



# PRISONERS' LEGAL SERVICE INC.

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*Justice Behind Bars*

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A Submission on behalf of the Prisoners Legal Services Incorporated QLD  
to the National Human Rights Consultation Committee.

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### 1.0 Introduction and Limitations

#### 1.1 Introduction

This submission is made to the National Human Rights Consultation Committee by Prisoners Legal Service Inc (hereafter PLS). It aims to firstly introduce you to the work that we undertake including certain characteristics of the people we work with. We will then discuss models for human rights protection in Australia. This will then be followed by the consideration of specific human rights issues that we have encountered over the course of our practice in prison law. Finally, we will conclude with specific recommendations for this consultation.

#### 1.2 Limitations

There are two considerable limitations to be made in relation to this submission. The first of these is that whilst we have done our best to consider the situation of persons incarcerated in Queensland and their families, we cannot claim to speak on their behalf. In conjunction with preparing this submission PLS has been active in encouraging incarcerated persons to prepare their own submissions to the consultation. Notification of the process has been included in the PLS monthly publication 'Chain Mail' which sees some 5000 copies distributed to prisoners throughout Queensland. We have also discussed the consultation with prisoners during our legal advice sessions.

However, significant resource constraints on our organisation have prevented us from engaging in a formalised consultation with our clients beyond the scope of the activities described above. PLS is concerned that owing to the significant obstacles prisoners face in participating in the consultation process, they will not be adequately represented and considered during the consultation. These obstacles were identified in a letter to the National Human Rights Consultation Committee from the *Centre for the Human Rights of Imprisoned People* (CHRIP) dated 4 March 2009 which included;

- A low level of literacy and education amongst the incarcerated.
- An inability to attend community consultations.
- Limited access to information and modes of communication.

PLS supports the suggestion of CHRIP that the consultation be expanded in a manner that would facilitate for the direct participation of those who are incarcerated. We note that in Queensland, there is a formalised system of representation through the Prisoner Advisory Committees which could be utilised in an expanded consultation.<sup>1</sup>

The second major limitation on our submission is that advocacy for human rights in prison, whilst an important priority, should not be the main goal of government in relation to prisons. Increasing incarceration rates over the last few decades are a major concern that will not be

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<sup>1</sup> For more information on the operation of Prisoner Advisory Committees, see the Queensland Corrective Services *Prisoner Advisory Committee* procedure at [http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender\\_Management/documents/ofmpropisadviscttee.shtml](http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmpropisadviscttee.shtml)



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addressed by instituting human rights in prison. In fact, there is a danger that it will do the opposite by encouraging and justifying further incarceration increases.

We believe that whole and substantive achievement of human rights, particularly rights that will address poverty, homelessness, cultural genocide and economic, social and cultural rights, if ultimately effective will negate the reliance on prisons entirely. This is by far a better outcome than tinkering at the edges so that we as a society can feel comfortable that, although we are locking up an increasing number of women, Aboriginal and Torres Strait Islander people, persons with a mental illness and the poor, at least they will be kept humanely. This is not and never will be enough.

So whilst the content of this submission substantially relies on case examples that relate to our particular expertise and practice in prison law, we strongly urge you to consider the issue of incarceration more broadly as a reflection of the totality of a person's life story before, during and after prison. Seeking these stories directly from those who are incarcerated is just one important part of this process. Another important part is to see prison as a counter-productive and inefficient means of dealing with criminal activity that merely diverts much needed funds from education, housing and diversion or early intervention initiatives.

## **2.0 Prisoners' Legal Service**

### **2.1 Our service**

PLS is a community legal service focusing on prison law, including practice in the areas of anti-discrimination, judicial review, parole advocacy and internal prison review mechanisms. Established in 1985, PLS offers free legal advice, information and assistance to Queensland prisoners and their families on matters relating to their imprisonment. During the last financial year we provided legal advice and assistance to over 4000 prisoners and their families. PLS also maintains a watching brief over prisons administration and law reform in Queensland in so far as these affect prisoners and the public interest.

