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youth affairs council
OF SOUTH AUSTRALIA

Anti-Social Behaviour Orders (ASBOs)

During the 2006 state election, the current government committed to the trialling of anti-social behaviour orders (ASBOs). There is currently a proposal to pilot these in SA. On 24 August 2007, the Youth Affairs Council of South Australia (YACSA) and the SA Council of Social Service (SACOSS) co-hosted a seminar on the topic of ASBOs. This event attracted over 100 people, representing community sector and local government workers, state government departments, and interested individuals. This significant attendance was a demonstration of the high level of interest, and concern, which exists around this proposed initiative.

What are Anti-Social Behaviour Orders (ASBOs)?

An Anti-Social Behaviour Order (ASBO) is a civil order made against an individual who has been shown, through a legal process, to be involved in 'anti-social behaviour'. This behaviour might be a certain activity, entrance to a particular area, congregation with particular persons, or other behaviour deemed as anti-social.

ASBOs have been available for application in England and Wales since 1999 and it is the UK model that has been proposed for adoption in South Australia. Whilst originally the numbers of ASBOs issued in the UK was low, it has increased significantly since 2003, when new legislation was passed in the area.

Typical areas in which ASBOs are generally applied include theft, vandalism and abusive behaviour. In the UK, anti-social behaviour is defined as anything that is 'likely to cause offence, harassment or fear'. Clearly, such a definition is open to disconcertingly broad and variable interpretation; it has resulted in playing football in the street and being sarcastic to one's neighbours being defined as 'anti-social'. ASBOs have been applied in situations that curb free speech and freedom of association.

Whilst an ASBO is a civil order, issued on the basis of non-criminal behaviour, breaching an ASBO is a criminal offence. Typically, an individual will breach an ASBO by engaging in the same non-criminal behaviour that earned them the ASBO in the first place. In this way, ASBOs have the effect of criminalising behaviour that would otherwise not be illegal. As some have characterised it, ASBOs have the effect of creating novel and tailor-made criminal offences for the individuals to whom they are applied.

Do ASBOs reduce anti-social behaviour?

The purpose of ASBOs is to reduce anti-social behaviour through the placing of an order on an individual or individuals. Clearly, in the most successful instance this will not limit all anti-social behaviour but only that anti-social behaviour associated with the relevant order.

However, statistics from the UK indicate that more than four in ten ASBOs issued are breached. This constitutes a failure rate of almost 50%, again only in relation to the anti-social behaviour associated with orders applied. Laws such as ASBOs don't prevent problematic behaviours, quite simply because they don't address the reasons for the behaviour. In fact, the evidence shows that in many instances ASBOs exacerbate pre-existing problems and create new ones, with ASBOs sometimes being adopted as a badge of honour by certain groups and individuals.

Evidence from the UK indicates that ASBOs work to reduce anti-social behaviour only when they are applied in conjunction with early intervention programs, support for behavioural change, education, programs that respond to the *causes* of the behaviour, and diversion programs for young people. This raises the obvious question: is it really the ASBOs that are working?

What other impacts can ASBOs have?

In the UK, ASBOs can be placed on anyone over 10 years of age. Breaching an ASBO can result in a prison sentence of up to five years or, for those under 17 years of age, a detention and training order of up to two years. This is a significant period out of the life of any young person. Statistics from the UK indicate that one in four people who have an ASBO placed upon them end up in prison. With more than four in ten ASBOs applied in the UK being breached, this may not be a surprising result. We have an obligation to consider what role ASBOs

play in increasing the numbers of people in the criminal justice system and whether this is an appropriate, effective or *fair* response to behaviour that may be anti-social but which is not criminal.

Evidence from the UK also indicates inequitable application of ASBOs. Whilst to date there has been no rigorous evaluation completed in the UK of the impact of ASBOs on different population groups, there is significant anecdotal evidence to suggest that young people and people from culturally and linguistically diverse backgrounds have been disproportionately impacted by ASBOs. Since the program's inception, more than four in ten ASBOs have been applied to people under the age of 17. We know that the most effective way to support young people as they transition out of offending behaviour is by diverting them away from crime and the criminal justice system through intervention and prevention programs. However, in the UK ASBOs also include the option to "name and shame" which involves the person who is subject to the ASBO having their photograph and details posted on the Internet and distributed to their communities through leaflet drops and flyers. This has occurred to individuals as young as 10 years old.

A 2005 study by the British Institute for Brain Injured Children showed that approximately 35% of ASBOs have been applied to young people with a diagnosed mental illness or learning disability. This would appear to quite plainly demonstrate that many ASBOs are issued on the basis of behaviour that is a symptom of a deeper, underlying issue and that, in such cases, ASBOs are an inappropriate response.

What other concerns are there?

Despite what can be the serious consequences of having an ASBO, the balance of proof required for an ASBO to be applied is not the same as that required for criminal offences. Hearsay evidence can be heard to support applications for ASBOs, with the result that 99 out of every 100 applications for ASBOs in the UK are granted.

Whilst ASBOs were initially popular in the UK, this popularity has been diminishing as their impact has become clear. ASBOs constitute a punitive response to behaviour that is very often underpinned by other issues. Through their punitive nature, ASBOs operate as a mechanism for excluding those very people that we are working to re-connect with their communities.

Further reading on ASBOs:

Campbell, S. (2002) A review of Anti-Social Behaviour Orders (Home Office Research Study No. 236), London: Home Office Research, Development and Statistics Directorate.
<http://www.homeoffice.gov.uk/rds/antisocial1.html>

Gil-robles A, (2005) Report of the Commissioner for Human Rights. <http://www.statewatch.org>

House of Commons Home Affairs Select Committee (2005) Report into Anti-social Behaviour London: House of Commons. <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/cmhaff.htm>

House of Commons Committee of Public Accounts (2007) Tackling Anti-social Behaviour 44th Report of Session 2006-07. London House of Commons <http://www.publications.parliament.uk/pa/cm/cmpubacc.htm#reports>

Hunter et al (2007) Disabled people's experiences of anti-social behaviour and harassment in social housing: a critical review. Disability Rights Commission, London. http://www.drc-gb.org/library/research/services_and_transport/anti_social_behaviour_review.aspx

National Audit Office (2006) The Home Office Tackling Anti-social Behaviour London House of Commons <http://www.nao.org.uk/publications/vfmsublist/index.asp?type=vfm>

National Association of Probation Officers (2005) 'Anti-social Behaviour Orders: analysis of the first six years', London: NAPO

Youth Justice Board (2006) Anti-social Behaviour Orders.
<http://www.yjb.gov.uk/Publications/Scripts/prodView.asp?idproduct=310&eP=>

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