

# STATE of SOUTH AUSTRALIA

## Trends and Issues 2006 Update

Australian Institute for Social Research  
Don Dunstan Foundation

### LAW AND ORDER, NO END IN SIGHT

John M Williams

#### Introduction

Historically, constitutionally and politically State governments have authority over matters related to law and order. In a federal system this has traditionally meant that a degree of divergence has occurred between the various jurisdictions. The direction in which policy has moved has reflected the mood of the community. If South Australia was once seen as a reforming State in the area of law reform, this is no longer the case. It, like the governments of all other Australian States, have pursued law and order as a central theme in electoral success. There would appear to be no appetite in the community, let alone electoral support, for anything other than the most punitive of responses to complex social situations. The Rann Government's law and order initiatives since 2002 have been consistent with the broader pattern across Australia.

#### The Character of the Reform and the First Rann Labor Government

The Rann Government has made no secret of the central role of law and order to its Vision of South Australia. Next to the restoration of the reputation of Labor as financially responsible managers, law and order rates as a first order priority. In South Australia's Strategic Plan the Government stated that:

South Australians have every right to feel safe in their communities and at work, and as free from the threat of crime, random violence or unnecessary risk of injury as any society can be. This requires vigilance from the Government as it identifies and deals with new threats. [South Australia's Strategic Plan, p, 25]

Initiatives the Government chose to highlight to bring about 'community wellbeing' in the 2004 Plan include such things as:

- introducing DNA testing for all prisoners,
- anti-fortification legislation,
- removal of immunity from prosecution for sex offences that occurred before December 1982,
- introducing a 20-year maximum jail term for bushfire arsonists and on-the-spot fines for those creating a risk of bushfire,
- giving greater rights to householders needing to protect themselves in their home; they are able to use whatever force they feel necessary at the time
- legislation to prevent the building of motorcycle gang fortresses,
- passage of the first laws in the nation to tackle the growing problem of identity theft; passing legislation targeting computer crime; and increasing counter-terrorism and State disaster response resources
- investigation of South Australia's child protection laws,
- increasing the number of inspectors by 50% to detect workplace safety breaches and improve occupational health and safety practices [South Australia's Strategic Plan, p, 25]

In a press release dated 25 May 2006 the Hon. Paul Holloway, the Minister for Police, highlighted 20 initiatives that emphasised the Government's commitment to 'tough new laws'. While many of these initiatives were restatements of earlier proposals, the tenor is signalled by further crack downs in the areas of criminal activity in the liquor, gaming and security industries, creating new child pornography offences, granting the police power of immediate impoundment of vehicles of declared 'hoon drivers', passing new criminal assets confiscation laws, creating new rights to protect against

'home invaders' and dealing with 'serious repeat offenders' and various new drug offences, including 'drug driving' [News Release Thursday 25 May 2006].

What marks these initiatives out for comment? In general, with the exception of the welcome reforms to workplace safety, it could be suggested that the bulk of the moves owe more to appeasing editorial writers and talkback radio hosts than a methodical reform blueprint. The ability to respond quickly to a perceived weakness in the law is doubtless a strength and a sign that 'the government is listening'. It is also consistent with the Rann Government's desire not to be wrong footed on law and order by allowing the Opposition or the media to establish an effective critique on the basis of inaction. Moreover, the tough on crime approach has allowed the Government to steal the ground from under the Opposition, as there would appear to be few votes in opposing such reform. Two case studies can be used to emphasise these points.

### **Terrorism Legislation**

In 2002 in response to the Council of Australian Governments (COAG) Summit on Terrorism the Commonwealth and States committed themselves to the passage of a suite of legislation to counter the threat of terrorism. This was in part achieved by the States referring to the Commonwealth authority over specific areas of terrorist activities. In 2002 South Australia passed the Terrorism (Commonwealth Powers) Act 2002 which came into operation on 3 April 2003. At a subsequent COAG meeting held in September 2005 the States and Territories were requested to pass additional legislation to give affect to a commitment to 'preventative detention for up to 14 days' [COAG, Communiqué]. The reason for the involvement of the States (and arguably the Territories) was to evade a constitutional limitation on the part of the Commonwealth. That is, the Commonwealth had advice that it could not detain individuals without them being brought before a court. To do so would be to breach their rights protected by the Australian Constitution. Due to a lack of a separation of powers in the States, they became the vehicle by which the Commonwealth could establish its anti-terrorism plan.

