increased social isolation and negative consequences for mental health. Smaller social networks, fewer close relationships and a reduced perception of social support greatly contribute to the symptoms of depression and other mental disorders.

Increased connectedness and participation within one's community/ies perpetuate a sense of belonging that sociological and psychological theorists argue contributes to positive psychological wellbeing (Kawachi & Berkman 2001).

The overrepresentation of people with a mental disorder within the correctional system must be addressed, and to this end SACOSS recommends that early intervention and prevention strategies are developed and implemented that focus upon treatment and the social inclusion of people who have a mental disorder. These early interventions should encompass improved clinical and non-clinical services, greater social support and targeted drug and alcohol services (Mullen 2001). Improved and consistent clinical and non-clinical services, social support and good social relations are known to make an important contribution to mental health (Wilkinson & Marmot 2003).

SACOSS policy position on restorative justice principles and rehabilitation

SACOSS is committed, through our *Blueprint for the eradication of poverty in South Australia* (Targets 37-42), to advocate for:

- Access to effective rehabilitation programs for all offenders.
- Reduce the numbers of Aboriginal and Torres Strait Islander South Australians in prisons, proportionate to their numbers in the overall state population.
- Halve the number of South Australians sent to prison, through the vigorous pursuit of restorative justice, diversionary court systems and alternative sentencing options.
- Ensure living conditions are safe and consistent with community living standards.
- Increase in the use of restorative justice processes to enable victims of crime to engage more meaningfully.
- Reduce the impact of crime on its victims.

Conclusion

Australia has been inextricably drawn to incarceration as the preferred method of punishment for criminality. This is despite the general lack of evidence to support its positive contribution to a safer community, rehabilitation or on recidivism rates. Due to the quite obvious failings of the current system of criminal justice there is a gradual change emerging within the thoughts and expectations of society in regards to justice and punishment.

Kelly (2006) believes that the tide is turning on the traditional law and order debate and the use of populist 'get tough' campaigns that aim to increase punitive sanctions and erode basic human rights. Arguably much of this change in opinion is due to the quite visible human and economic costs of imprisonment, but it is also been influenced by increased voter distrust of political game playing. Within focus group consultations with South Australian voters prior to the last state election a preponderance of participants perceived law and order issues in negative terms. Voter cynicism is due to years of electioneering and 'get tough' campaigns that have not resulted in them feeling any safer or showing any demonstrative results in crime statistics or recidivism.

SACOSS recommends that the key elements of any criminal justice policy should include:

- Capacity-building in communities to address the underlying causes of social exclusion, and to enable people to fully participate in and contribute to their community.
- Improving public safety through early intervention and crime prevention by focusing on the needs of the most vulnerable and 'at risk'.
- Reacting to crime and its impacts by engaging victims and offenders by addressing the needs of those who are the victims of crime as well as offenders (psychological therapy, training, education, health intervention).
- And ensuring community safety and accountability of offenders for harmful or criminal behaviour through appropriate and relevant sentences.

It is clear that more holistic, thoughtful and developmental approaches are being demanded increasingly by voters; therefore government will need to act in more considered and socially responsible ways when developing criminal justice policy.

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