Submission of Sisters Inside to the 2005 Review of the *Corrective Services Act* 2000

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SUMMARY OF RECOMMENDATIONS

1. That responsibility for the provision of health and medical services in QLD prisons be transferred to a specialist prison health service within Queensland Health.

2. Accommodation of immigration detainees in QLD correctional centres should be outlawed. These detainees have not committed any offence and it is therefore illogical and unjust that they should be accommodated in a correctional setting.

3. The legislation should provide that prisoners must be classified and accommodated at the lowest level of security classification for which they qualify.

4. Queensland should, at least, be brought into line with other Australian states in the provision and use of open security accommodation – ie at least 27.3% of QLD prisoners should be accommodated in open security facilities by December 2006. Additional open security accommodation should not add to the number of prison beds, rather excess capacity in secure custody should be decommissioned.

5. The legislation should provide that clear guidelines, based on international research and best practice, should be regularly issued and promulgated setting out precisely how "risk" is assessed by the DCS and the classifications of prisoners in secure custody should be assessed against these guidelines for possible reduction in their classification *at least* every six months.

6. Factors that are unrelated to security risk such as mental illness, disability, remand status, history of social disadvantage etc should not be factors in decision-making around security classification because they lead to discrimination.

7. That solitary confinement should not be used for punishment of prisoners – and if it is so used that it should be the last resort in a continuum of other measures and should be limited to a maximum period of 24 hours.
8. That the category of "administrative" solitary confinement should be abolished.
9. That a full-time psychiatrist, employed by Queensland Health, should be allocated to each prison.
10. That a psychologist should be on-site in QLD prisons 24-hours per day.
11. That *all* solitary confinement orders should be reviewed, daily, by the psychiatrist assigned to the relevant prison.

12. That no mentally ill prisoner should be permitted to be subject to an order for solitary confinement within a prison – except as a temporary security measure - no more than 24 hours - pending transfer to a health facility.

13. That a CSU Reference Group should be constituted to provide a general oversight and advisory role to the Department which includes representatives of ATSI and general community mental health organisations, prisoner advocacy organisations, the Health Department, qualified psychiatrists, psychologists and medical practitioners.

14. That a specialist "Serious Offenders Council", similar to that in operation in NSW, should be instituted in QLD to deal with referrals to the MSU and reviews of Maximum Security Orders. The Council should be chaired by a judge or retired judge and include independent mental health specialists and indigenous people and should receive reports from Official Visitors.

15. that the legislation should be amended to provide that a strip search of an individual prisoner may only be authorised by the General Manager of the prison only if s/he forms a reasonable suspicion that a prisoner has concealed a prohibited thing and that a strip search is absolutely necessary in the circumstances considering:

    a) the type of offence for which the prisoner is serving a term of imprisonment;

    b) the prisoner's security rating;

    c) the type of corrective services facility in which the person is detained, and the principles underlying that facility, or the purposes for which a person is detained in that facility;

    d) the negative impact of the strip searching process on the prisoner in question – particularly considering their physical and/or mental health;

    e) the demoralising effect of such practices on prisoners as a group;

    f) the fact that such practices in any context except for the purposes of legitimate medical examination, would constitute the criminal offence of sexual assault under the *Criminal Code*;

    g) the fact that such practices are socially unacceptable in the community, with the exception of a person consenting to medical treatment by a qualified medical practitioner;

    h) the likelihood that such practices, particularly when carried out with the frequency provided by the Act, are likely to cause officers carrying out the procedures, to hold prisoners in low regard or to treat them as being of lesser value than other members of the community; and

i) the appropriateness, or otherwise, of permitting or requiring corrective services officers to carry out such procedures.

16. That a Corrective Services Advisory Council including experts in criminology, penology and prison health and respected members of QLD ATSI communities, should be established and resourced, to report to the Minister for Corrective Services on matters of corrective services policy.
17. That a commitment to procedural fairness should be enshrined in the "Purpose" statement at s 3 of the current Act.
18. That there should be effective, robust and consistent internal (departmental) and external (prison tribunal) merits review processes available to prisoners and others, such as family members, affected by decisions under corrective services laws and policies that seriously affect individual rights – particularly those that affect, or may affect, the length of a prisoner's period of imprisonment.
19. That responsibility for administering the corrective services Official Visitor scheme should be transferred to the office of the Queensland Ombudsman.
20. That the current presumption that visits will be non-contact (in s 124) should be reversed so that visits are presumed to be contact visits unless the General Manager of the prisoner orders otherwise on the basis of a reasonable belief that there is a risk that contraband may be smuggled into the prison on that visit or that there is some other serious risk posed by a contact visit.
21. That all prisoners be eligible for community-based release on completion of half their sentence – unless their sentence includes an earlier parole recommendation.
22. That there be a presumption that all prisoners complete the final part of their sentence in a community setting – with varying degrees of supervision and support from Community Corrections as determined by Community Corrections Boards.
23. That prisoners be eligible for remission of their sentence, on grounds of good conduct and industry, following their release to community supervision.
24. That prisoners should have a legal right to personal appearance and legal representation before Community Corrections Boards considering community release.