PLS receives its operational funding from the Community Legal Centre Program, which is administered by Legal Aid Qld (which in turn receives funding from the Federal Government CLC Program and the Qld Government CLC program). The current core funding level is sufficient to employ three full time staff, being a Coordinator/Solicitor, Casework Solicitor and a full time Administrator. We also run projects as funding permits, including our current Gradual Release Assistance Program. PLS relies on numerous volunteers who assist in the provision of legal advice and the administrative functions of the service.

Limited resources mean that we are unable to meet the legal needs of our clients. Last financial year, we were unable to answer over 79 000 calls placed to our advice service as we were engaged providing advice to other clients. In respect of the unmet legal needs of people in prison, we draw your attention to the NSW Law and Justice Foundations report, *Taking Justice into Custody*.<sup>2</sup>

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<sup>2</sup> Anne Grunseit, Suzie Forell & Emily McCarron (2008), (2008), *Taking Justice into Custody*, Law and Justice Foundation NSW.



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### 3.0 Vulnerability of Prisoners to Human Rights abuses

Article 2 of the UN Declaration of Human Rights declares that;

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Despite this universal understanding of the application of human rights, prisoners face significant challenges in having their human rights upheld in a political environment that will often trivialise, minimise and specifically legislate against such rights. Prisoners as a group are a socially unpopular category and their rights can be subject to violation with little objection ever likely to be raised by the public, media or politicians. Moreover, their incarceration forces incarcerated persons to be completely reliant on the State for day to day matters, increasing the potential for ongoing abuses.

A prisoner's vulnerability to the state for protection from rights abuse is further exacerbated by the fact that they are amongst the most disadvantaged members of society. Prisoners in Queensland represent a group with extremely high needs, often including a cross section of mental illness, addiction, homelessness and poverty as evidenced by the following statistics:

- Over 70% of prisoners have not attained a grade 10 level education and many are functionally illiterate.
- The rate of female prisoners in Queensland with a mental illness is 66%. NSW statistics for male prisoner's statistics suggest the presence of a psychiatric disorder amongst this group is as high as 74%.
- Indigenous prisoners represented 24% of the total prisoner population at 30 June 2008 while only representing 2% of the population.<sup>3</sup>
- Across Australia, statistics indicate that 95% of women prisoners and 78% of men prisoners have a least one chronic health condition.<sup>4</sup>
- 60% of women prisoners and 37% of men prisoners have experienced sexual abuse before the age of 16 years.<sup>5</sup>

A failure to address the underlying issues evident in these statistics leads to incarceration which only adds to the vulnerability of this group. For this reason it is submitted that any move to codify or recognise human rights within Australia **must** extend to all individuals, including those who are incarcerated whose rights are often politically expedient to exclude.

### 4.0 Models of Human Rights Protection

Australia should seek to lead the way in relation to human rights recognition and protection. In order to do this, we take the view that consideration should be given to constitutional protection for human rights in the first instance. In particular, we support the amendment of the constitution in order to insert an 'equality clause'.

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<sup>3</sup> Australian Bureau of Statistics

<sup>4</sup> M Levy et al 2005 *Prisoner Health* in OToole S & Eyland S (eds) *Corrections Criminology* p 136

<sup>5</sup> M Levy et al 2005 *Prisoner Health* in OToole S & Eyland S (eds) *Corrections Criminology* p 136



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Such a clause should include a guarantee of equality, including that everyone has the right to equality before the law, equality under the law, equal protection of the law, equal benefit of the law and the full and equal enjoyment of human rights and fundamental freedoms. Any inconsistent law, policy, program, practice or decision which is inconsistent with the equality guarantee should be inoperative to the extent of the inconsistency. The provisions of a constitutional equality clause should not be infringed by measures taken to overcome disadvantage.

