



Comment

on the New South Wales' Correctional Services Legislation Amendment Bill 2006

26 July 2006

I NTRODUCTION

ACTCOSS acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a dynamic, collaborative and sustainable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

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Human rights and prison

"5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

***Basic Principles for the Treatment of Prisoners
Adopted and proclaimed by General Assembly resolution 45/111
of 14 December 1990***

http://www.unhcr.ch/html/menu3/b/h_comp35.htm

Regardless of whether Australian States and Territories have produced bills of rights or other supporting legislation to entrench a human rights culture, they are bound by the Federal Government's involvement in and ratification of many UN human rights instruments. It is therefore disturbing to read that the New South Wales parliament is contemplating a regime that will introduce life-long punishment for some inmates of state jails.

*Hansard extract: The Hon Tony Kelly
New South Wales Legislative Council
7 June 2006*

"The Bill therefore applies to males and females, adults and juveniles, who are imprisoned for committing a serious indictable offence. Application of the amendments to both adult and juvenile offenders is necessary for consistency of operation, particularly in the case of offenders who progress from juvenile detention to adult custody on reaching the statutory age. Application to both male and female inmates is intended to ensure that the legislation cannot be challenged on the basis of breaching the Commonwealth Sex Discrimination Act 1984. Restricting the prohibition to inmates in full-time custody for committing a strictly indictable offence will ensure that only those inmates convicted of very serious offences will be subject to the ban – inmates whose crimes the community abhors and to whom community concerns apply.

(..... irrelevant sections deleted.....)

A "serious indictable offence" is an offence that may only be dealt with on indictment and includes offences committed elsewhere than in New South Wales which, if committed in New South Wales, would be serious indictable offences; and various terrorism offences. Examples of offences covered by the definition are offences such as murder, sexual assault and kidnapping."

NSW Hansard:

<http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/8bd91bc90780f150ca256e630010302c/6bbcb2e1e769d720ca2571920019a6d5!OpenDocument>)

ACTCOSS is very concerned that such a broad policy approach affects inmates at a time when they are facing life-threatening illness. No scenario has been put forward suggesting that inmates who are healthy are asking for genetic material collection and storage. Rather, it appears that inmates undergoing chemotherapy and similar radical treatments are storing genetic material as an expression of hope for their future release and return to the community. The fact of their incarceration does not deny them the right to produce offspring after release from prison if they are able to do so without fertility treatment. This bill seeks to make the fact that a person's illness occurs while they are in jail the defining fact in whether they become parents upon their return to the community.

This organisation sees this ban as a transgression against inmates' basic human rights and the imposition of a secondary punishment which is outside the terms of their original sentence – a double jeopardy.

It is of particular concern that this ban is to be extended to young people in corrections institutions, as it provides an extra level of punishment that extends into their adult lives. Claiming that the extension to young people is necessary because of their possible progress to the adult corrections system indicates that the New South Wales Government has given up on these young people.

The United Nations Standard Minimum Rules for the Treatment of Prisoners states that:

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

ACTCOSS cannot see any justification for denying a prisoner the right to have their genetic material collected and stored before undergoing medical treatment that may affect their fertility. While the Parliament may feel it is justified because of the serious nature of the crimes defined in this Bill, it is introducing a form of double jeopardy under which some prisoners will be sentenced a second time, not by the courts but by the Parliament. This is in breach of the UN Model Rules and the Covenant on Civil and Political Rights.

ACTCOSS asks that the General Purposes Standing Committee reject the Bill and its implied derogation of the duty of states and territories to comply with human rights principals.