REHABILITATION AND REINTEGRATION

The terms of reference for the current legislative review specifies "rehabilitation and reintegration" as one of four major areas to be examined for "efficiency and effectiveness". However no discussion paper has been produced on this topic and it receives scant attention in any of the 12 discussion papers that have been published. Certainly there has been little or no information provided in the discussion papers as to the efficiency or effectiveness with which prisoners are rehabilitated or reintegrated through corrective services in QLD.

We submit that if the QLD Government wishes to seriously review and improve corrective services laws an examination of the measurable outcomes of the current system (such as rates of reoffending and return to prison, deaths following custody, prisoner health status, outcomes of offender treatment and community corrections programs etc) must be undertaken.

In our view, the complete failure to examine efficiency and effectiveness with which prisoners are rehabilitated and reintegrated under the current Act throws the credibility of the current review into serious doubt.

HEALTH AND MEDICAL SERVICES

We submit that the area most urgently in need of reform in QLD prisons is the provision of, or failure to provide, adequate, effective and appropriate health and medical services to prisoners - particularly mental health services.

We submit that addressing the health needs of prisoners, particularly in relation to mental health and drug and alcohol dependency, is critical if there is to be any improvement in the rate at which prisoners are safely and permanently reintegrated into mainstream society.

This is an especially acute area of need for women in prison, as the Department itself acknowledges, because of the prevalence of mental illness amongst women prisoners, their reproductive health needs and the needs of children in their care.

There is no discussion paper on this issue and no proposals have been advanced for legislative reforms that would provide a framework for better health services and outcomes in QLD prisons.

In our view the current system is at an impasse because of the legal framework that gives responsibility for the provision of health and medical services to prisoners to the Department of Corrective Services. We submit that the core business of the DCS is the operation of prisons, as prisons, and that its key concern is security. Health and

medical services, like other services, can never become a key priority for a service that is primarily focussed on maintenance of prison security.

In our view prisons are, by their nature, not healthy places and can, and do, cause damage to the health of people whose health is already compromised by poverty, substance abuse, neglect and abuse. In our view health services are best delivered in a community context wherever possible.

However, we recognise that more than 5000 Queenslanders are incarcerated on any one day and that delivery of health and medical services in prisons can and must be improved.

We submit that health and medical services can only be qualitatively improved, if responsibility for their provision is entrusted to a specialised, adequately resourced, prison health service within Queensland Health.

We note that health and medical services in NSW prisons and juvenile detention centres are delivered by Justice Health, a statutory health corporation under the NSW *Health Services Act* 1997 that also manages a Correctional Centre Release Treatment Scheme that assists adult offenders to link with community services upon their release from prison, a Community and Court Liaison Service that provides advice to magistrates on options for people before the court with a mental illness or disorder, provides education and professional development for prison health workers and conducts research on prison health issues.

We urge the QLD Government to consider the adoption of a similar model of health and medical service delivery in QLD corrections.

Recommendations

1. That responsibility for the provision of health and medical services in QLD prisons be transferred to a specialist prison health service within Queensland Health.

PRISONERS WITH "SPECIAL NEEDS"

In our view the methodology adopted by the legislative review in relation to the specific needs of women, aboriginal and islander people, people from non-English speaking backgrounds, elderly people, young people and people with disabilities or illnesses is fundamentally flawed in that it seeks to separate the issues affecting these diverse people in prison from the substantive issues addressed in the review such as classification, segregation, visits, searches etc.

In our submission it is nonsensical to try to deal with "special needs" separately from the key areas in need of legislative reform. Any useful reform of the laws of segregation, for example, needs to take account of the special needs of ATSI prisoners. Reform of visits must take account of the special needs of custodial parents who are, overwhelmingly but not exclusively, women. Reform of strip searching powers must take account of the needs of people who have survived sexual abuse – again, largely but not exclusively women.

In this submission we have not separated our consideration of the special needs of specific groups of prisoners from consideration of the substantive issues. For example, we will submit that the legislative authority for routine strip searching, for example before and after prison visits, should be abolished in recognition that the ill-effects of strip searching for prisoners who have a history of sexual abuse (primarily women) vastly outweigh any security advantage.

IMMIGRATION DETAINEES

The recent public outcry over the detention of Cornelia Rau in the Brisbane Women's Correctional Centre has highlighted the inappropriateness of the accommodation of immigration detainees (and people with mental illness) in prisons.

Recommendation

2. Accommodation of immigration detainees in QLD correctional centres should be outlawed. These detainees have not committed any offence and it is therefore illogical and unjust that they should be accommodated in a correctional setting.

SECURITY CLASSIFICATION

DCS Proposals

- To replace the current five security classifications (maximum, high, medium, low and open) with two classifications only: secure and open custody.

- To abolish the requirement for six monthly reviews of prisoners' security classification.

Response

The discussion paper does not address how this legislative change will affect the sentence management process – the process by which prisoners have been assessed and classified in recent years, and which has been the cornerstone of the Department's efforts towards rehabilitation and graduated reintegration of prisoners.

