

Corrections Amendment (Treatment of Sex Offenders) Bill 2015 SASS Submission

18 September 2015

Sexual Assault Support Service Inc (SASS) welcomes the opportunity to provide feedback on the *Corrections Amendment (Treatment of Sex Offenders) Bill 2015* (the Bill). In Part 1 of this submission, we address the wording of the Bill and make several recommendations, for consideration. In Part 2, we encourage the Tasmanian Government to table a series of amendments to the *Children, Young Persons and Their Families Act 1997 (Tas)* (CYPFA) and *Youth Justice Act (Tas) 1997 (YJA)*, with view to legislating on the provision of treatment programs to persons aged <18 years.

SASS urges policymakers to make a long-term commitment to sexual violence prevention, by supporting and funding treatment programs to address sexually abusive behaviour exhibited by children and adolescents. We believe that the provision of effective interventions at the earliest stages of sexual offending is a sound investment, in terms of:

- delivering a clear message to the community that sexual violence of any kind is unacceptable;
- reducing levels of juvenile involvement with the criminal justice system; and
- reducing the risk of continued sexual offending into adulthood and potential incarceration.

In May 2015, SASS released a Position Paper titled *Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania*.¹ Relevant recommendations will be drawn upon in this submission.

Part 1

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of *approved organisation*:

appropriate treatment, in relation to a sex offender prisoner, means a professional intervention to address the underlying causes of offending behaviour;

In this section, SASS recommends that the definition of ‘appropriate treatment’ be expanded to include the teaching of self-regulation and management skills to replace offending behaviour.

¹ SASS (2015). Position Paper: *Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania*. Paper available at: http://www.sass.org.au/assets/SASS_Position_Paper_PSB-SAB.pdf

31. Treatment of sex offender prisoners

- (1) This section applies if the Director is satisfied on reasonable grounds that appropriate treatment is available for a sex offender prisoner.
- (2) The Director is to give the sex offender prisoner a reasonable opportunity to participate in the appropriate treatment unless satisfied on reasonable grounds that –
- (a) the prisoner is medically or psychologically unfit to participate in the treatment; or
 - (b) the prisoner is not cognitively capable of participating in the treatment; or
 - (c) there is insufficient time for the prisoner to complete the treatment; or
 - (d) the prisoner’s participation in the treatment could compromise the safety, security or good order of the prison.

With reference to (2), we suggest that words to the effect of “At the earliest practicable opportunity,” be inserted, ahead of the current wording.

SASS believes that a prisoner’s medical, psychological, and/or cognitive impairment or condition should not impact negatively on their ability to access appropriate treatment for sex offending. With reference to (a) and (b), we recommend that any treatment interventions or programs offered to sex offenders in the prison setting should be tailored to accommodate different levels of functioning and ability. We note that in South Australia, the State government provides funding for the *Sexual Behaviour Clinic (SBC) – me* program at Mt Gambier Prison, which is described as:

a psychotherapeutic treatment program for adult male sexual offenders with a mild to borderline level of intellectual functioning. The overall aim of the SBC-me is to reduce reoffending rates by assisting offenders in understanding their offending cycle, and by learning skills to cease offending behaviour in the future. The SBC-me utilises discussions, role plays, art and drama therapy.²

We also note that Queensland’s *Corrective Services Act 2006* states that in the prison setting, “... programs or services must take into account the special needs of offenders.”³ Throughout the Act, there are several other references to taking special needs (including disability) into account, when administering correctional processes.⁴

With reference to (c), SASS recommends that sex offenders are given the option to commence treatment in prison; and continue to participate in a community-based program, upon release. In a

² Department for Correctional Services (SA). ‘Sexual Behaviour Clinic’. Accessed 09/09/15 at: <http://www.corrections.sa.gov.au/rehabilitation-programs/sexual-behaviour-clinic>

³ See s.265 (2) of *Corrective Services Act 2006* (Qld).

