

**Submission
No 5**

INQUIRY INTO CORRECTIONAL SERVICES LEGISLATION AMENDMENT BILL 2006

Organisation:

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Subject:

Summary

Mr Stephen Frappell
Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie Street
SYDNEY 2000

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Dear Mr Frappell

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

I humbly submit this submission for the Standing Committee's consideration.

I am a Public Health Physician with ten years experience in prisoner health care - eight years in New South Wales, and two years with the World Health Organization and the International Committee of the Red Cross. I have participated in one mission of the Committee for the Prevention of Torture, Council of Europe.

I am opposed to the Correctional Services Legislation Amendment Bill 2006.

The proposed legislation raises the spectre of health professionals being in conflict with well accepted standards of professional practice, and places Australia in conflict with agreed international human rights standards.

Australia is a signatory to the Convention Against Torture. The internationally agreed definition of torture is "cruel, inhuman or degrading treatment or punishment". By applying restrictions on access to otherwise available health care, in addition to judicial punishment, this legislation readily fits into the definition of torture. As such, it could be anticipated

that the Commonwealth (through the Human Rights and Equal Opportunity Commission) and the United Nations (through the Special Rapporteur on Torture) will raise concerns about the legislation.

The United Nations Basic Principles for the Treatment of Prisoners states;

- (Article 1) All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- (Article 9) Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

The Oath of Athens, approved by the International Council of Prison Medical Services in 1979, states:

- We recognize the right of the incarcerated individuals to receive the best possible care.
- We undertake that our medical judgement be based on the needs of our patients and take priority over any non-medical matters.

The Crimes (Administration of Sentence) Act 2001 invests responsibility for the health care of prisoners to the Chief Executive Officer Corrections Health Service (Justice Health since 2004). The Chief Executive Officer is appointed under the Health Services Administration Act and reports to the Director-General Health. Uniquely in Australia, the Department of Corrective Services has no authority over the provision of health care to persons in contact with the criminal justice system. The origins of this arrangement lie in the Nagle Royal Commission. Now, after nearly thirty years, the New South Wales is raising a spurious reason to insert limits to health services to be provided, using Correctional Services legislation.

Mr Justice Nagle stated that prisoners deserved a 'reasonable health service', making the observation that one factor contributing to the malaise of the mid-1970 New South Wales prison service was the sub-standard medical service. New South Wales responded by developing an enviable record in good service provision to prisoners. The current government is turning away from this provision, by denying specific prisoners specific health care.

The Minister for Corrective Services while having no responsibility for the health care of prisoners could now have the power to restrict the health care provided to prisoners. As the level of service stipulated in the Amendment Bill is only offered at tertiary level health services, the interference of health service provision is directed to health professionals with no prior experience with the Minister of Corrective Services, or his officers.

We are left to hypothesise why the Government did not take a more humane approach to the original situation it faced:

- One prisoner who the Commissioner used administrative orders to prevent storage, being challenged; and
- One prisoner who had been sentenced, and was being assessed for a serious medical condition.

The second hearing speech of Minister Kelly, presents a position characterised by malice. In a specious attempt to achieve synergy with existing legislation, the starting position of preventing one inmate from having semen stored, is expanded to include all males with certain crimes, to all women with certain crimes, so as to circumvent sex discrimination legislation, and then further expanded to embrace juveniles in detention, to address a *scenario* of a juvenile being accused of an indictable crime, and then at a later stage being transferred to an adult correctional centre.

The Legislation, if passed, would create a situation where sperm and ova could become contraband. The reality of New South Wales prisons is that despite inordinate efforts to control contraband - telephones, drugs even armaments - the Department of Corrective Services has been unable to absolutely control their flow through the gates. By placing a prohibition on the normal handling of semen and ova, a new commodity has been created. It is not for us (non-prisoners) to hypothesise how this situation will evolve; what is absolutely certain, is that a market will be created, the law will be circumvented, and there will be collateral damage.

The oft (mis)quoted statement that the tenor of a society can be judged by the treatment of its prisoners (Dostoyevsky, Winston Churchill or Eleanor Roosevelt are variously attributed to a variation of this statement), finds resonance in the Parliamentary debate that referred the matter to Committee.

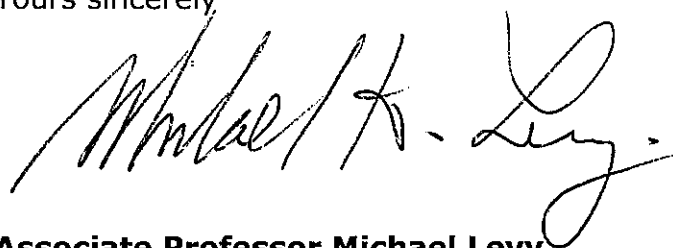
The consequences of the Committee's deliberations, and subsequent actions of the Government, will reflect on New South Wales society, and be of interest to, and scrutiny of, the international community.

To assist the deliberations of the Committee, I offer the following references:

- The United Nations Convention Against Torture www.hrweb.org/legal/cat.html
- The Oath of Athens <http://icpms.interfree.it/atheus.htm>
- Basic Principles for the Treatment of Prisoners. http://unhchr.ch/html/menu3/b/h_comp35.htm
- Standard Minimum Rules for the Treatment of Prisoners http://unhchr.ch/html/menu3/b/h_comp34.htm

I would be pleased to support this written submission with an oral submission, should your Committee request my appearance.

Yours sincerely,

 17/7/06

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Victorian Institute of Forensic Medicine, Monash University, and
Convenor, Prisoner Health Special Interest Group, Public Health
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