If this consultation does not support such a constitutional change, we submit that the minimum standard of rights protection must be a statutory charter/Human Rights Act. This Charter/Act should be at least representative of those rights and freedoms that Australia has already agreed to protect in international treaties and covenants. These rights and freedoms include those contained in:

1. The Universal Declaration of Human Rights
2. Convention on the Elimination of all Forms of Discrimination Against Women
3. International Convention on the Elimination of all Forms of Racial Discrimination
4. International Covenant on Civil and Political Rights
5. International Covenant on Economic, Social and Cultural Rights
6. Convention on the Rights of the Child
7. Convention on the Rights of Persons with Disabilities
8. Convention Against Torture

In addition, PLS takes the view that, in order to be considered a world leader, Australia must go further and enact additional rights and freedoms that are specific to prisoners. We advocate specifically for the incorporation of the rights and freedoms contained in the following documents:

1. Standard Minimum Rules for the Treatment of Prisoners
2. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
3. Basic Principles for the Treatment of Prisoners
4. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
5. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
7. Declaration on the Elimination of Violence against Women

Any legislative human rights protections should bind both the Commonwealth and the States and Territories and should be enforceable by judicial and administrative remedies. This is particularly important for the protection of prisoners rights as the vast majority of people in prison are under the ambit of State and Territory laws.



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### **5.0 Practical Examples of the Need for Protection of Prisoners Rights**

The importance of having a formally enunciated and protected set of guaranteed Human Rights can not be overstated. While delivering protections and benefits to all individuals, the following analysis of three basic rights highlight the impact that formal recognition of human rights may have on the everyday lives of incarcerated people.

#### **5.1 The right to an effective remedy by competent national tribunal for violations of rights granted by constitution or law.**

The right to access a remedy where a person's fundamental human rights have been violated is as important as the right itself. A human right is meaningless without a mechanism to have that right enforced and a breach of that right ended. The importance of this, particularly with regard to prisoners, is reflected in two UN documents.

##### Universal Declaration of Human Rights 1948

Article 8 - *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

And;

##### The Basic Principles for the Treatment of Prisoners 1990

Article 36 (3) - *Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.*

36 (4) - *Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.*

The Corrective Services and Other Legislation Amendment Act 2008 (Qld) represents a failure of our political system to commit to the protection of this basic human right and demonstrates the need for a universally binding charter to protect such rights. This Act came into effect on 7 November 2008 and made significant amendments to the Corrective Services Act 2006 (hereafter CSA).

These amendments classified the State of Queensland and employees or engaged service providers of the State as 'protected defendants' under the Anti-Discrimination Act 1991 (Qld). This category of 'protected defendant' related only to complaints brought by prisoners and people supervised by probation and parole (including community based orders) and set an alarming precedent for rolling back human rights law. The changes to the CSA make it significantly more time consuming and difficult for victims to raise complaints of discrimination, vilification or sexual harassment against 'protected defendants'. In addition, the Act proposes a specifically defined test of 'reasonableness' that can excuse both indirect and direct discrimination. Finally, the ability to retain awards of monetary compensation in discrimination and personal injury matters was substantially curtailed.

One of the major outcomes of the new law will be a delay of up to five months while various employees of Queensland Corrective Services attempt to resolve complaints of discrimination, sexual harassment and vilification internally before external accountability mechanisms can be



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accessed. This time does not extend the 12 month limitation period for bringing a complaint under the *Anti Discrimination Act 1991* (Qld).

This delay applies not only to instances of discrimination, but also to sexual harassment and vilification. It is completely inappropriate to expect anyone who is being discriminated, sexually harassed or vilified to live with this treatment for 5 months before external accountability mechanisms can be utilised. Such measures will only discourage prisoners and persons on probation and parole from bringing complaints where appropriate.

Whilst most prisoners already choose to exhaust internal complaints mechanisms first, there are cases where the impact of living with discrimination for five months will cause long term hardship.

For the many prisoners serving short sentences, this period of time will effectively allow QCS to delay making relevant changes prior to their release, thus discouraging further action or systemic change. It is noted that 72% of prisoner admissions are for total sentences of less than 12 months.<sup>1</sup>

Prisoners Legal Service notes that discrimination within the prison system disproportionately affects women in prison. The changes to the CSA can be seen to have a potentially devastating affects on women in prison, particularly those with small children. The following are case studies demonstrating this point.