⁴ For example, see s.3 (3) b.

report titled *Outcomes of Queensland Corrective Services Sexual Offender Treatment Programs*, Smallbone and McHugh (2010) argue for an integrated system of intervention:

Losel and Schmucker found that community-based programs were generally more effective than programs in prison settings, with mixed-setting programs showing intermediate effects. These findings are consistent with the results of reviews of the effectiveness of general offender rehabilitation programs, which have also shown that community-based programs are generally more effective than prison-based programs. These effects tend to hold even when pre-existing risk-related differences between community-based and prison-based offenders are controlled. Prison-based programs can be effective, but it is very important that they are linked structurally with community-based services (Hollin, 2001).⁵

Smallbone and McHugh also highlight the importance of post-release supervision, which, in the Queensland context, may take the form of either ‘standard’ supervision (for example, parole)⁶ or “more stringent supervision and monitoring provisions of the Dangerous Prisoners (Sexual Offenders) Act (DPSOA).”⁷ In their study, the authors found that being released without supervision was one of two factors that were “significantly and uniquely related to sexual recidivism”.⁸ SASS recommends that the *Corrections Amendment (Treatment of Sex Offenders) Bill 2015* be expanded to include post-release supervision provisions for high-risk sex offenders, to complement and support ongoing treatment arrangements.

With reference to (d), SASS suggests that a brief explanation should be provided to clarify valid reasons why the Director may decide to exclude a prisoner from sex offender treatment, under this provision. We make the respectful submission that any grounds for treatment exclusion on the basis of maintaining “the safety, security or good order of the prison” should be clearly articulated, to ensure accountability. We suggest that where possible, a comprehensive risk assessment should be carried out for each potential participant; and a robust risk management plan enacted, in preference to exclusion.

Part 2

In 2014, SASS launched an Options Paper titled *Responding to Problem Sexual Behaviour in Tasmania*. As explained in the Paper, SASS defines Problem Sexual Behaviour (PSB) as behaviour,

... of a sexual nature irrespective of age that is both outside that behaviour accepted as “normal” for their age and level of development and occurs to the detriment of the child’s or young person’s engagement in activities of normal functioning. This may include behaviours such as excessive self stimulation or excessive preoccupation with pornography that isolates

⁵ Smallbone, S., & McHugh, M. (2010). Final Report: *Outcomes of Queensland Corrective Services Sexual Offender Treatment Programs*. Griffith University, pp 8-9. Available at:

http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Reviews_and_Reports/Final%20Report_%20Outcomes%20of%20QCS%20Sexual%20Off%20Treatment%20Program.pdf

⁶ Ibid, p.46.

⁷ Ibid.

⁸ Ibid, p.51. The other identified factor was “higher assessed static risk”.

them from normal social and/or learning opportunities and does not include the sexual abuse of others.⁹

This term may be used with reference to children and young people up to and including the age of 17. The Paper explains that Sexually Abusive Behaviour (SAB) describes a subset of behaviours displayed by children and young people against others, which include,

... the absence of consent; involve[ing] the use of threat of force or force; coercion, and [may include] a disparity of age, level of development or size.¹⁰

A primary purpose of the Options Paper was to bring attention to issues which are known to increasing numbers of health and education professionals, and affected families, but are largely unfamiliar to other sections of the community. We invited stakeholders to respond to a range of key issues, questions, and proposed interventions; of relevance to the domains of health, education, law, and law enforcement. We received insightful feedback from a number of agencies and individuals, across the public and private sectors. Following careful consideration of the feedback received, we released our Position Paper on *Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania*, in May 2015.

SAB among children and young people has significant implications for the domains of law and law enforcement. In our Position Paper, we explain that:

Whilst child/adolescent sexually abusive behaviour does not necessarily lead to adult sexual offending, evidence does suggest that a subset of adolescent sexual offenders are at high risk of progressing from adolescent to adult sexual offending. Gelb identifies two particular studies that support this conclusion; the first being a US survey of adult sex offenders, in which 58 per cent reported that their offending behaviour began when they were adolescents, and the second a New Zealand study that interviewed female survivors of child sexual abuse and found that 25 per cent had been abused by adolescents. Corroborating this, Abel and Harlow's 2001 research with 4007 self-confessed child sex offenders revealed that "20% said they began abusing boys and 12% began abusing girls before the age of ten. Forty-three per cent began abusing boys when they were aged 10–15 years and 32% began abusing girls. Seventy per cent of adult male offenders were abusing boys by the time they were aged 19 and 54% were abusing girls."¹¹

SASS recognises that in the Tasmanian context, children and young people aged 10+ years may face legal consequences of sexually abusive behaviour. However, we believe that the State's current legislative provisions do not address the complexities of child and adolescent sexual offending. For this reason, we urge the Government to consider tabling Bills to amend two additional statutes, i.e.

