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The Honourable T Koutsantonis MP
Minister for Correctional Services
GPO Box 464
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Attn: Mr Peter May
Acting Director Policy and Stakeholder Services
Via fax: 8226 9226

Dear Minister

Discussion Paper: Changes to the *Correctional Services Act 1982* and *Regulations*

I refer to the above Discussion Paper, which has been considered by the Society's Criminal Law Committee, and provide the following comments in relation to particular proposals put forward in the paper.

Proposed Amendment 3.1

The current legislation ensures that someone at last partially familiar with the parolee's history prepares the report. The proposal has the potential to remove this. It is essential for the community and for the parolee that the person who is in the best position to make the report does so.

The Chief Executive will inevitably not be the best person to prepare the report. At best, the Chief Executive will delegate this function and sign off on the report. The problem with enshrining in legislation that the Chief Executive will prepare the report is that, in practice, there is a substantial risk that reports will be prepared by the most convenient people to the Department rather than the most appropriate.

Any amendment should ensure that the obligation, if delegated, is delegated to **the most appropriate person** to prepare the report.

Proposed Amendment 3.2

We do not support this proposal. Parole conditions will vary in importance.

The important parole conditions are, or should be, classified as "*designated*" conditions. The consequences of breaching designated conditions is rightfully significant.

The less important conditions should not be elevated in importance to designated conditions. For the less important conditions, serving up to an extra six months imprisonment is a harsh enough consequence for breaching a condition not considered important enough to be a *designated* condition.

Proposed Amendment 3.3

We do not support this proposal. The power to issue a warrant is significant because it authorises the parolee's arrest. Giving that power to the Chief Executive places the power in the hands of someone who is not best placed to take the relevant factors into account and assess the relevant factors (eg, reasonable grounds to suspect/whether the alleged breach justifies a warrant). The Chief Executive is not qualified to embark on such a judicial type decision making process. The power to issue warrants should be strictly limited, and with appropriate safeguards, as it presently is.

Whilst accepting the importance of breaching a parole condition, it must be noted that the majority of breaches would not justify the issue of a warrant.

The current system for the issuing of warrants appears sufficient. If the matter is serious enough, a warrant can be issued with some urgency. If greater flexibility is required, it should consist of the power to apply to a magistrate for a warrant. Urgent warrant applications are routinely made at any hour of the day/week in other areas of practice and there is no reason why the same cannot be the case for serious suspected breaches of parole.

Proposed Amendment 3.4

It follows from our views on proposed amendment 3.3 that we do not support this proposal. We maintain our opposition even if amendment 3.3 was implemented. Four weeks incarceration as a maximum is wholly unacceptable for alleged conduct which may not justify a warrant (as is contemplated by this proposed amendment). In practice, the maximum tends to be the minimum. The maximum should be no more than 48 hours.

Proposed Amendment 3.5

We oppose the amendment. SAPOL already has sufficient powers to arrest any person who they suspect may have committed an offence. The concept of "serious threat to public safety" is nebulous and the existing range of offences is sufficient.

Proposed Amendment 3.6

It is not clear how this proposal will operate. If the effect of it is that the parolee is in custody after being released on parole or after a time he/she would otherwise have been released then we do not support the proposal in that form. If the parolee is to undertake pre-release preparation in a "suitable prison" it should be prior to what would otherwise be the release date. In other words, this proposed amendment should not have the effect of increasing a parolee's non-parole period. Only a court should be able to do that (and with cause).

There should be a further amendment requiring the Governor in Executive Council to give reasons for not acting on the Parole Board recommendations so that the prisoner knows what they need to do to achieve parole.

Proposed Amendment 3.7

We do not support this proposal as framed or at all. Electronic monitoring, as a concept, is inimical to freedom and rehabilitation. There is good reason why its use is limited to home detention (ie, as part of a custodial sentence). A parolee has served the custodial part of his/her sentence. It is acknowledged that certain parolees must have conditions attached to their parole. In some cases, a breach of those conditions may lead to further serious offending (eg alcohol use / access to children).

Whilst devices such as electronic monitoring and other laws that restrict fundamental freedoms may have a beneficial effect on crime rates, they are and cannot be a feature of a society adhering to the rule of law and respecting the liberty of the citizen.