The sentence management process has been, and remains deeply flawed, inconsistently applied, discriminatory and a cause for great confusion and distress for prisoners. A number of unsatisfactory mechanisms have been adopted over recent years to identify the "risks and needs" of prisoners and to attempt to address these via various programs. It would appear that there is now a recognition that these processes have been a failure.

In order to learn from these experiences, some analysis should be made of their shortfalls.

The views of Sisters Inside in relation to the gender and race bias of the various risk assessment tools – and the inconsistency of classification practice and particularly provision of programs to address offending behaviour - is well known and we will not repeat those submissions here.

We are disappointed, however, that a discussion paper purporting to explore the issues and options in relation to a legal framework for prisoner classification fails to canvass any of the learnings from previous failed experiments. Why were many programs not able to be delivered? What were the outcomes of those that were delivered? Why were the various risk assessment tools adopted ineffective and discriminatory in their effect? We submit that if these questions were asked, and properly considered, useful lessons would be learned.

The proposal to abolish variegated classification and replace it simply with "secure" and "open" appears to us to be an abandonment by the DCS of any attempt to provide a sentence structure within which prisoners can work to prepare themselves for a safe and successful return to the community.

According to its terms of reference, the efficiency and effectiveness of the *CSA* 2000 in relation to offender rehabilitation and reintegration is one of the four major areas that the current legislative review is required to examine. However, as we have pointed out, *there is no discussion paper that addresses rehabilitation nor any assessment of the various incarnations of "sentence management" that have been in place in recent years*.

The discussion paper suggests that classification of prisoners into the two categories would be based purely on security considerations: risk of escape; risk to the community; and risk to the security of the prison.

This approach appears to us to be an admission that a QLD correctional centre is really just a prison – a human warehouse – where security is a static concept that is unrelated to rehabilitation and reintegration.

The discussion paper does not specify how these risks will be assessed. If new tools are to be adopted we submit that it would be wise, in light of previous failures, to examine them very carefully.

The discussion paper, whilst acknowledging that Queensland's use of open security is one of the lowest in Australia (16.4% of the average daily prisoner population as compared with the Australian average of 27.3%) it does not provide any information regarding the number of beds currently available in an open custody setting in this state. Our observation is that capital expenditure in corrections in QLD has recently been focussed almost exclusively on the provision of high and maximum security accommodation. We submit that the provision of prison farm and other open security accommodation – especially for ATSI women in the north of the state - should be an immediate priority and that secure custody facilities should be de-commissioned as open security facilities are established.

Recommendations

3. The legislation should provide that prisoners must be classified and accommodated at the lowest level of security classification for which they qualify.

4. Queensland should, at least, be brought into line with other Australian states in the provision and use of open security accommodation – ie at least 27.3% of QLD prisoners should be accommodated in open security facilities by December 2006. Additional open security accommodation should not add to the number of prison beds, rather excess capacity in secure custody should be decommissioned.

5. The legislation should provide that clear guidelines, based on international research and best practice, should be regularly issued and promulgated setting our precisely how "risk" is assessed by the DCS and the classifications of prisoners in secure custody should be assessed against these guidelines for possible reduction in their classification *at least* every six months.

6. Factors that are unrelated to security risk such as mental illness, disability, remand status, history of social disadvantage etc should not be factors in decision-making around security classification because they lead to discrimination.

SOLITARY CONFINEMENT

DCS Proposal

To "standardise" solitary confinement by legislating for a single "separation order" to replace the four current statutory mechanisms for solitary confinement: special treatment; crisis support; maximum security and separate confinement.

Response

The proposal for a standardised Separation Order is purely administrative and does not address the substantive issues associated with the use, and overuse, of solitary confinement as a tool for managing prisoners.

We observe that the use of solitary confinement has greatly increased in recent years – and this observation is borne out by the increased proliferation of purpose-built and extremely expensive, hi-tech solitary confinement facilities such as Maximum Security and Crisis Support Units.

Over-reliance on the use of solitary confinement inevitably creates a demand amongst prison managers and officers for greater powers to segregate and more elaborate facilities in which to do so.

The ever-increasing use of solitary confinement indicates deep problems within the prison system. Almost all prisoners will return to the mainstream prison population and to the community at some point. As more and more prisoners experience long-term solitary confinement, that process of reintegration will become ever more difficult – the precise opposite of the rehabilitative aim of a correctional system.

In our experience, and that of our clients, there is currently little practical difference between administrative, punitive or "therapeutic" segregation in QLD prisons. Most prisoners experience solitary confinement as punishment – even if it goes by another name – and many prison officers also use it as such.

Our gravest concern is with the use of solitary confinement as a response to behaviours associated with mental disturbance and mental illness. We know, through our extensive casework, that mentally ill and severely emotionally distressed prisoners are the ones most likely to be placed in solitary – by prison officers and managers who are challenged by their behaviours and unable to manage them in any other way.

We challenge the Department to investigate this assertion by commissioning a study, by independent medical researchers, of the mental health of prisoners ordered into solitary confinement.

