

Criminal Law (Extended Supervision Orders) Bill 2015

Provisional comments

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**VICTIM
SUPPORT
SERVICE
INCORPORATED**

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Table of Contents

Introduction	4
Executive Summary	5
Key Recommendations	6
Provisional Comments	7
Establishing risk of reoffending	7
Recommendation 1	7
The Victim Register.....	8
Recommendation 2.....	8
Recommendation 3.....	8
Inquiries by medical practitioners.....	9
Recommendation 4.....	9
Victim submissions to the Parole Board regarding an ESO application	9
Recommendation 5.....	9
Recommendation 6.....	10

Introduction

Victim Support Service ('VSS') is a not-for-profit organisation that provides therapeutic and practical support to 30,000 victims and witnesses each year in South Australia. We have a local presence in every major community throughout the State. Through our advocacy, we give a voice to victims within the criminal justice system.

Since 1979, we've been helping people affected by crime to face the future with hope. We support them therapeutically, emotionally, and practically, helping them to *cope* and *recover* after crime.

This can range from helping a woman assaulted by her partner to get extra home security, to supporting families as they cope with the aftermath of the murder of a loved one. We often support people through challenging and traumatic times, helping them to get their lives back on track.

We are also there to help victims, witnesses and their families in every criminal court in South Australia. Our Court Companion Service supported more than 300 people in the run up to a trial and during the court process in 2013-14, helping them to feel informed and supported so that they could give evidence confidently and promote justice.

We do not do this alone. We work with many organisations, including police, courts, Office of the Director of Public Prosecutions, and the judiciary to provide the most effective assistance to victims.

VSS is also a member of the Serious Offenders Committee ("SOC"). The SOC provides assistance to the government in making management decisions for serious offenders.

VSS acknowledges that responding to high risk offenders and their potential for reoffending is a complex issue faced by the criminal justice system. The rights of both the victim and the offender must be equally considered, as well as the safety of victims of crime and the community.

VSS understands that the intention of the Criminal Law (Extended Supervision Orders) Bill 2015 is to establish a monitoring system for high risk offenders who have been released from prison after serving their term, in addition to current parole arrangements. VSS welcomes the opportunity to provide provisional comments on the Bill. It is important to note that these are provisional comments only, and that VSS would appreciate a copy of the Report on this matter to inform any further comment.

Executive Summary

The criminal justice system continues to face the issue of how to respond to high risk offenders. The rights of the victim, the offender, and the safety of the victim and the community must be considered when responding to this issue. Victim Support Service (“VSS”) welcomes the intent of the South Australian Government to protect the safety and wellbeing of the community, as outlined in the Criminal Law (Extended Supervision Orders) Bill 2015.

VSS is concerned, however, that the safety of victims has not been clearly addressed by the Bill. We believe that the safety and wellbeing of victims of crime should be considered as equally paramount by the Supreme Court and the Parole Board to the safety and wellbeing of the community.

We also believe that victims of crime should be informed by the Victim Register of Extended Supervision Orders (“ESO”) applications, outcomes, and any conditions set by the Supreme Court or the Parole Board.

We strongly endorse victims of crime being able to make submissions to the Parole Board to inform the setting of ESO conditions. We believe that offenders should not have access to submissions made by registered victims to the Parole Board.

These issues are explored further in our Submission.

Key Recommendations

Recommendation 1

The term “appreciable risk” should be clearly defined in respect of the risk of reoffending.

Recommendation 2

The safety of the victim needs to be considered by the Supreme Court and the Parole Board as equal to the importance of the safety of the community when an application or conditions regarding an ESO are made.

Recommendation 3

The victim of the related offence should be informed by the Victim Register of any ESO application, application outcome, and any ESO conditions given to the offender by the Supreme Court or the Parole Board.

Recommendation 4

The meanings of “legally qualified medical practitioner” and “prescribed authority” should be made clear.

Recommendation 5

Victims of crime should be able to make submissions to the Parole Board regarding ESO conditions.

Recommendation 6

Offenders should not have access to any submissions to the Parole Board made by victims.

Provisional Comments

Establishing a risk of reoffending

VSS understands that the intent of the introduction of Extended Supervision Orders (“ESOs”) is to protect the community from certain high risk offenders who have the potential to reoffend. According to the Bill, a high risk offender is:

- a person who has been convicted of 'serious sexual offence' and who was sentenced to a term of imprisonment; or
- a 'serious sexual offender' who is serving a sentence of imprisonment;
- a person who has been convicted of a 'serious offence of violence' who was sentenced to a term of imprisonment;
- a person who is serving a sentence of imprisonment for contravening or failing to comply with an ESO or an interim ESO; or
- a person who is the subject of an ESO.

