

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

Organisation:

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Date Received: 31/07/2006

Subject:

Summary

The Correctional Services Legislation Amendment Bill 2006 is not just another example of the punitive 'law and order' legislation that has characterised NSW politics for decades, it represents a major abandonment of fundamental principles of democratic governance.

Michael Strutt

Submission to NSWLC General Purpose Standing Committee #3
Inquiry into The Correctional Services Legislation Amendment Bill 2006
Michael Strutt, 30 July 2006

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country"
- Winston Churchill

In early May, tabloid newspapers revealed that the semen of a convicted gang rapist had been frozen (at taxpayers' expense!) for possible future use following anti-cancer therapy that would render him sterile¹. Although the journalist attributed her tip-off to court documents, it seems possible that access to details about the prisoner's condition and treatment (as well as medical details about prisoner Les Kalache²) was facilitated by the Privacy and Personal Information Protection Amendment (Prisoners) Act which grants impunity to government agencies and employees who pass personal information about prisoners to the media.

The response from the government was swift, with Premier Iemma saying he was "repulsed by the practice and the distress that it has caused victims and their families"³. However, rather than moving to prevent the taunting of victims with the leaked medical files of convicted offenders, the government introduced legislation to prevent imprisoned serious offenders from accessing reproductive cell preservation technology and ending government funding for existing patients.

To some it may have seemed that this was just another example of a media driven law and order moral panic, culminating in yet another hastily drafted bill aimed at further punishing prisoners and restricting their rights.

Medical professionals pointed out that such discriminatory medical treatment was unethical and a breach of human rights⁴ and the tabloid press countered that 'jail cannot be a healthier option'⁵ than living in the community (strangely, the suggested solution was not to improve community health services, but to reduce health services in prison).

¹ 'Gang rape ringleader wants kids' by Janet Fife-Yeomans, Sunday Telegraph, 06-May-2006
<http://www.news.com.au/sundaytelegraph/story/0,,19040588-5001021,00.html>

² 'Serial rapist must pay to freeze sperm' by Janet Fife-Yeomans, Herald Sun, 12-May-2006
<http://heraldsun.news.com.au/printpage/0,5481,19109863,00.html>

³ 'Prisoners banned from saving semen' ABC News Online, 12-May-2006
<http://www.abc.net.au/news/newsitems/200605/s1636989.htm>

⁴ 'Fertility law unfair to prisoners, say doctors' by Ruth Pollard, Sydney Morning Herald, 06-Jun-2006
<http://www.smh.com.au/news/national/fertility-law-unfair-to-prisoners-say-doctors/2006/06/05/1149359674952.html>

⁵ 'Jail cannot be a healthier option', Editorial, The Daily Telegraph, 17-Jul-2006
<http://www.news.com.au/dailytelegraph/opinion/story/0,22049,19814151-5001031,00.html>

The NSW Legislation Review Committee notes that the proposed law breaches several international human rights covenants, contradicts the spirit previously expressed in Section 72A of the Crimes Administration of Sentences Act and risks imposing 'double jeopardy' extra-judicial punishment upon some prisoners⁶.

But of course, NSW prisoners already receive discriminatory medical care. They cannot choose their health provider, they cannot access needle syringe programs or many D&A and mental health treatment options, the 'treatment' they receive for mental health crises would be considered abuse in any other institution⁷ and they have lost their right to have their medical privacy protected by law⁸. Medical care in NSW prisons is all too often caught up in the punishment/reward system used to manage prisoners and can be seen by them as erratic, unavailable or harmful.

The regard the NSW Government has for the human rights of prisoners might best be illustrated by its lack of response to a recent UNHRC report on breaches of the rights of a NSW juvenile detainee and the lack of effective processes or bodies to redress those breaches⁹. The government has also shown itself to be unconcerned about 'double jeopardy' punishment imposed upon prisoners in the past, as when it abolished the genetic privacy of serious offenders in 2001¹⁰ or chose to 'cement' certain prisoners into their cells¹¹.

However, other commentators saw the bill as something more sinister than just another round of the hysterical prisoner-bashing that passes for criminal justice policy making in this state.

A prominent Jewish-Australian medical ethicist was quick to point out parallels between the path mapped by the bill and that followed by Germany in the 1930s and 40s¹², while a supporter of the bill made its appeal to ignorant eugenicists clear by suggesting that it would help to cleanse society of criminal DNA¹³.