The women's prison in Townsville has a high proportion of Aboriginal and Torres Strait Islander women, ranging between 70 - 90%. Some of these women may be pregnant, breastfeeding or caring for infants at the time of their incarceration. Despite this, the specially designed mothers unit was shut down for more than two years and reopened earlier this year. During the period of closure our office received numerous complaints from women who gave birth in prison and had to hand their babies out, women who gave birth prior to incarceration and were breastfeeding on the weekends and women who had many children, including infants and were forced to choose between staying in Townsville where they could get access to outside children or being transferred to Brisbane to keep breastfeeding.

In such cases, some women chose to bring swift complaints through the Anti-Discrimination Commission Queensland. One such woman was a prisoner who had a number of children and was again pregnant. The prisoner was informed that in order to keep her newborn with her she would have to be transferred to Brisbane, nearly 1400km from her other children, where she could not afford telephone communication.

The transfer effectively prevented her from keeping in contact with her other four children who were still residing with their grandmother in Townsville. This separation caused significant trauma to both mother and children. Within 4 days of being apprised of the situation PLS commenced an action on the prisoners' behalf with the Anti Discrimination Commission QLD which resulted in the woman's transfer back to Townsville. This prompt response would not have been possible under the new provisions of the CSA.

Further fears are held for breastfeeding women who may be forced to be separated from their children for any period of time considering that women may lose the ability to breastfeed well



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inside of the five months they must wait to access external review mechanisms available to other citizens.

In the past we have assisted a woman in prison with a breastfeeding matter. The client had been twice denied a request to take her 3 month old child to court with her. The first time she was denied this, the woman was told that she must leave her baby in the care of another prisoner to be fed formula. The child and mother were separated for a total of 12 hours with the child reportedly distressed and crying for the majority of those 12 hours. When the mother returned the child was bloated and vomiting as a result of the formula, a situation that caused great distress to both mother and child.

In this case we were able to bring an interim application immediately before the Anti-Discrimination Tribunal to seek orders that indirect discrimination would occur if the mother and child were separated in a similar way for a second time. As a result of this attention, the second separation was a lot shorter. Once again the new provisions of the CSA preventing expedient review of administrative decisions that breach rights would frustrate such efforts in the future and will discourage affected parties from exercising their rights.

The provisions are a clear violation of the UN articles and their requirement for access to an effective and prompt remedy for human rights breaches.

Another disturbing feature of the CSA was the inclusion of a reasonableness test as justification for direct discrimination. The new provisions read;

*4 (1) This section applies if a protected defendant treats, or proposes to treat, an offender with an attribute less favourably than another offender without the attribute in circumstances that are the same or not materially different.*

*(2) For the Anti-Discrimination Act, section 10 the protected defendant does not directly discriminate against the offender if the treatment, or proposed treatment, is reasonable.*

In considering the term 'reasonableness' the Act specifies the following matters:

- (a) the security and good order of any corrective services facility in which the offender was detained when the protected defendant treated, or proposed to treat, the offender less favourably;
- (b) the cost to the protected defendant of providing alternative treatment
- (c) the administrative and operational burden that providing alternative treatment might place on the protected defendant;
- (d) the disruption to the protected defendant that providing alternative treatment might cause;
- (e) the budget constraints of the protected defendant;
- (f) the resources constraints of the protected defendant;



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(g) whether the treatment, or proposed treatment, adequately meets the needs of the offender, notwithstanding the availability of alternative treatment that more ideally meets the needs of the offender;

(h) the need to respect offenders' dignity;

(i) whether the treatment, or proposed treatment, unfairly prejudices other offenders;

(j) any other matter the tribunal considers relevant.

This is the first time that we are aware of that a reasonableness test can be used to justify direct discrimination in this manner. The factors to be considered appear to strongly favour the "protected defendant".