Mental illness and severe emotional distress should not be "treated" by security personnel and solitary confinement – they should be treated by mental health professionals in a health setting. We submit that the millions expended on purpose-

built segregation units would be better spent on adequate mental health services in prisons.

Solitary confinement and international law

The seriousness with which the use of solitary confinement authorised under Special Treatment Orders, should be viewed is emphasised in UN Standard Minimum Rules for the Treatment of Prisoners (rules 31 and 32 below). In our submission the current over-use of separate confinement is a breach of this international standard.

> ***Rule 31***
>
> *Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.*
>
> ***Rule 32***
>
> *Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.*
>
> *The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.*
>
> *The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.*

Solitary confinement of ATSI prisoners

The cavalier, inconsistent or arbitrary use of separate confinement is inappropriate per se, but its use is clearly at odds with recommendation 181 of the 1991 Royal Commission into Aboriginal Deaths in Custody and in particular recommendation 181:

> *That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention.*

The CSU at BWCC

Until 2002 there was no crisis support unit within the women's prison. Women prisoners on crisis support orders were housed in the men's crisis support unit. After many complaints raised by Sisters Inside and other prisoners' organisations about the treatment of women imprisoned within the CSU at the men's prison it was finally closed. This decision is said to have resulted from a number of incidents at the prison.

Furthermore, there was reporting in the media of horrific treatment of women prisoners by staff and male prisoners. As a consequence of the men's prison CSU being closed to women, a unit within BWCC was refurbished for women on crisis support orders.

The Crisis Support Unit in BWCC is referred to as S4. Even though this unit was refurbished to replace the CSU in the men's prison it is not treated as a formal CSU by the prison authorities. If this were a formal CSU then it would only be allowed to house women who were on Crisis support orders. In order to remove the need to have women placed on Crisis Support orders before they could be placed in the Crisis support unit the Department of Corrective Services began to refer to the CSU as "S4". In this way they are able to send women to what is effectively the CSU without having to comply with the legislative requirement for a crisis support order. In short, the Department of Corrective Services are confining women in the CSU illegally

Some women are confined to the CSU on a voluntary basis. However, women segregated in the CSU, even those women who are ostensibly there as a result of their own volition face the constant presence of uniformed correctional officers in the unit.

There can be no doubt that the participation of correctional officers and nurse/guards on "treatment" teams raises real questions about the voluntary nature of prisoner compliance with treatment. Indeed, this issue underscores the element of coercion, which is ever present in a prison setting.

Coercion is absolutely incompatible with voluntariness, especially in the context of a prison regime, which is by definition coercive. Women in the CSU are usually advised that if they do not consent to remain they will be considered more difficult to manage and therefore not suitable for the general population. If they are not already labelled as maximum security prisoners, they will likely be reclassified. They will be described as having elevated their security risk by virtue of their refusal to recognize their "need" for treatment to address their criminogenic "risk factors".

In the end, this will mean that women who do not consent to such treatment regimes will likely see their security classification level elevated to the maximum-security designation.

Within the CSU, women are usually further segregated by reason of mental health disability. This means that they may end up being confined in cells for 23 hours a day, with no personal property of any kind and released only for showers and exercise, for one hour daily, usually in body belts and handcuffs.

These orders whether voluntary or ordered are discriminatory as the CSU is no more than a form of segregation. These women are removed from association with the general population of the prison. This segregation based on security classification and mental health status places these women, in terms of their conditions of confinement, at a considerable disadvantage.

Women who have mental health disabilities are more likely to be placed in administrative segregation (CSU or Special Treatment Orders). They are isolated, and often deprived of clothing and placed in stripped/barren cells, usually restrained with body belt and hand cuffs depending on behaviour.

> *Julie is a woman prisoner with a mental disability. Because of certain behaviours that may be caused by her mental disability the Department of Corrective Services psychologist decides that the most appropriate accommodation for her is in the CSU. She is placed in the CSU with a lawful order that keeps her segregated and isolated from the rest of the prison population.*
>
> *While in the CSU an incident occurs, Julie yells abuse and strikes out at a correctional officer. She is then placed in a body belt and double handcuffed and placed in the rubber room for over 7 hours. She is menstruating and crying requesting tampons. Blood is everywhere. She is absolutely devastated, shamed and feeling undignified. She lies on the mattress and starts to unpick the stitching on the mattress. Prison staff eventually come into the isolation cell and inform her that she is being charged with destroying government property. She is formally charged.*
>
> *She makes numerous complaints but to no avail. She is left for days in isolation. A community organisation assists her in the approval of Supreme Court Bail. She is released from prison. The organisation takes her home. She is highly traumatised by the abuse in the CSU. Mental health workers assist where possible. She requires 24 hours 7 days a week support. She eventually tries to throw herself under a train and is taken to the Psychiatric Ward. The doctor diagnoses her with posttraumatic stress disorder due to her experience in the CSU at the women's prison. The doctor states that if she were returned to prison it would be to her absolute health detriment. The doctor states that the prison is not conducive to ensuring that this woman's mental health needs will be address appropriately.*[1]

Women prisoners who have a mental health problem, who are in need of support due to self harming or have an intellectual disability are confined in exactly the same way as women who are perceived as problems for prison discipline. Prison staff are not adequately trained and resources are not available to ensure proper treatment is available to women with mental health disabilities so the women are imprisoned within the CSU.

