

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

Organisation: The Cancer Council NSW
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Date Received: 28/07/2006

Subject:

Summary

From: "Britt Granath"
To: <gpscno3@parliament.nsw.gov.au>
Date: 28/07/2006 1:48 pm
Subject: The Cancer Council NSW Submission re Parliamentary Inquiry into the Correctional Services Legislation Amendment Bill 2006

Please find attached The Cancer Council NSW Submission re the Correctional Services Legislation Amendment Bill 2006. Thank you for providing this opportunity to comment on the inquiry.

Summary:

The Cancer Council NSW welcomes this opportunity provide a submission to the Parliamentary Inquiry into the Correctional Services Legislation Amendment Bill 2006, which will prohibit inmates of prisons and juvenile justice systems from providing reproductive material for use or storage.

The Cancer Council does not support the Correctional Services Legislation Amendment Bill as we believe in equitable, affordable access to health care for all Australians. The bill could lead to lasting and permanent denial of a person's ability to reproduce; effects which reach beyond the term of the original prison sentence. This is inconsistent with criminal justice principles under which the term of imprisonment is the term of punishment. The impact of the bill could be that some prisoners bear additional and unnecessary physical and psychosocial side-effects of cancer treatment for their entire lives, simply because they were incarcerated at the time of treatment.

Contact Details:

Dr Andrew Penman
Chief Executive Officer
The Cancer Council NSW

<<TCCN Submission Correctional Services Bill July 2006.pdf>> <<TCCN Cover Letter re Correct Svs Bill 2006.pdf>>

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28 July 2006

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



*Building a
Cancer Smart
Community*

Dear Mr Frappell,

Parliamentary Inquiry into the Correctional Services Legislation Amendment Bill 2006

The Cancer Council NSW welcomes this opportunity provide a submission to the Parliamentary Inquiry into the Correctional Services Legislation Amendment Bill 2006, which will prohibit inmates of prisons and juvenile justice systems from providing reproductive material for use or storage.

Loss of fertility can occur in cancer treatment which involves surgery, radiation therapy or chemotherapy that may damage the function of the ovary or testis. Most people with cancer will experience some symptoms of anxiety and depression, however those with concerns regarding infertility have been found to suffer higher than usual levels of distress. People who are younger, childless and of a lower education level are more likely to experience ongoing psychological distress when faced with infertility. The Correctional Services Legislation Amendment Bill, by prohibiting the use of fertility-preserving treatments such as sperm donation, may lead to permanent sterility in inmates who are undergoing cancer treatment.

Due to the psychological impact of infertility, the bill has the potential to cause longer term impacts than that intended by the original sentence. The Cancer Council believes that prisoners have the same right to health care as the general population, regardless of their legal situation.

The Cancer Council NSW does not support the Correctional Services Legislation Amendment Bill as we believe in equitable, affordable access to health care for all Australians. The bill could lead to lasting and permanent denial of a person's ability to reproduce; effects which reach beyond the term of the original prison sentence. This is inconsistent with criminal justice principles under which the term of imprisonment is the term of punishment.

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The impact of the bill would be that some prisoners may bear additional and unnecessary physical and psychosocial side-effects of cancer treatment for their entire lives, simply because they were incarcerated at the time of treatment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Penman', with a long horizontal flourish extending to the right.

Dr Andrew Penman
Chief Executive Officer

The Cancer Council NSW



Submission to the Legislative Council General Purpose Standing Committee No. 3

Parliamentary Inquiry:
Correctional Services Legislation
Amendment Bill 2006

July 2006

Introduction

The Cancer Council NSW is the leading cancer charity in New South Wales. Our mission is to defeat cancer. To achieve our mission we are working to build a cancer smart community by providing information and services, conducting research, and generating funds. The Cancer Council also aims to reduce the impact of cancer on communities by speaking up for the rights and interests of cancer patients and their carers and families.

The Correctional Services Legislation Amendment Bill 2006 details changes to the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987* which will effectively prohibit inmates of prisons and juvenile justice facilities, who have been convicted of serious indictable offences, from providing reproductive material for use or storage. The bill also requires those inmates who are eligible to have their reproductive material stored for reproductive purposes to pay charges for the storage.