The impact of this legislation on the lives of prisoners has already been significant. Within two days of the legislation becoming operational PLS received calls from two separate prisoners who utilised specific equipment due to disabilities. This equipment was certified as necessary by medical personnel and caused no serious issues to the good order of the facility. As a result of the amendments this equipment was taken away from these prisoners with the only explanation being that new laws have been passed allowing this treatment. The new legislation means that the only form of redress for this clear discrimination is an internal written complaint, followed by a five month wait, without the aid of their equipment, before being permitted to apply for review from a competent tribunal.

Human rights are granted by virtue of a person's humanity and should not be restricted following the conviction of a criminal offence. Anti discrimination laws are one of the only existing legislative human rights protections and for the government to legislate to protect itself from such obligations is shameful, especially given rhetoric and policy commitments to an environment free from discrimination and disadvantage.

Public servants and the State do not need 'protection' from human rights laws that aim to stop discrimination, sexual harassment and vilification. They can avoid complaints by providing adequate training to ensure that human rights are upheld and that breaches of such laws are dealt with appropriately. By reducing external accountability mechanisms, the result will inevitably be an increase in human rights abuses. This new law demonstrates the need for a binding human rights legislation which does not include an "opt out" option, especially where such an option is politically popular. It demonstrates that legislative human rights protections should bind both the Commonwealth and the States and Territories and should be enforceable by judicial and administrative remedies.

Along similar lines, the rights of incarcerated people to challenge decisions made in relation to their classification and placement were severely curtailed by the introduction of privative clauses that came about with the enactment of the CSA 2006. Rights to Judicially Review decisions that contained an error of law were replaced by an internal review mechanism with a seven day limitation. The new law aimed to replace legal requirements of procedural fairness in relation to such decisions. The limited time periods and accountability mechanisms associated with internal review mechanisms mean that a person's right to an effective remedy is curtailed by such a provision.



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## **5.2 The right not to be subject to torture, cruel, inhumane or degrading treatment or punishment.**

One of the most fundamental rights of all humans is not to be subject to torture or inhumane and degrading treatment. International case law regarding incarceration has expanded our understanding of this principle in relation to prisoners. The basic principles are espoused in the following:

### Universal Declaration of Human Rights

Article 5 - *No one shall be subjected to torture or to cruel, in humane or degrading treatment or punishment.*

And;

### International Covenant on Civil and Political Rights

Article 7 - *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Article 10 - *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

### And in the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Despite this right forming the basis of numerous international treaties and covenants that Australia is a signatory to, a lack of any specific constitutional or legislative protection leaves individuals, particularly those who are incarcerated, vulnerable to violations of this right. We welcome recent moves of the Federal Government to commit to signing the *Optional Protocol Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. In particular, we hope that this will allow for independent scrutiny of the prison system, such as is the case with the Western Australian model of independent inspection of prisons.

PLS and other bodies regularly encounter potential violations of this particular right in regard to prisoners. Some examples are provided below.

### The Maximum Security Unit

In Queensland, a proportion of prisoners are kept in socially isolated conditions (solitary confinement) with limited access to educational opportunities and other privileges. For people who are classified maximum security, these conditions extend for years at a time and placement is in maximum security units. In overseas jurisdictions with human rights protections, such units have been the subject of judicial scrutiny.



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In the case of *Garland vs Chief Executive, Department of Corrective Services*<sup>6</sup>, the situation of an Aboriginal man who was detained in this isolated setting for over eight years was considered. The Queensland Court of Appeal specifically considered whether or not there was a requirement to recognize basic human rights in considering the lawfulness of Garland's detention in the maximum security unit. Extracts from the judgment of Chesterman J are insightful in this regard:

“Section 3 of the Act provides: ‘(1) The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

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<sup>6</sup> *Garland v Chief Executive, Department of Corrective Services* [2006] QCA 568 (06/8379) Brisb  
McMurdo P Holmes JA Chesterman J 22/12/2006



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(2) This Act recognises that every member of society has certain basic human entitlements, and ... an offender's entitlements, other than those that are necessarily diminished because of imprisonment ... should be safeguarded.

(3) ...'

