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## **Proposed Amendments to the *Correctional Services Act 1982* and Regulations**

**SACOSS submission on the proposals contained in the Department for Correctional Services Discussion Paper, November 2010.**

***Submitted 10 January 2011***

# **SACOSS Submission on Proposed Amendments to the *Correctional Services Act 1982* and Regulations**

## **Introduction and General Comments**

As the peak non-government representative body for the health and community services sector in South Australia, SACOSS believes in justice, opportunity and shared wealth for all South Australians. We have a strong membership base representing a broad range of interests in the social services arena. Our core activities include analysing social policy and advocating on behalf of vulnerable and disadvantaged South Australians; providing independent information and commentary; and assisting the ongoing development of the health and community services sector. SACOSS has a keen interest in correctional services and rehabilitation of offenders because of the cross-over of offenders/prisoners with other areas of disadvantage and because a number of our member groups provide services to offenders.

SACOSS has considered the proposals put forward in the Department's Discussion Paper of changes to the *Correctional Services Act 1982* and *Regulations*, and we have consulted with a number of our member groups with an interest in the area.

SACOSS welcomes amendments aimed at providing legal certainty, regulation of areas not currently regulated, or the provision of greater efficiency or clarity around who exercises particular powers under the Act. However, we have concerns around the overall approach of the proposed amendments.

In July 2009, SACOSS published a paper on principles of law and justice policy, noting that sociological causes underpin much offending and that punitive sanctions have historically not deterred the commission of crime. (SACOSS, 2009) It is necessary to address the causes of crime, including social exclusion, and providing and adequately resourcing rehabilitation and treatment programs (particularly in the area of mental health which is a key but inadequately addressed issue in incarceration). Such approaches are proven to work in reducing criminal behaviour and are less expensive than the alternative punitive and prison based models.

Sadly, we find little by way of sociologically-based preventative approaches in the proposed amendments. The proposed amendments appear to be based around a punitive model which sees the answer in terms of further surveillance (eg. proposals 3.7, 3.9, 3.12) and the social isolation of prisoners (eg. proposals 3.8, 3.13, 3.16, 3.17)

Our concern about the framework underpinning the proposed amendments is heightened by the fact that the amendments are being drafted in tandem with the public consultation. This limits the ability to query or change the framework and suggests that it is only the details of particular proposals which may be amended as a result of the consultation. If this is the case, it is disappointing and a cause for concern for the community services sector.

Beyond these overarching concerns, we have additional specific concerns with some of the proposals which are detailed below.

## Comments on Specific Proposals

### 3.2 Cancellation of parole orders

In circumstances where the Parole Board has already seen fit to make a parole order, and where there is no breach of a designated condition (as per s73) the proposed amendment to s74 of the Act appears to be unnecessary and inflexible. Consider the situation of a parolee who has addiction or substance abuse problems. In general terms, the long term answer is support to overcome these issues. If a slip along the way leads to a breach of a parole condition, it is unlikely that the long term issue will be addressed or assisted by taking the person back to square one via the need to effectively re-apply for parole – with all the uncertainty and lack of empowerment that implies. This fails to recognise and reward progress along the way, nor allows for discretion in the event of a minor lapse and simply punishes rather than disciplines and supports a person in that position.

*The proposed amendment should be dropped.*

### 3.3 and 3.4 CE issued arrest warrants and subsequent imprisonment

Following from the above, the power of the Chief Executive of the Department to issue an arrest warrant, which will therefore see a parolee detained for up to 28 days before a consideration of the matter by the Parole Board, is also questionable. In the example above, the slip of the addicted person may see immediate re-imprisonment and an abrupt halt to any recovery and normalisation program before the prisoner has a chance to make it right themselves or to have the circumstances of their case considered by those who made the parole order. Again this inflexibility is unlikely to assist the parolee in the long term and will make reintegration into the community harder if it impacts on employment or other social normalising interactions.

There is also a “separation of powers” governance problem with the Department charged with determining that a parole breach has occurred, judging the requisite enforcement action to be taken (ie. issuing a warrant), and enforcing the imprisonment.

*The proposed amendment should be dropped, or at least constrained to only exceptional circumstances (for instance, where there is an imminent and serious threat to public safety).*

### 3.5 SAPOL arrest powers re parole breaches

The discussion paper asserts that “there are circumstances where parolees pose a serious threat to public safety without necessarily committing an offence”. The paper does not detail what these circumstances and it is not clear to SACOSS what circumstances are envisaged. That being the case, SACOSS would want to be assured that the power under the proposed amendment would not apply to technical breaches. A clear definition of the circumstances where this would be implemented should be included in the Act or Regulations.