[1] "Julie's" story is based on the experiences of women prisoners who have been detained in the CSU as conveyed to Sisters Inside

Submissions

7. That solitary confinement should not be used for punishment of prisoners – and if it is so used that it should be the last resort in a continuum of other measures and should be limited to a maximum period of 24 hours.
8. That the category of "administrative" solitary confinement should be abolished.
9. That a full-time psychiatrist, employed by Queensland Health, should be allocated to each prison.
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ROUTINE AND MANDATORY STRIP SEARCHING

The critical outstanding issue in relation to the law governing prison searches remains the legality of the practice of *routinely* strip searching prisoners, for example before and after prison visits. This practice should be outlawed.

We submit that the discussion paper glosses over the important distinction between *targeted* and *routine* strip searching – particularly in its discussion of prison search laws in other jurisdictions, the vast majority of which require a very senior prison officer (often the general manager of the prison) to form a *reasonable suspicion* that contraband is concealed on a prisoner's person before s/he can authorise a strip search.

When routine strip searching of prisoners, by order of the Chief Executive, was legalised in QLD in 2000 Sisters Inside and other advocacy and service agencies made extensive submissions setting out its lack of effectiveness and disregard for basic human rights. These submissions were ignored. The arguments still stand:

Routine strip searching discriminates against women

Strip searching of prisoners is currently permitted by s. 26A(4)(a) of the *Corrective Services Act 2000*. Strip searches are mandatory following all contact visits at Brisbane Women's. Strip searching indirectly discriminates against women – the effect on women prisoners is disproportionately greater than the effect on men and the requirement is not reasonable in the circumstances.

Strip searches of prisoners are justified on the basis of keeping prisons free of drugs and contraband. According to the Department, visitors pass illicit drugs and contraband to prisoners. However, Sisters Inside's research has revealed that strip searches do not uncover contraband being smuggled into the prison. According to records obtained by Sisters Inside through the *Freedom of Information Act 1992*, there were 41,728 searches conducted in Brisbane Women's in the three years between August 1999 and August 2002 (one of which was conducted on a baby). Only two of these searches discovered any significant contraband.

Some of the contraband reported as found by the Department following searches included cigarettes, earrings, a sanitary pad (no blood), a "scratch on a cell wall from the window to the door" and a "foul odour". Out of 41,728 searches there were only two instances of an unspecified drug being found. It is difficult to understand how the pad and the scratch can be considered contraband but Corrective Services records have identified them as such.

In spite of comprehensive mandatory strip searching - illicit drugs are still available in the prison. In a recent survey of the women inside: 51% of women state that they are still using drugs within the prison. 84% say they are receiving no counselling or support to assist them with their drug abuse.[2]

It is Sisters Inside's contention that the Department of Corrective Services does not wish to investigate a major route of drugs into prison. The cars, bags and clothing of correctional officers are never searched when entering the prison, let alone their persons.

Prisoners are strip searched because it is a highly effective way to control women, not because it keeps the drugs out of prison. It is obvious from evidence about drug use in the wider community and within prisons that repressive regimens simply do not work. The emphasis of prison and general community drug policy should be focused on the reasons why women use drugs rather than physically trying to prevent the use of drugs. Strip searching as a mechanism for ridding prisons of drugs is a

[2] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001

demonstrable failure.

We submit that mandatory strip searches of women prisoners are unlawful assaults and systemic sexual assault. The enormity of these assaults is exacerbated by the fact that the overwhelming majority of women prisoners are survivors of sexual abuse and incest. Even when carried out by women, strip searches are still assault. They re-traumatise already traumatised women and they function to demoralise and control prisoners in a cruel manner.

Sisters Inside asserts that the degrading and humiliating impact of strip searches on women prisoners, is an exercise in domination and social control by the State. The State tries to deny that strip searches are criminal assaults and attempts to justify the practice by labelling the victims of strip searches as being of a class deserving of the treatment, and by completely ignoring the experiences of the victim. The State goes to great lengths to justify giving itself these powers over women prisoners precisely because it knows that these actions are criminal.[3]

The criminal nature of routine strip searching can be appreciated in the context of the law of assault. Assault is the application of force to a person without their consent and includes the person's reasonable fear that force will be applied to them. What might otherwise be regarded as an assault is no longer an unlawful act if there are circumstances which the law recognises as justifying the use of "reasonable force". What the law regards as reasonable force is always decided on a case by case basis. It depends on the specific circumstances.

How can strip searching, which is nothing other than an assault, be justified as "reasonable force" unless it is justified on the basis of specific and reasonable suspicion that the particular person about to be searched has contraband secreted on her person? To continue strip searching again and again without finding contraband cannot be justified. To strip search women when there is no reason to suspect they are carrying contraband cannot be justified. The prisoner having received a visit is not a valid reason.