[17] The appellant's submissions were that his 'basic human rights are recognised by s 3(2), other than those reasonably diminished because of imprisonment, and that he has such a right to be kept in humane containment whilst subject to a maximum security order.'

...

Unless the appellant can demonstrate that the power conferred on the respondent by s 47 must be exercised subject to the provisions found in s 3, it will not matter whether his containment is humane or not.

[21] It is clear that s 47 is not subject to s 3. The latter is a statement of legislative purpose. It sets out what the Act is intended to achieve. It does not contain a restriction upon the specific power conferred on the respondent by s 47. That section is quite explicit. The chief executive may make a maximum security order if a prisoner is classified as maximum security (as the appellant is) and the chief executive considers, on reasonable grounds, that (relevantly) the prisoner is a substantial threat to the security or good order of the prison. If the statutory pre-conditions are satisfied the order may be made. It is not a requirement that the chief executive be satisfied that the prisoner will be contained humanely if the order is made. Nor is it a condition of such an order that the prisoner be contained humanely so that if the condition be unsatisfied the order will lapse or become unlawful.



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[22] The result is not as bleak as may appear from this statement of the law. As the trial judge's careful exegesis of the topic reveals there is a great deal of scope for debate about what is, or is not, inhumane about the treatment of prisoners. There is no reason to suspect that the respondent and her officers do not treat the appellant in as humane a manner as possible consistent with the constraints on his liberty imposed by confinement in the maximum security unit. He is adequately housed, fed and clothed. He has some, though limited, access to educational and recreational resources. His capacity for movement beyond his cell and contact with other human beings is limited but this is because of the danger he has posed to other prisoners and prison officers in the past.

[23] The appellant is not without redress should his treatment become inhumane by reason of anything done to him by a prison officer. Should he be physically mistreated, assaulted or tortured, the fact could not be concealed and the perpetrator would be prosecuted for an offence against the *Criminal Code*. If the appellant were neglected and came to harm he could sue for and recover damages from the respondent."

As can be seen, the ability of the courts to consider human rights is severely limited. Only a few specific actions could be considered negligent or criminally liable. Human rights and essential human dignity could be breached daily without a criminal or civil liability arising. Moreover, the changes to the CSA introduced last year drastically limit a prisoner's prospects of retaining any damages for compensation that they may seek through these actions. This case clearly demonstrates the vital need for stronger human rights protection. The introduction of human rights legislation is important to allow judicial consideration of conditions such as those found in the maximum security units.

### The Overuse of Strip Searches

The overuse of strip searches is a continuing source of degradation for prisoners in Qld. PLS notes with concern the findings of the 2006 Queensland Anti Discrimination Commission, *Women in Prison Report*. Among its findings was the routine overuse of strip searches of women in prison in situations that are not reasonably necessary, and are often conducted in an unlawful manner. Prisoners in some facilities must submit to a full strip search after any contact-visit without the need for any reasonable suspicion or cause. The overuse of strip searches is degrading and humiliating and PLS is aware of prisoners who choose not to have visitors in order to avoid the humiliation of strip searches.

### Medical care for Prisoners

We believe that detaining mentally ill prisoners and failing to provide adequate treatment amounts to a breach of human rights and note particularly the case of *Dybeku v Albania* [2007] ECHR 41153/06 (18 December 2007).

Our office has recently been involved in the Coronial Inquest into the death of Mr John Simpson Willson. In this case, Daniel Patel was a prisoner with multiple and complex diagnosis in relation to mental illness and intellectual impairment. He was released at the completion of three years in prison having received minimal treatment and with a vastly inadequate post release plan. Shortly after his release he proceeded to kill Mr John Simpson Willson and was subsequently found to be of unsound mind.



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## Justice Behind Bars

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The evidence provided during the inquest makes it apparent that there was completely inadequate medical treatment available during his incarceration. The inadequate resources of the Queensland Health sponsored Prison Mental Health Service, coupled with a Queensland Corrective Services policy to provide risk assessment without treatment meant that the standard of care provided to Mr Patel was not comparable to that in the general community. Because prisoners are not eligible for Medicare, they are prevented from accessing many services that are available to persons outside prison.

