

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

**Organisation:** Australasian Chapter of Sexual Health Medicine  
The Royal Australasian College of Physicians

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**Subject:**

**Summary**



The Royal Australasian  
College of Physicians

## **Australasian Chapter of Sexual Health Medicine**

27 July 2006

General Purpose Standing Committee No. 3  
Parliament House  
Macquarie St  
Sydney NSW 2000

**RECEIVED**

31 JUL 2006

**GPSC's**

Dear Committee Members

### **Australasian Chapter of Sexual Health Medicine of the Royal Australasian College of Physicians submission to the Parliamentary Inquiry:**

#### **Correctional Services Legislation Amendment Bill 2006**

We would like to add the strong support of our Fellowship to the submission made by the RACP dated 17 July 2006. The Australasian Chapter of Sexual Health Medicine would like to express its strong objection to the proposed Correctional Services Amendment Bill 2006, relating to the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987*, regarding the storage of reproductive materials for prisoners convicted of serious indictable offences. The amendments will prohibit inmates who are serving sentences for serious indictable offences, or who are awaiting sentencing for such offences, from providing their reproductive material for use, or storage, for reproductive purposes at hospitals or other places; and will require inmates who have had their reproductive material stored for reproductive purposes to pay charges for the storage during any period in which they are imprisoned.

Prisoners have been punished already by their incarceration. It is an infringement of their basic human rights to restrict their access to accepted medical treatment, particularly as they may be incarcerated at a young age. Any prisoner who has radiotherapy for a malignancy may suffer damage to their reproductive organs and may be rendered infertile as a result. Bearing in mind that convictions are not uncommonly overturned on appeal it is unsafe to deny a prisoner the right to store reproductive material if they are at risk of becoming infertile, in situations such as that following treatment by radiotherapy or chemotherapy for malignancies. The Commonwealth's *Disability Discrimination Act 1992* section 5 specifically refers to discrimination in relation to "the malfunction, malformation or disfigurement of a part of the person's body" as a disability and includes a disability that "may exist in the future" in the grounds upon which discrimination is unlawful.

The Universal Declaration of Human Rights, adopted nearly sixty years ago, came into being after the world had been shocked by the inhumane treatment of specific groups of human beings, which included restrictions on their ability to marry and to reproduce. Australia has a poor past history in relation to the treatment of our indigenous population and their right to reproduce and raise their children; as well as a punitive attitude towards reproduction by Australians with disabilities. As a society, Australians today, would generally condemn such attitudes and behaviors and yet the state government has proposed legislation that restricts the rights of individuals to reproduce.

The Universal Declaration of Human Rights, to which Australia is a signatory, includes three relevant articles:

*Article 6*

Everyone has the right to recognition everywhere as a person before the law.

*Article 7*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 16*

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

In 1984, the UN Economic and Social Council adopted *Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners*. Rule 6 of the *UNSMR* prohibits any discriminatory treatment of prisoners that is based on the grounds of race, colour, religion, gender, national or social origin, political or other opinion, property, birth or other status. This suggests that the purpose of the *UNSMR* is to reflect upon the fundamental human rights principles contained in other international documents, and to provide specific guidance on issues of prison management and conditions for prisoners.

The *UNSMR* exerted considerable influence in the final report and recommendations of the Royal Commission into New South Wales Prisons conducted by Nagle J in the late 1970s and the Commonwealth response to the Royal Commission into Aboriginal Deaths in Custody recognized that while the *UNSMR* are not binding in international law, they did establish a set of minimum international guidelines. The Australian Government's international human rights policy, which is based on recognizing the universality of internationally accepted human rights standards, requires that these standards be fully met in Australia and Australia's international reputation in the area of human rights requires

that action must be taken to ensure that the guidelines are implemented throughout Australia.

Without in any way negating the serious impact of indictable offences on the victims of such crimes we cannot support legislation that infringes upon human rights in such a fundamental and irreversible manner. In terms of cost to the community the inability to become a parent may deter prisoners who are subsequently released, from becoming responsible members of society and foster a sense of alienation from their community through their inability to have a family oriented life. The emotional cost to other members of the prisoner's family such as a spouse or existing children should also be considered.

The impact on medical practitioners working in Justice Health must be considered. Has the government considered the conflict between the standards of medical practice required by the general community and the standard they propose for prisoners? If current best practice in a particular clinical setting would be to advise collection or storage of sperm or ova before undertaking operative treatment that irreversibly affects future fertility, should the practitioner discuss/agree to the option of the prisoner not having the treatment in order to preserve the potential for reproduction even though that may risk shortening the life of the prisoner? Clinical decision making should not be subject to such ad hoc decision making at a parliamentary level. This is a political response to a health and human rights issue that should not be supported.

Yours faithfully



**Associate Professor Katherine Brown**  
Chair, Australasian Chapter of Sexual Health Medicine