As tempting as it is to impose further restrictions on those convicted of serious offences upon their release from custody, we do not, in general terms, support the unduly onerous use of electronic monitoring. If the concerns about a parolee's conduct whilst in our society is so grave he/she should not be released. In most cases, a potential parolee would much prefer to be released with electronic monitoring than to remain in custody. The desire of the potential parolee, however, is not determinative of whether he/she should be released at all.

In our view, if electronic monitoring is to be introduced in the parole process, it should be limited to the following circumstances:

- as part of the custodial sentence (ie, analogous to home detention whereby the prisoner serves part of his/her sentence in the community); or
- if it is to be following release on parole, then it must be authorised by the sentencing Court and only where, despite the parole board's decision to release, the Department or the Board considers there is a real risk that the parolee may not comply with a specified fundamental (or designated) condition. In that event an application to the Court must be made for the imposition of the electronic monitoring device. In such cases, the period during which the device is to be worn should, we suggest, be limited to a maximum of six months after which the Court must decide whether to extend its use to a further maximum of six months or to revoke the condition. It would be inappropriate, and against all the accepted jurisprudence on rehabilitation and reintegration, to have a parolee on electronic monitoring for the whole or a substantial portion of his/her head sentence. As indicated, if the doubts on the parolee are so grave then he/she should not be released.

Proposed Amendment 3.8

We do not support this proposal to the extent that it relates to non-child related work. It is draconian. In most cases it will be unnecessary and not in the public interest. It is likely to result in the parolee not being employed. That is an undesirable outcome. It is far too harsh a consequence for the parolee.

Proposed Amendment 3.9

We make no comment.

Proposed Amendment 3.10

We query the need for this proposal given s85C(b). If there is a need for it, then the authority to release information must not be at large. It should be limited to only that part of the information necessary to achieve/satisfy the reason for release.

Proposed Amendment 3.11

We make no comment.

Proposed Amendments 3.12 & 3.13

We suggest that the approval from the Chief Executive be delegable (say, for example, to the Manager).

Proposed Amendment 3.14

Whether the proposed amendment is necessary will depend upon the definition of the term "correctional institution" in s85B in relation to each prison. Section 4 relevantly defines the term to mean a "prison" which, in turn, is defined to mean a premises declared to be a prison under Part 3 of the Act.

If the current definition includes all prison grounds (including car parks), then no amendment would be required. If the definition does not extend to all prison grounds (including car parks), an amendment to extend the definition for the purposes of s85B only would be preferable.

Otherwise, if there are no prison "grounds" as such in relation to a particular prison, or they are unduly limited, then any amendment to provide a power of search and arrest should be strictly limited by a narrow radius (say, for example, 200m from the institution) and only to those cases where the Manager believes on reasonable grounds that the person intends to enter the prison and that he/she has a prohibited item.

Proposed Amendment 3.15

The accepted jurisprudence is that increasing the maximum penalty for offences does not act as a greater deterrent for potential offenders. Generally, the maximum penalty for an offence should only be increased if Parliament considers that the level of sentences should be increased for a particular type of offending. Unless the two year maximum for introducing illicit substances is considered insufficient, then there would not appear to be a proper basis to increase the penalty.

If, on the other hand, two years is considered insufficient, then we do not support an increase to 10 years. That appears to be very excessive and out of proportion for this type of offending.

Proposed Amendment 3.16

We suggest that the approval from the Chief Executive be delegable (say, for example, to the Manager). It would be far too restrictive if only the Chief Executive was able to give the approval.


Proposed Amendment 3.17

We express considerable concern about the use of biometric identification procedures. If it is introduced, it must be strictly controlled to ensure it is not misused. In any event, we suggest that a host of visitors be exempted from using it, including professional visitors.

Otherwise, the 100 points identification appears quite excessive and will present difficulties for minors or those without a driver's licence.

It should be a sufficient penalty for a person to be in custody. To place hurdles that would have the effect of restricting visitation rights seems most unfair on both the prisoner and the prisoner's family, friends and *bona fide* visitors.

Yours sincerely



Ralph Bönig
PRESIDENT