*The amendment should be tightly worded to only be applicable where there was a serious threat to public safety and the Act and Regulations should state this explicitly.*

### **3.6 Pre-release reintegration activities for life imprisonment potential parolees**

SACOSS welcomes the recognition in the Discussion Paper that it is important and appropriate that prisoners participate in preparation activities for release, and recognises the difficulty of doing this outside of prison if parole orders may not subsequently be made. However, we are concerned that the proposal effectively adds up to 12 months to a sentence after parole has been granted, and further that the proposed “in-house” programs may be seen as sufficient in themselves when clearly both pre and post-release support programs are required.

In general, whatever the fate of this proposed amendment, SACOSS would like to see more emphasis on post-release support of prisoners.

### **3.9 Provision of information to SAPOL**

Again, this provision is about surveillance rather than support for parolees and does nothing to help integrate parolees back into our community. The assertion in the Discussion Paper is that “ensuring that SAPOL has relevant information on persons on parole contributes to increased public safety” suggests that the Parole Board has granted parole to people who still constitute a threat to public safety. Accordingly, and so as to minimise the workload on SAPOL and the counterproductive surveillance for many parolees, SACOSS suggests that *the proposed requirement on the Parole Board to notify SAPOL of parolees’ addresses and conditions of parole should only apply to cases where the Parole Board believes that there is a threat to public safety.*

### **3.12 and 3.13 Prevention of acts by ex-prisoners**

While SACOSS understands the circumstances outlined in the Discussion Paper giving rise to this proposal, we are concerned that this is an unwarranted interference with the liberty of persons who have “served their time” and is a further punishment/imposition beyond that envisaged and imposed by the courts (eg. a sentence for two years imprisonment was for two years imprisonment, not two years plus a further one year where the offender will not have the control over their money or people they contact that other persons in the community have). We also note that the Discussion Paper states that the proposal is to apply to any “person discharged from custody”. SACOSS notes with consternation that the current proposal therefore presumably includes those persons who are discharged from remand and who have not been found guilty of any offence. This is certainly not appropriate.

Furthermore, if the issue is smuggling contraband, then that is and should be treated as a separate offence and should not be dealt with by making all recent-ex-prisoner visits illegal. Similarly, if the concern is prisoner gambling or illicit drug use more generally, then that is better dealt with by instituting appropriate rehabilitation and support programs, not via the imposition of blanket encroachment on the rights of citizens.

*The proposed amendments should be dropped.*

### **3.16 Prohibition of interviews of prisoners or parolees**

SACOSS believes that prohibiting interviews with prisoners and parolees appears draconian and is unlikely to assist integration of offenders into wider society. It is particularly unclear what this may mean in the case of a parolee. Would it prevent the person from being interviewed for a job, or discourage the participation in employment if every prospective employer had to seek

permission to interview an employee? Would consultation with health professionals and community service workers be caught by this proposal?

The provision of services by a variety of community agencies (including SACOSS members) which provide services to parolees would also be inhibited as these agencies, while often funded by the government to provide such services, are not on the list of those excluded from the application of the proposed section.

*The proposed amendment should be dropped, or at a minimum, the list of exemptions should be expanded to include health and community service providers.*

We also note with interest the assertion in the Discussion Paper that there is an adequate range of opportunities for prisoners to complain. We believe that this fails to understand organisational and structural dynamics and power. Coming from the body exercising power and who may be the subject of complaint, the assertion is ironic at best.

### **3.17 Prison visits and identifications**

If a “non-contact visit” means an inability to sit across a table without physical barriers, then the proposal that the minimum standard for visitors be a non-contact visit is draconian, particularly for remand prisoners who retain the presumption of innocence. If the minimum standard is not to apply to everyone, but simply be a legislated minimum, it is not clear what the amendment achieves given that the Act already prescribes the number of visits. We are concerned that if a standard of non-contact visits is enshrined in legislation, the minimum will become the default.

The proposal to amend s34 to require any visitor to a correctional facility to undergo biometric identification is an unacceptable imposition on the rights of that person (who has committed no offence), particularly where there is no guidance (in the Discussion Paper) as to what will happen to any records and data gained from such identification.

*The proposed amendments should be dropped, or radically re-thought and limited.*

## **References**

SACOSS (2009), *Law and Justice: Shift the focus to crime prevention*, SACOSS Principles Paper No.4, July 2009. South Australian Council of Social Service, Adelaide.