⁶ Legislation Review Digest 8/2006, Legislation Review Committee, 02-Jun-2006

⁷ *'Ethical issues for the treatment of suicide in prisons'* by Douglas Bell, Australian and New Zealand Journal of Psychiatry (1999, pp723-728)

⁸ Privacy and Personal Information Protection Amendment (Prisoners) Act

⁹ Communication No. 1184/2003 : Australia. 27/04/2006 (CCPR/C/86/D/1184/2003), 27-Apr-2006
<http://www.unhchr.ch/tbs/doc.nsf/0/8aeb1fcbc458419ac125716200520f4b>

¹⁰ Crime (Forensic Procedures) Act 2001

¹¹ Crimes Legislation Amendment (Existing Life Sentences) Act

¹² *'Vote sets an unfair precedent for prisoners'* by Dr Alex Wodak, Sydney Morning Herald, Letters, 06-Jun-2006
<http://www.smh.com.au/text/articles/2006/06/05/1149359672851.html>

¹³ *'Crimebuster'* by Greg Cantori, Sydney Morning Herald, Letters, 07-Jun-2006
<http://www.smh.com.au/text/articles/2006/06/06/1149359742048.html>

The second reading in the Legislative Council saw rare unanimity across the cross benches against the bill as well as varying degrees of misgivings expressed by major party members. Dr Arthur Chesterfield-Evans echoed the sentiments of much of the medical community in pointing out the eugenic features of the bill while the Hon. Peter Wong made clear the implicitly racist application of the bill, comparing it to programs carried out by “murderous and morally depraved regimes”.

So what is it about the Correctional Services Legislation Amendment Bill 2006 that has prompted public comparisons to the Holocaust?

Does it represent anything more than another incremental increase in the punishment imposed upon NSW prisoners, as per bi-partisan policy since the 1980s?

In practical terms the change would affect a relatively small number of prisoners, although longer sentences, older prisoners and indifferent prison health care makes it likely that the number of prisoners suffering reproductive failure will increase even as improvements in technology increase the potential number of prisoners who might benefit from reproductive cell preservation (it should also probably be noted that future stem cell research will probably widen the definition of ‘reproductive cell’ to include material such as umbilical cord blood).

But it does not seem likely that, in utilitarian terms at least, refusing to allow prisoners access to reproductive cell preservation would be any more unethical than denying them access to clean injecting equipment.

However, the Correctional Services Legislation Amendment Bill crosses an ethical rubicon in that it explicitly and implicitly breaches several moral principles which have remained inviolate in the institutions of most democratic countries since 1945.

For the first time, denial of medical treatment of a group of people is not being justified as an incidental effect of another requirement (e.g. lack of resources or ‘for the security and good order of the prison’) but as a deliberate end in itself. Medical deprivation has become an explicit part of the punishment the state inflicts upon its prisoners.

And for the first time since the mid 20th Century, the NSW government has invoked the spectre of state sponsored negative eugenics. The notion that certain kinds of people are unfit to reproduce. The idea that the state can determine which life is ‘unworthy of life’.

The Correctional Services Legislation Amendment Bill breaks new legislative ground that will make it easier to impose medical punishment upon prisoners and other vilified minority groups in the future and to deny reproductive rights to citizens based on their behaviour or membership of a particular group. It also exposes a sick body politic, in which a steadily escalating ‘tough on crime’ rhetoric has brought us back into territory abandoned by the civilised world over sixty years ago.

Neither of the major parties in NSW have shown any inclination to be restrained by evidence based criminology or international human rights standards in their development of criminal justice policy. If there is to be any limit at all to the punishment inflicted upon prisoners, surely deliberate denial of medical treatment and negative eugenics are beyond those limits.

It is reassuring that enough MLCs have uncharacteristically paused in their headlong rush to bigger and better punishment to refer this bill to committee, where I hope it will end.

I believe that enough people can see where the Correctional Services Legislation Amendment Bill 2006 leads to turn their backs on it.

To do otherwise would be to take a goosetep down the road to Dachau.

Recommendations

1. That the Correctional Services Legislation Amendment Bill 2006 be rejected completely.
2. That an inquiry be set up to investigate how better healthcare can be delivered to NSW prisoners – especially indigenous prisoners.
3. That the Privacy and Personal Information Protection Amendment (Prisoners) Act be repealed and the medical privacy of prisoners protected.
4. That sentence remissions be reintroduced to the NSW prison system – especially on compassionate and medical grounds.
5. That conjugal visits and conjugal release be made widely available to NSW prisoners.
6. That the parliament and major parties take action to redress a political culture that abuses prisoners and victims alike in its promotion of vilification and vindictiveness over rational and humane criminal justice policies.