Under the Bill, the Attorney General may make an application to the Supreme Court for an ESO to be made regarding such a person.

According to the Bill, the Supreme Court must consider whether there is an “appreciable risk” to the safety of the community if an ESO is made in respect of a person who is currently not under an ESO.

VSS is seeking clarification regarding the meaning of “appreciable risk” in respect of reoffending and the safety of the community. Specifically, we are seeking confirmation as to whether there are criteria, or some other tool of measurement, that the Supreme Court must use when making a decision regarding an ESO application.

Further, it is unclear whether the safety of the victim of the related crime is a primary factor considered by the Supreme Court during the ESO decision making process. We believe that the safety of the victim, in addition to the safety of the community, should be considered equally paramount by the Supreme Court when considering applications.

Recommendation 1

The term “appreciable risk” be clearly defined in respect of the risk of reoffending.

The Victim Register

The Bill does not make any reference to the Victim Register or any other process designed to ensure the victim is kept informed about any applications made for an ESO, as well as the outcome of an application, and any conditions set by the Supreme Court or the Parole Board.

We believe that a victim should not be responsible for requesting information about ESO application outcomes and the conditions set by the Supreme Court or the Parole Board should an ESO be made in respect of the offender. This is particularly important in cases of domestic and family violence where a person meets the criteria for a high risk offender and an ESO application is made in respect of that person.

VSS commends the South Australian Government for making domestic violence prevention a priority in response to the findings of the State Coroner regarding the murder of Zahra Abrahamzadeh in March 2010. In light of the State Government's commitment to making the prevention of domestic and family violence a key policy focus, we believe that victims of domestic and family violence should be made aware of any ESO applications, application outcomes, and any conditions given to the offender in respect of an ESO. This is paramount to the safety of the victim, who may need additional support from the criminal justice system or support services depending on the outcome of the ESO application and the conditions set by the Supreme Court or the Parole Board.

VSS strongly believes that informing the victim should be an automated process where information about the status, outcomes of ESO applications, and ESO conditions is provided by the Victim's Register directly to the victim in a timely manner.

Recommendation 2

The safety of the victim needs to be considered by the Supreme Court and the Parole Board as equal to the importance of the safety of the community when an application or conditions regarding an ESO are made.

Recommendation 3

The victim of the related offence should be informed by the Victim Register of any ESO application, application outcome, and any ESO conditions given to the offender by the Supreme Court or the Parole Board.

Inquiries by medical practitioners

VSS is seeking clarification regarding the meaning of “legally qualified medical practitioners” referred to in section 16 of the Bill. It is not clear if the term refers to general practitioners, or any other medical professionals.

In principle, VSS supports the nomination of a medical practitioner by a prescribed authority to carry out an independent examination of the person who is the subject of the ESO application. However, it is unclear to whom the term “prescribed authority” refers. This term should also be made clear.

Recommendation 4

The meanings of “legally qualified medical practitioner” and “prescribed authority” should be made clear.

Victim submissions to the Parole Board regarding an ESO application

VSS understands that a victim listed on the Victim Register currently has the opportunity to make a submission regarding any concerns that they may have to the Parole Board in writing, or in person, before an offender is released on parole.

We believe that victims of crime should also be able to make submissions to the Parole Board regarding an ESO application. It is important that the safety of the victim, and any concerns they have for their safety, are considered by the Parole Board before ESO conditions are set.

We believe this is important because victims may have specific areas of concerns that should be considered by the Parole Board, such as the prisoner trying to contact them if an ESO application is approved or rejected. This is particularly important in cases of domestic or family violence where the victim may be fearful that an offender will try to contact them. A victim may also be facing continuing issues regarding the impact of the offence on their wellbeing and quality of life. The Parole Board should be made aware of these issues when considering ESO conditions.

Further, in line with current practice regarding upholding the rights of registered victims, VSS strongly recommends that offenders do not have access to submissions made by victims under any circumstances.

Recommendation 5

Victims of crime should be able to make submissions to the Parole Board regarding ESO conditions.

Recommendation 6

Offenders should not have access to any submissions to the Parole Board made by victims.