There are more humane and less discriminatory ways to detect drugs than strip searches of women. This plus the low detection rate of contraband means that mandatory strip searching is not reasonable, which combined with its disproportionate effect on women, indirectly discriminates against women.

Strip searching has a disproportionate effect on women prisoner, particularly in the light of the pre-imprisonment experience of many women prisoners. Research indicates that 89% of women prisoners have been sexually abused at some point in their lives.[4] A survey conducted in 1989 by Women's House in Brisbane found that 70-80% of women in prison were survivors of incest.[5]

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[3] Amanda George "Strip Searches: Sexual Assault by the State" in Easteal, P (ed.) *Without Consent: Confronting Adult Sexual Violence* Australian Institute of Criminology. Conference Proceedings 27-29 October 1992 p.212.
[4] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001
[5] This figure is consistent with the rest of Australia. See for example Stella Simmering and Ruby Diamond "*Strip Searching and Urine Testing: Women in Prison"* Polemic Volume 7 no 1 1996, Kilroy D '*When Will They See the*

Significant numbers of these women were abused as children by people in a position of authority or trust. It is cruel and inhuman treatment to re-victimise these women by subjecting them to mandatory strip searches by people who exert considerable authority over them and control their lives.

In a study of 100 women surveyed by Sisters Inside in South East Queensland Prisons, 42% of the women have attempted suicide (with a total of 150 attempts spread through the group). 41% have self-harmed (with a total of 331 self-harm experiences). 40% received no support. 23% believed the self-harm and attempted suicides were due to the abuse they had experienced.[6]

Women who have survived sexual abuse are re-victimised by strip searching which is humiliating, degrading, performed by someone in power over someone who has no power. The state deliberately demoralises women prisoners through the indignity and humiliation of the strip search. On the one hand women prisoners have access to sexual abuse counselling, psychiatric assistance for depression and other mental illness, and programs to improve their self-esteem and to develop cognitive and assertiveness skills. On the other hand a mandatory strip search is the price the woman prisoner must pay to get a visit from her children, her lover, or her mother. The deliberate cruelty is in the stripping away of any fragile self-esteem that might be developed by the various welfare programs conducted in prison. The total powerlessness and humiliation experienced in the mandatory strip-search can only exacerbate depression, thoughts of suicide and incidents of self-mutilation and, ironically, return women to the need for drugs to avoid the mental anguish inflicted by abusive treatment.

Another effect of mandatory strip searches is that some prisoners are now reluctant to receive visits because the feelings of powerlessness and degradation experienced during the strip search and the reminder of previous sexual abuse are too much to take. Enforcing a strip search as the price of a family visit is analogous to torture. Maintenance of strong family ties during imprisonment, particularly with children, is widely recognised as an important element of rehabilitation and decreases recidivism.[7] Because women in maximum security prisons face mandatory strip searching as the price they must pay for a visit from family members, children and friends, some women are now telling their families not to visit. This is not in the interests of their rehabilitation.

Strip Searching and International Law

As an unjustified, unreasonable and discriminatory practice, strip searching also contravenes the Australia's International Treaty obligations. Sisters Inside believes that Queensland's women prisoners are held in conditions, and subjected to treatment,

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Real Us: Women in Prison' Australian Institute of Criminology Conference 2000

[6] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001

[7] Amnesty International Report. AMR 51/01/99 United States of America. "*Not Part of My Sentence*". Violations of Human Rights of Women in Custody. pp.24-25.

that are in breach of United Nations standards and Australia's obligations under international law,
For example, the *International Covenant on Civil and Political Rights* (ICCPR) in force in Australia since 13 November 1980, the *Convention on Elimination of All Forms of Discrimination Against Women* in force in Australia since 27 August 1983 and the *Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment* (referred to as the *Convention Against Torture*) in force in Australia since 7 September 1988.

The ICCPR provides that prisoners must be treated with humanity and respect and should not be subject to cruel, inhuman or degrading treatment or punishment. Furthermore, ICCPR codifies the right of people not to be arbitrarily interfered with and the protection of the law against such interference.

A punishment is cruel if it makes no measurable contribution to acceptable goals and hence is nothing more than the purposeless and needless imposition of pain and suffering. One indicator of cruel punishment is where the permissible aims of punishment (deterrence, isolation to protect the community and rehabilitation) can be achieved as effectively by punishing the offence less severely.[8]

Two important principles emerge from the international standards on the treatment of prisoners. Firstly, individuals are sent to prison *as* a punishment, not *for* punishment and secondly, justice does not stop at the prison door.[9]

> *While the law does take [the prisoners] liberty and imposes a duty of servitude and observance of discipline for [her] regulation and that of other prisoners, it does not deny [her] right to personal security against unlawful invasion*.[10]

The experience of women in QLD prisons is that they are indeed sent to prison for punishment. They are regularly punished by mandatory routine strip searching, which is conducted because they are women and because they are seen as a class of people who deserve no better treatment. Mandatory strip searching violates the women prisoners' right to personal security against unlawful invasion. The injustice perpetrated against women prisoners in the name of the State diminishes us all.