In a similar respect, we support the submissions of HREOC into the death of Scott Simpson. Mr Simpson was a prisoner of the Long Bay Correctional Centre in NSW and hanged himself there in 2004. Mr Scott suffered from paranoid schizophrenia and despite numerous recommendations of psychiatrists to transfer Mr Scott for hospital treatment this never occurred. Instead Mr Scott was simply segregated from other prisoners which added further to his mental deterioration. HEROC submitted at the coronial inquest that both failing to provide the necessary medical treatment and prolonged periods of segregation during his incarceration were consistent with both article 7 and article 10 of the ICCPR. PLS regularly comes into contact with prisoners suffering mental illness who are not receiving adequate treatment, despite the best efforts of the under-resourced health professionals in this field.

### Water Restriction Measures

In response to water shortage concerns, many Queensland prisons are now being fitted with water saving measures, some of which may amount to degrading treatment. For example, the technology limits the number of times that a prisoner may flush their toilet and the number of minutes that their shower can operate before it is automatically switched off. We are particularly concerned that there are no publicly known legislative or procedural accountability mechanisms or processes to monitor and account for this new technology. Correspondence from prison administrators that we have received states that prisoners will be permitted to flush their cell toilet a maximum of 6 times in 24 hours. We have also been advised that if a prisoner requires an extra flush or more time in the shower, they must make a request through prison officers and have it approved. This places prisoners who suffering from ongoing or temporary medical illness involving bowel movements or vomiting, or women who are menstruating, in the degrading situation of having to ask permission to use their own toilet. It further raises serious hygiene concerns.

We are aware of at least three prisons in Queensland that have instituted these water restrictions. One of these prisons is Townsville Women's Correctional Centre which is located in an area that has not been affected by drought.

Another prison with water restrictions is the Maximum Security Unit in Arthur Gorrie Correctional Centre where some of the cells are completely restricted and prisoners need to request permission every time they need water, including for drinking. We have received complaints that requests for drinking water have at times been denied. Without legislative or procedural accountability mechanisms, such complaints are difficult to resolve.

These are but a few of the circumstances that we come across while assisting prisoners with their legal issues. Enacting human rights legislation would not necessarily address and rectify



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these complaints, however it may provide a process to have complaints heard and a benchmark for an impartial arbitrator (the courts) to determine whether legislation and administrative decisions and functions are in keeping with human rights principles.

### **5.3 The right to fair and adequate reintegration and resettlement programs.**

If Australia is to be seen as a world leader in human rights protection then it should go further than simply endorsing the treaties and covenants it is a signatory of and also give effect to the model rules and guidelines endorsed by the UN and relevant international bodies. Such guidelines call for adequate reintegration and resettlement programs for prisoners. These can be found in the;

#### UN Standard minimum Rules for Non-Custodial Measures (The Tokyo Rules)

Article 1.5 - *Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.*

Article 2.3 - *In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.*

#### Article 9 - *Post-sentencing dispositions*

9.1- *The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.*

9.2 *Post-sentencing dispositions may include:*

- (a) Furlough and half-way houses;*
- (b) Work or education release;*
- (c) Parole;*
- (d) Remission;*
- (e) Pardon.*



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9.3 - *The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.*

9.4 - *Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.*

And;

### UN Standard Minimum Rules for the Treatment of Prisoners

Article 60 - (1) *The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.*

(2) *Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.*

Article 61- *The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.*

Re-integration is a difficult process, especially for long term prisoners. Concerns approaching release include accommodation, family reunification, identification, income, employment and changes in technology. There is presently no cohesive system in place to ensure that people released at their full time date are provided with transport, money or accommodation. Many people are released to poverty and homelessness, huge distances away from their homes or places of arrest. Gradual release and re-settlement programs presently do not receive adequate legislative or resource support to ensure that they can provide a mechanism for people to go through the re-integration process in a controlled manner prior to their full time release date.