⁹ SASS (2014). Options Paper: *Responding to Problem Sexual Behaviour in Tasmania*, p. 5. Paper available at: http://www.sass.org.au/assets/Options_Paper_PSB_Dec_2014.pdf

¹⁰ Ibid.

¹¹ SASS (2015). Position Paper: *Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania*, p.12. Paper available at: http://www.sass.org.au/assets/SASS_Position_Paper_PSB-SAB.pdf

the *Children, Young Persons and Their Families Act (Tas) 1997*; and the *Youth Justice Act (Tas) 1997*. We believe that in most cases, it is preferable for early intervention, treatment, and support to be made available to child and adolescent sexual offenders (and their families), before punitive actions are taken. We argue that the provision of timely and appropriate treatment is likely to circumvent the need for further judicial and correctional responses, and reduce the risk of future/adult offending.

SASS's specific recommendations, as outlined in our Position Paper, are as follows:

7. The *Children, Young Persons and Their Families Act (Tas) 1997* be amended to state that children and young people up to and including 17 years of age displaying PSB/SAB require a child protection intervention, whether or not they are themselves at risk of neglect or abuse; and
8. That under the Act, a child protection intervention in these cases focuses on both the safety management of other vulnerable children and the provision of rehabilitative treatment (including a mandated intervention) to the child that poses a risk to others.
9. Notifications regarding a child displaying sexually abusive behaviour should also attract mandatory notification to the police.
10. Legislative reform [is] accompanied by professional training for frontline child protection workers to ensure that where a notification is made regarding a child displaying PSB/SAB, this is appropriately responded to the first time the report is made.
11. The Children's and/or Youth Justice Divisions of the Magistrates Court be granted power to order a young person up to and including 17 years of age, and their family, to undergo therapeutic counselling for sexually abusive behaviours where it is clear that they would not otherwise access voluntary treatment.
12. Any statements made by a child or young person whilst participating in voluntary, or non-voluntary counselling, are not admissible in court.
13. The *Children, Young Persons and Their Families Act (Tas) 1997* be amended to enable a child to be placed out of home where this is necessary to ensure their attendance and participation in an appropriate treatment program, through a Therapeutic Treatment Placement Order.
14. The *Children, Young Persons and their Families Act (Tas) 1997* be amended to expressly consider the effects of cumulative harm, rather than just episodic interventions.
15. Amendments be made to the *Youth Justice Act (Tas) 1997* to:

- Enable the Magistrate’s Court (Children’s Division) to refer children and young people (aged between 10-17 inclusive) convicted of a sexual offence to an individual assessment, and then based on this, to an appropriate therapeutic treatment program;
- Enable the Court to adjourn criminal matters for non-prescribed offences when a child or young person (aged between 10-17 inclusive) is made subject to a Therapeutic Treatment Order (assuming that the *Children, Youth and Their Families Act (Tas) 1997* is amended to adopt this approach); and
- To dismiss charges where a child or young person (aged 10-17 inclusive) successfully completes a treatment program – whether this is voluntary or non-voluntary. In making a decision as to whether a young person has ‘successfully completed’ a program, the Magistrate is to have regard to:
 - i. the young person’s attendance records;
 - ii. the nature and extent of the young person's participation;
 - iii. whether or not the young person's participation was to the satisfaction of the therapeutic treatment provider; and
 - iv. the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

SASS believes that enacting these recommendations will serve to:

- Demonstrate a long-term commitment to sexual violence prevention;
- Support the early engagement of children, young people, and their families in treatment;
- Deter children and young people from future sex offending, and thereby reduce the risk of further harm being caused to vulnerable individuals and families; and
- Reduce levels of resourcing associated with the operation of high-cost corrective services.

Final comments

We are aware that several other States (including Victoria, Queensland, and Western Australia) have passed separate, detailed legislation for the treatment and post-release supervision of serious sex offenders. We mention this as a further option for the Tasmanian Government to consider.

SASS welcomes any questions about the contents of this submission.



Sexual Assault Support Service

References

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