Sisters Inside submits that mandatory strip-searching of women prisoners violates the provisions of the ICCPR and the *Convention Against Torture*. Sisters Inside submits that mandatory strip-searching constitutes cruel, inhuman or degrading treatment or punishment and is an arbitrary, unjustifiable and unlawful interference with the privacy of the prisoner. Mandatory strip-searching violates the obligation to treat women prisoners with humanity and respect for the inherent dignity of the human person. That violation is the very thing which makes it useful to the State as a means of social control.

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[8] Paul Sieghart, *The International Law of Human Rights* 1983 Clarendon Press p.166
[9] Nick O'Neill and Robin Handley *Retreat from Injustice*: Human Rights in Australian Law 1994 Federation Press p.171.
[10] Coffin v Reichard 143 F. 2d. 443 (1944) at p.445.

Subjecting a woman prisoner to a mandatory strip search other than one based on specific and reasonable suspicion of a criminal offence constitutes and reinforces her powerlessness and loss of dignity. It is inhuman and degrading treatment. Imposing mandatory strip searches as the price a prisoner pays for visits from family, friends and children is tantamount to torture.

It can also be argued that mandatory, arbitrary, capricious and oppressive strip searching of women is in breach of Australia's commitment to the rights of women. The *Convention on the Elimination of All Forms of Discrimination against Women* establishes the Committee on the Elimination of Discrimination against Women. The Committee comprises 23 experts of high moral standing and competence in the fields covered by the Convention. The Committee has said that the definition of discrimination against women which is prohibited by the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

The former general manager of Brisbane Women's has stated that the reason for mandatory strip searches is that women have more orifices in which they can conceal things. This is violence directed against women because they are women. If a woman is intrusively searched by a person in a position of ultimate authority, the search reinforces gender subordination in the most humiliating manner. This is violence that affects women disproportionately. As most women prisoners are survivors of sexual abuse, intrusive body searching which triggers recollections of prior abuse is violence which affects women disproportionately.

The US Supreme Court has considered the prohibition against cruel and unusual punishment in the Eighth Amendment of the US Constitution and has held that such punishment includes more than just physically barbarous punishment. In 1910 in *Weems v United States* 217 US 349, the Court observed that the prohibition against cruel punishment was not confined to punishment involving torture or lingering death, but acquires wider meaning as public opinion becomes enlightened by humane justice. In *Estelle v Gamble* 429 US 97 (1996) the Court held that the prohibition embodies broad and idealistic concepts of dignity and civilised standards of humanity and decency against which penal measures must be evaluated.

In *Jordan v Gardner* 986 F. 2d 9th Cir 1993 the Court declared that "pat searches" of women prisoners by male guards amounted to cruel and unusual punishment. The judge said that intrusive probing searches by men in positions of ultimate authority constitute and reinforce gender subordination and offend our concepts of human dignity whether or not the woman prisoner had been sexually abused prior to imprisonment.

In *Denmark et al v Greece* the European Monitoring Center on Racism and Xenophobia (EUCM), stated that the notion of inhuman treatment covers at least such treatment which deliberately causes severe suffering mental or physical which in the particular situations is unjustifiable. *Ireland v United Kingdom* noted that the use of

"unjustifiable" had given rise to misunderstanding as it did not have in mind the possibility that there could be a justification for the infliction of inhuman treatment.

In *Denmark et al v Greece* the EUCM defined "degrading treatment" as treatment which grossly humiliates an individual or drives him to act against his will or conscience. In Europe, treatment has been held to be degrading in a number of cases - denial of exercise to prisoners whether convicted or on remand, taking a person through the town wearing handcuffs and prison dress, close body searches, the forced administration of medicine to a mentally disabled prisoner.

In *Tyrer v United Kingdom* the European Court of Human Rights (EUCt) held that punishment does not lose its degrading character merely because it is believed to be, or actually is, an effective deterrent or an aid to crime control. The EUCt also held that while publicity might be a relevant factor in assessing whether a punishment is degrading, it might well suffice that the victim is humiliated in his own eyes.

Recommendations

We believe that strip searching of prisoners, and particularly women prisoners, causes drastically greater harm than benefit and should be discontinued. However, we recognise that the Queensland Government is most unlikely to adopt this view and, in recognition that strip searching will continue to be conducted in QLD prisons at least until more humane and effective means of addressing the issue of drug and alcohol dependence are adopted system-wide, we recommend:

15. that the legislation should be amended to provide that a strip search of an individual prisoner may only be authorised by the General Manager of the prison only if s/he forms a reasonable suspicion that a prisoner has concealed a prohibited thing and that a strip search is absolutely necessary in the circumstances considering:

    j) the type of offence for which the prisoner is serving a term of imprisonment;

    k) the prisoner's security rating;

    l) the type of corrective services facility in which the person is detained, and the principles underlying that facility, or the purposes for which a person is detained in that facility;

    m) the negative impact of the strip searching process on the prisoner in question – particularly considering their physical and/or mental health;

    n) the demoralising effect of such practices on prisoners as a group;

    o) the fact that such practices in any context except for the purposes of legitimate medical examination, would constitute the criminal offence of sexual assault under the *Criminal Code*;

p) the fact that such practices are socially unacceptable in the community, with the exception of a person consenting to medical treatment by a qualified medical practitioner;

q) the likelihood that such practices, particularly when carried out with the frequency provided by the Act, are likely to cause officers carrying out the procedures, to hold prisoners in low regard or to treat them as being of lesser value than other members of the community; and

r) the appropriateness, or otherwise, of permitting or requiring corrective services officers to carry out such procedures.

