

**Submission  
No 19**

**INQUIRY INTO CORRECTIONAL SERVICES  
LEGISLATION AMENDMENT BILL 2006**

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**Subject:**

**Summary**

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MEDICAL PRACTICE - DRUG AND ALCOHOL

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### FACSIMILE TRANSMISSION

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27 JUL 2006

GPSC's

26 July 2006

Re Corrective Services Legislations Amendment Bill 2006

To the members of the General Purpose Standing Committee

I write to ask each member of the General Purpose Standing Committee to act to prevent the further passage of the above legislation through the NSW Parliament.

The Corrective Services Legislations Amendment Bill 2006 was apparently drafted in response to media-fanned outrage after the leaking of the information that the sperm of a prisoner had been frozen before he had treatment for cancer, a treatment which would have resulted in his infertility.

The leaking of this information was a unacceptable breach of patient confidentiality. The procedure itself would on purely medical grounds have been offered to any other individual of this age facing this kind of medical treatment.

The hurried drafting and introduction of this legislation left little time for a considered response from concerned members of the community, including the medical profession. Undue haste was evident in the failure of the drafters of the Bill to understand such basics as that human ova cannot be viably frozen.

This bill has all the appearances of a knee-jerk reaction, in the 'law and order' auction.

The draft legislation:

1. sets a precedent for discrimination toward prisoners in the quality of health

care and the treatment alternatives provided;

2. may result in patients declining treatment of life-threatening conditions, where such treatment will result in infertility;

3. fails to take into account circumstances where a conviction is overturned on appeal, following the individual having undergone treatment for cancer, without storage of sperm having taken place;

4. means that doctors could be prosecuted for giving what is an accepted standard of medical care;

5. arguably contravenes the Commonwealth Disability Discrimination Act in creating a "sentence" beyond incarceration, thus constituting "cruel and unusual punishment".

The Bill is clearly inconsistent with the AMA Position Statement on the Health Care of Prisoners and Detainees (1998) which states:-

"Medical practitioners should not deny treatment to any prisoner or detainee on the basis of their culture, ethnicity, religion, political beliefs, gender, sexual orientation or the nature of their illness. The duty of medical practitioners to treat all patients professionally with respect for their human dignity and privacy applies equally to the care of those detained in prison, whether convicted or on remand, irrespective of the reason for their incarceration."

As Dr Catherine Silsbury has written "the principle that medical treatment available to remanded and convicted individuals is a vital one..... What aspect of the medical treatment of prisoners might be next? What expensive treatment may be refused to prisoners – treatment of HIV/AIDS....."

I understand that Associate Professor, Dr. Sandra Egger, Head of the School of Law, UNSW, advises as follows:

*"An important issue justifying the opposition of the Bill by medical practitioners relates to the legal ramifications they alone will have to face. Under statute, they must not offer the treatment. On ethical grounds, they should offer the treatment. Under tort law (duty of care) they must offer the treatment.*

*A medical practitioner who declines to offer the treatment because of the risk of criminal prosecution may still be liable in tort and may be exposed to the payment of large compensatory damages. It is difficult to know which of these conflicting laws would prevail and what the legal position of the Doctor would*

*be. A medical practitioner who offers the treatment can be prosecuted and sentenced to imprisonment. They will not be liable in tort, but they will have a criminal record."*

The legislation would put doctors in the position of an impossible ethical conflict. It would enshrine in law the principle that the medical treatment of prisoners may differ from that of other members of the community.

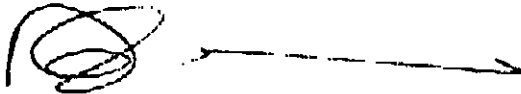
The most likely scenario in which sperm of a prisoner would be frozen for medical reasons is treatment for cancer. I ask the Committee seriously to reflect on what it means for a person to have cancer, whether they are a prisoner or not.

The underlying idea that certain criminals are not fit to reproduce smacks of eugenics.

We must not sacrifice our fundamental ethics to gratuitous punishment. All of us in the community suffer from the aftertaste of such actions. They demean us all.

I appeal to Members to bring the kind of mature and sober reflection to this Bill which is the province and purpose of the Parliamentary Standing Committee.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line that ends in an arrowhead pointing to the right.

Dr R A Hallinan