The South Australian legislation, the Terrorism (Preventative Detention) Act 2005, reflected an uncritical acceptance of the Commonwealth's priorities. As Premier Rann stated at the time of the COAG meeting, 'political leaders could not "pussyfoot around when you are dealing with the threat of mass murder"' (Australian Financial Review, 28 September 2005). By contrast Mr Jon Stanhope, the Chief Minister of the Australian Capital Territory, took a more consultative and reflective approach. Much to the reported annoyance of the Commonwealth Attorney-General he posted the Bill on his website. In doing so he highlighted the lack of judicial oversight and human rights

protections evident in the first draft. As the Chief Minister noted '[t]hese laws are of such significance that every individual and every organisation has the right to have a proper look at the drafts before they are codified into law' [Canberra Times, 15 October 2005]. This action arguably improved the Bill and can be contrasted with the uncritical acceptance by the other premiers on the issue.

### **'Hoon Drivers'**

The Statute Amendment (Misuse of Motor Vehicle Act) 2004 is a much-heralded attack by the Government on anti-social behaviour involving cars. It is the so-called 'Hoon drivers' legislation. The Act created two new summary offences relating to the misuse of a motor vehicle. In particular the Act covers the driving of a vehicle in a public place that involves any 'competitive trial to test drivers' skill' or the 'sustained wheel spin' [Section 66(2)(a-d)]. The Premier in September 2005 stated that 'Bit by bit, even the densest hoon driver is starting to get the message' [The Advertiser, 16 September 2005]. No one could doubt the importance of road safety. While the Act has some safeguards against abuse, the impounding and possible forfeiture of a vehicle is a dramatic response to a misuse of a motor vehicle. What was the Opposition's response to this arguably punitive measure? Mr Robert Brokenshire, the Opposition police spokesman, chided the Government noting that the Act could have been in operation two years earlier if they had supported his private Member's Bill [Advertiser, 16 September 2005].

These two examples are indicative of much of the Government's approach to the area. It is generally reactive to particular incidents and carefully crafted to wrong-foot the Opposition by quickly taking the populist high ground.

### **Law and Order, Law Reform and the Judiciary**

The process of law reform in South Australia is itself caught within the politics of law and order. South Australia remains the only state or territory without a law reform commission or institute. When the Director of Public Prosecutions, Mr Stephen Pallaras, QC, submitted to the Kapunda Road Royal Commission that a body should be established to review and co-ordinate changes to the law he was given a swift rebuff by the Premier. '[W]e do not need a law reform commission - another expensive lawyers' talkfest. What we want is people's law, not lawyers' law' [Advertiser, 7 July 2005].

The rhetoric surrounding the law and order agenda has caused disquiet between the Executive and the Judiciary. In July 2006 letters between the Premier and Chief Justice John Doyle revealed the latter's concern that the Premier's comments

were undermining public confidence in the Court system [Advertiser, 12 July 2006]. The Premier responded that he would not be 'censored'. The Premier rightly highlights that the Government he leads is responsible to the public for the quality of the law in the State. However, if the impression is allowed to develop that the judiciary or lawyers are not operating in compliance with the laws that the Parliament have enacted then the public's confidence in the judicial system will inevitably be eroded (Kirby, 1990, 188.). Such a result highlights the need for reasoned commentary by parliamentarians.

## Conclusion

Politics in South Australia, like all state governments, has become formulaic. The scope of core activities for state governments has been reduced to little more than the variables of health, education and law and order. While health and education provides an arena for Commonwealth/State cooperation and/or blame shifting, law and order remains primarily a state issue. In this context the Rann Government has made law and order an electoral plus. Unable to turn to the progressive, liberal and reforming legacy that were once found at the state level, modern Labor has now calculated that law and order brings its own electoral success.

## References

Advertiser

Australian Financial Review

Canberra Times

Council of Australian Governments' Special Meeting on Counter-Terrorism, Communiqué 27 September 2005  
<http://www.coag.gov.au/meetings/270905/index.htm>

Kirby, M, 'Judicial Independence in Australia Reaches a Moment of Truth' (1990) 13 University of NSW Law Journal 187.

Statute Amendment (Misuse of Motor Vehicle Act) Act 2004

South Australia's Strategic Plan: Creating Opportunity, Vol 2, 2004.

Terrorism (Commonwealth Powers) Act 2002