

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

Organisation:

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Subject:

Summary

The Bill should not be passed as it:

- creates a precedent for discrimination toward prisoners in the quality of health care and the treatment alternatives provided,
- may well contravene the Commonwealth Disability Discrimination Act,
- in causing a "sentence" beyond incarceration, constitutes "cruel and unusual punishment" commensurate with torture,
- may result in patients declining treatment of life-threatening conditions, where such treatment will result in infertility—which may, in the end, be more costly to health services and thus, to the community,
- may result in health services being sued for failure to provide treatment equivalent to that available to other community members,
- 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,
- contravenes the AMA position statement on "Health Care for Prisoners and Detainees", and
- means that doctors could be prosecuted for providing "standard care".

Professor John Rasko

Bill to ban reproduction of inmates with cancer proposed in New South Wales

A young man, a minor when sentenced in Sydney, was diagnosed with lymphoma soon after incarceration. He commenced appropriate treatment, including collection and storage of semen prior to undergoing this. A local newspaper report that his sperm was collected and stored at taxpayers' expense prompted outrage among some sections of the community.

In response to this publicity the New South Wales Government drafted the Corrective Services Legislation Amendment Bill 2006, which would make it a crime for an individual imprisoned for a "serious indictable offence", such as homicide, rape or terrorism to store "reproductive material" (semen or ova). (See [http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/0/044f50600fe72da2ca25717700329252/\\$FILE/b06-058-19-p01.pdf](http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/0/044f50600fe72da2ca25717700329252/$FILE/b06-058-19-p01.pdf)). Indeed preventing the storage of reproductive material would also extend to persons awaiting sentencing for such offences.

In the case of any male of reproductive age who is about to undergo therapy for cancer it is routine (and many would say mandatory) for him to be offered the option to store semen free-of-charge. Without this option, even after the cancer therapy is successful, the survivor might be unable to have his own offspring. In the current practice for male prisoners, semen is stored before commencing treatment for cancers or similar conditions that may induce temporary or permanent infertility. This is the accepted standard of care, offered prior to such treatment to men who have not completed their families.

It is not current practice in New South Wales to store prisoners' semen in any other circumstances. There is no current technology for storing unfertilized ova and fees for storing semen are not consistently charged by public health services. Medical practitioners not complying with this legislation would face

prosecution, if involved in providing such treatment. However, not to do so would breach their duty of care.

The Bill will create a precedent for future discrimination against prisoners in the quality of health care. In precluding access to accepted medical care, this could constitute a form of “cruel and unusual punishment” – the accepted international definition of “torture”. Australia is a signatory to the United Nations Convention Against Torture (see <http://www.hrweb.org/legal/cat.html>).

The New South Wales Legislative Assembly passed the Bill on 25th May 2006. Medical, legal and human rights organisations and individuals expressed concern to Parliamentarians. In the Legislative Council on June 7th, 2006, a majority vote referred the Bill to a Parliamentary Committee.

If passed into law the Bill would breach the principle of equivalence of health care for prisoners. The Australian Medical Association Position Statement on the Health Care of Prisoners and Detainees (1998) (<http://www.ama.com.au/web.nsf/doc/SHED-5G4V6U>) states: "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."

I would argue that the Bill implies some intent to rid society of ‘criminal seed’ and begins a slippery slope towards eugenics. If our society really accepts the idea that inmates of correctional facilities may one day return to a full and productive life, then it is unreasonable to irrevocably deny them the possibility of having their own children because they developed a serious cancer. If this legislation is passed, a discriminatory practice of medicine according to convict status will be enshrined in New South Wales law.

Yours truly,

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