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Over the last decade, the Queensland government has progressively removed gradual release mechanisms, such as classification reduction systems, home detention and re-settlement programs. This trend is in contrast to the models set down by the UN and is ultimately to the detriment of people in prison, their families and the community at large.

Upon the enactment of the CSA in 2006, classification systems were reduced from a five tiered system to a three tiered system. The practical effect of this was that overnight approximately 85% of people in prison became classified as 'high security' and reviews of classification were reduced from 6 monthly reviews to 12 monthly reviews. As mentioned previously, judicial review of classification decisions was abolished by the addition of a privative clause (section 17 CSA).

The Corrective Service and Other Legislation Amendment Bill 2009 (QLD), currently before parliament, proposes to remove remaining resettlement leave provisions from the CSA. It is proposed that a classroom style Transitions program and release-to-work programs will fulfil the same purpose. We do not believe this to be true. Removing such opportunities simply adds to uncertainty and apprehension regarding release.

Resettlement leave programs have a long and successful history in providing reintegration with family and society. They provide valuable time for prisoners to, for example, visit Centrelink or to try and obtain accommodation as well as re-familiarise themselves with family relations, shop for necessities and become practically familiar with new technology such as ATMs or the internet.

PLS regularly encounters prisoners who are denied parole because the Parole board would like to see them complete a gradual release mechanism. Removing access to such mechanisms may result in prisoners who would otherwise be eligible for parole being denied.

This trend is also evidenced by the limited progression options for persons convicted of a sex offence. One example of this is that such persons are commonly prohibited from progression to low security facilities by virtue of the practical operation of section 67 CSA.

Under the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* a prisoner may be held after their release date where a risk assessment deems that a prisoner poses an unacceptable risk to the community. This process has been complicated by the removal of gradual release and integration programs for dangerous prisoners under Corrective Services legislation and procedure. In the case of *Attorney-General v Lawrence* [2008]<sup>7</sup> Justice Fryberg highlighted the concerns with the removal of such programs. In that case Mr Lawrence had completed his sentence and treatment programs but was determined to still constitute an unacceptable risk to the community. Justice Fryberg noted that the only way to minimise that risk was a post-release

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<sup>7</sup> *Attorney-General for the State of Queensland v Lawrence*  
[2008] QSC 230



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## *Justice Behind Bars*

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program that included gradual release, accommodation and supervision, all of which were not available under the current system.

### **6.0 Recommendations**

Based on the information provided above PLS makes the following recommendations;

- 6.1 That debate surrounding the ideal mechanism of protecting human rights, including a constitutional charter, should be continued.
- 6.2 That measures be taken to propose that the Constitution be amended to include a guarantee of equality, including that everyone has the right to equality before the law, equality under the law, equal protection of the law, equal benefit of the law and the full and equal enjoyment of human rights and fundamental freedoms. Any inconsistent law, policy, program, practice or decision which is inconsistent with the equality guarantee should be inoperative to the extent of the inconsistency. The provisions should not be infringed by measures taken to overcome disadvantage.
- 6.3 That the Australian Federal Government should enact a Commonwealth Human Rights Act that grants legislative protection to all of the rights contained in the international treaties that Australia is a signatory to (As identified in Part 4).
- 6.4 That in order to ensure that Australia plays a key role in leading the world in human rights protection, the Australian Federal Government should enact a Commonwealth Human Rights Act that grants legislative protection to all of the rights contained in the model international rules and guidelines (As identified in Part 4).
- 6.5 That the Australian Federal Government should ensure that it's Commonwealth Human Rights Act applies to ALL individuals equally. The Act must not allow exclusions or exemptions based on incarceration or detention.
- 6.6 That any legislative human rights protections should bind both the Commonwealth and the States and Territories and should be enforceable by judicial and administrative remedies.

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<sup>1</sup> Based on figures for admissions in 2003-2004. Department of Corrective Services QLD (2006) Myths and Frequently Asked Questions [www.correctiveservices.qld.gov.au](http://www.correctiveservices.qld.gov.au), downloaded 22 July 2008.