This bill has been ostensibly brought about after the revelation that an inmate currently serving a sentence in Long Bay Correctional Complex for his involvement in a gang rape, had his sperm cryogenically frozen for future reproductive use. The inmate in question is undergoing chemotherapy for Hodgkins lymphoma, a cancer of the lymphatic system. This treatment is likely to result in infertility.

Although this bill has been developed in response to a specific situation, when applied across the prison system, it is likely to have a disproportionate effect on the most disadvantaged members of our society who are already facing the burdens associated with the diagnosis and treatment of cancer. Disadvantaged groups such as those of lower socioeconomic status and Indigenous peoples are over-represented in the NSW correctional system; also the majority of prisoners are of reproductive age. Studies of the prison population in NSW have found.¹

- Most inmates are male; females make up only 6% of the inmate population.
- 18% inmates are Aboriginal and/or Torres Strait Islander, compared with 2% of the general community in NSW.
- 50% of males and 75% of females were unemployed in the six months prior to incarceration.
- 50% have not achieved School Certificate level of education.
- The average age of inmates is 33 years for males and 31 years for females.

Medical treatment for inmates is paid for by Justice Health, a division of NSW Health, as part of their duty of care.

As a result of advances in the treatment of cancers that affect people of childbearing age such as Hodgkin's lymphoma, many patients who may previously have had a limited life expectancy will now go on to have children. The effects of cancer and its treatment on reproduction and fertility are well documented; the psychosocial and behavioural ramifications of cancer treatment on young adult survivors are only starting to be understood.

Most people with cancer will experience some symptoms of anxiety and depression. Some people will go on to develop more severe problems, such as clinical anxiety, depression or post-traumatic stress disorder.² These psychological symptoms are related to issues such as self image, body image and sexuality, and include the loss of sexual function and fertility.²

Loss of fertility can occur in cancers where the treatment involves surgery, radiation therapy or chemotherapy that may damage the function of the ovary or testis. Not surprisingly, for most women of childbearing age, the possible loss of fertility has been found to be a distressing part of the cancer journey.³ However, men also experience significant distress regarding infertility after treatment. This is an under-recognised issue for men with cancer.

Most studies of the infertility concerns of male cancer survivors relate to testicular cancer, the most common solid tumour diagnosed in men aged 20 to 35 years. Studies into the psychosocial effects of testicular cancer have reported that infertility can cause long-term distress in young male survivors.^{4,5} Men who are younger, childless and of a lower education level are more likely to experience ongoing distress regarding infertility.^{4,6}

With regards to other cancers, both males and females have said that having children after cancer is related to a better quality of life.⁷ As such, 24% of childless men under the age of 35 years had their sperm stored in a medical facility before treatment for cancer.⁷ Another study found that approximately 23% of both men and women would consider gamete donation if they were rendered infertile.⁸

The National Breast Cancer Centre and the National Cancer Control Initiative have published *Clinical Practice Guidelines For The Psychosocial Care Of Adults With Cancer*². These Guidelines state that maintaining quality of life and minimising the psychological impact of cancer treatment are a major focus of cancer care. The Guidelines recommend that health professionals provide the opportunity for affected cancer patients to consider the options of sperm banking or preservation of ovarian tissue.

Due to the psychological impact of infertility, the Correctional Services Legislation Amendment Bill has the potential to cause longer term impacts than that intended by the original sentence. As the bulk of prison inmates are males of reproductive age, the bill is likely to have the most impact on this group. This psychological issues surrounding infertility may adversely affect the ability of people to re-integrate into society upon release from prison.

The Cancer Council NSW does not support the amendments to the above Acts, as we believe in the equitable, affordable access to health care for all Australians. The Correctional Services Legislation Amendment Bill could lead to lasting and permanent denial of a person's ability to reproduce, effects which reach beyond the term of the original prison sentence. This is inconsistent with criminal justice principles under which the term of imprisonment is the term of punishment. The impact of the bill would be that some prisoners could bear additional and unnecessary physical and psychosocial side-effects of cancer treatment for their entire lives, simply because they were incarcerated at the time of treatment.

International Human Rights Obligations

Australia has obligations to prisoners under international human rights law as a result of its ratification of several international treaties and conventions including the United Nations' *International Covenant on Civil and Political Rights*⁹ to which Australia became a signatory in 1980.

Article 10 of the Covenant states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.."

Although not legally binding, there is an expectation that Australia will follow the United Nations' *Basic Principles for the Treatment of Prisoners*. These principles are intended to provide guidance to government agencies when drafting local laws.

The Principles state: "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."

Denying a prisoner medical treatment that would reasonably be available outside of the correctional facility may constitute a breach of the above agreements. Any breach of the United Nations' Covenant or even the Basic Principles will reduce Australia's international standing and expose ourselves to the possibility of prosecution in international human rights courts.

Local Guidelines

Standards for the conduct of prisons in Australia have been agreed upon by the corrective services ministers and are set out in the *Minimum Standard Guidelines for Australian Prisons*.¹⁰ The Guidelines were based on the United Nations' *Standard Minimum Rules for the Treatment of Prisoners*¹¹ with modifications to accommodate local rules and conditions.

The Guidelines state: "Every prisoner is to have access to evidence-based health services provided by a registered health professional who will provide a standard of health services comparable to that of the general community."

The Guidelines also prohibit the use of "cruel" methods of punishment. By causing health effects which go beyond incarceration, this may be construed as a cruel punishment and breach the intent of the Guidelines.

Justice Health is responsible for overseeing and improving the health status of those within the jurisdiction of the NSW Department of Corrective Services whilst minimising the health consequences of incarceration on individuals. The Justice Health Annual Report lists "equitable access" to healthcare as one of its values. Passing of the Correctional Services Legislation Amendment Bill would be in conflict with the principles of the Justice Health organisation as well as the *Minimum Standard Guidelines for Australian Prisons*.

Conclusion

The Correctional Services Legislation Amendment Bill 2006 will affect men and women who have been sentenced to crimes such as murder, sexual assault and kidnapping who undergo cancer treatment at the time of incarceration. Although the nature of these crimes leading to incarceration is heinous, there are broader principles at stake – that of human rights and the equity of our health system. This bill also has the potential to cause lasting harm to children who have been incarcerated for committing crimes as juveniles.

A number of peak organisations have expressed viewpoints on the treatment of prisoners which would have an impact on the proposed Bill. The Cancer Council NSW supports the Australian Medical Association position statement¹² which asserts that:

- Prisoners and detainees have the same right to access, equity and quality of health care as the general population,
- Prisoners and detainees should retain their entitlement to the Medicare system
- Medical practitioners should not withhold appropriate medical care.

Recent overturning of two major criminal cases in Australia have introduced doubts as to the infallibility of the criminal justice system. There is therefore a chance, however remote, that an innocent person could suffer lasting health ramifications due to the changes outlined in this bill.

The psychosocial needs of cancer patients are significant, but are often underestimated. Male fertility issues are especially under-recognised in the general medical profession, although both male and female cancer survivors have reported that having children forms a large part of their quality of life following cancer treatment.⁷ Distress following cancer-related infertility is especially prevalent in those of lower education level and who do not already have children. Long-term psychological effects of cancer treatment, which could be compounded by the psychological effects of imprisonment, may prevent successful rehabilitation and reintegration into society.

As part of recognised best practice, national clinical guidelines recommend that doctors offer fertility treatment, such as storage of ovarian tissue or sperm, to all applicable cancer patients in order to reduce such long-term psychological effects. The Cancer Council believes that similar consideration should be extended to prisoners.

The Cancer Council believes that the proposed changes to the above Acts which may lead to the effective denial of reproductive rights are a serious infringement on the human rights of prisoners. Those most affected by the proposed changes would be those of lower socioeconomic status and Indigenous peoples, who are over-represented in the prison population. The Cancer Council believes that a prisoner has the same right to health care as the general population, regardless of their legal situation.

In addition, The Cancer Council does not support the amendment which will result in prisoners being required to pay for medical treatment that is normally free to citizens in the general community. The social and ethical ramifications of this bill would mean that the ability to reproduce could be denied to those who are economically disadvantaged. Moreover, there is the chance that prisoners would choose to refrain from the most effective medical treatment due to cost and possible reproductive health implications.

Although the nature of the specific crimes that led to the drafting of the Correctional Services Legislation Amendment Bill 2006 is abhorrent, The Cancer Council opposes the bill on the principle that the proposed legislation would adversely affect human rights and have long-term psychological effects which extend beyond the prison sentence.

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