CORRECTIVE SERVICES ADVISORY COUNCIL

We submit that the abolition of the Corrective Services Advisory Council in the 2003 amendments was a major step backwards for Corrective Services in Queensland and that the Government should consider establishing such a body, in the current review, in order to fulfil the important functions highlighted both by the historic 1988 Commission of Review into Corrective Services in Queensland (the Kennedy Report) and by the 1993 review by the Public Sector Management Commission:

- to protect the system from administrative neglect and apathy and provide revitalisation and a forum for debate of contentious issues;
- to provide clear direction through its monthly meetings and open up the system to public scrutiny, ensuring a better public understanding of corrections;
- to create a more timely decision-making environment and greater management control and supervision;
- to provide increased internal discipline in administration and be better able to match responsibility and authority at all levels; and
- to be more flexible, more community conscious and less secretive, resulting in greater public accountability for its decisions and actions.

We submit that, without high level involvement from experts and community members from outside the Department, including representatives of ATSI communities, corrective services will inevitably regress back to the secretive and dysfunctional culture it developed prior to the Kennedy reforms.

Recommendation

16. That a Corrective Services Advisory Council including experts in criminology, penology and prison health and respected members of QLD ATSI communities, should be established and resourced, to report to the Minister for Corrective Services on matters of corrective services policy.

PROCEDURAL FAIRNESS

In our dealings with custodial, programs, sentence management and even management personnel we are constantly amazed by the lack of knowledge amongst corrective service employees regarding the requirement, at law, for due process to be observed when making decisions that affect the rights of individuals and the impropriety of arbitrary exercise of power, particularly in a criminal justice setting. Most decision-makers appear affronted that we should be asking the basis upon which they have made their decision and many refuse to release any information to us at all.

In our opinion the lack of understanding of the basics of due process and the tendency among staff, both in custodial and community corrections, to exercise power arbitrarily is very dangerous and creates an environment in which corruption and violence can thrive. Meaningful avenues of appeal and access by those affected by decisions to information about those decisions are vital checks on the powers of bureaucrats and, even more particularly, private service provider employees.

Whilst this is certainly a training issue, it is also the case that existing legislation, regulations, rules, policies and procedures provide few guarantees of fair process. Where internal appeal mechanisms do exist the time limits are often ridiculously short and almost none provide the opportunity for prisoners or family members to be informed of the allegations against them or the criteria against which those allegations are going to be judged.

Despite claims in the discussion paper on Prisoner Review and Complaints Mechanisms regarding availability of internal review, it is out experience that there are, in fact, very few avenues of effective internal merits review available to personal affected by Corrective Services decisions, and that those which do exist (listed at page 11 of the discussion paper) are of questionable integrity and effectiveness due to short time limits and inability of the persons affected to access information about either evidence or process.

We submit that the presence of more effective and robust internal merits review procedures would reduce the demand for Judicial Review of prison decisions. Once again, we strongly recommend that Department undertake a study of these avenues.

We note that an external review mechanism was proposed in the 1998 draft amendments. We believe that this scheme had potential, but as an alternative or precursor to the administrative law remedies available under the Judicial Review Act, 1991 (JRA), not as a replacement. With a merits review regime in place the JRA would no longer be the first and only formal review available to prisoners for a multitude of corrective services decisions. It would only need to be resorted to where there was a fundamental disagreement over statutory or common

law interpretation which required resolution by a court or where the processes of the merits review itself were at issue.

We submit that the nature of decision-making in corrections provides more, not less, necessity for the decisions for correctional administrators to be demonstrably grounded in law and policy.

Prisoners and their families, we submit, are more seriously affected by administrative decisions than most other groups. Many decisions will affect the duration of their incarceration, such as:

- parole and other community orders
- security classification
- internal discipline
- access to programs to address offending behaviour

Others deal with equally serious matters, such as the place and type of incarceration. Examples include referral to a Maximum Security Unit or Crisis Support Unit or transfer of a traditional, non-English speaking aboriginal prisoner thousands of kilometres away from their community in Cape York to attend a program only available in a Brisbane prison.

In the Australian legal system, the standard of decision-making imposed on judges, magistrates and juries in criminal cases is the strictest in existence (requiring, for example, that an offence be proved "beyond a reasonable doubt") precisely because a person's liberty is at stake. We submit that liberty is at stake in a large number of decisions made by correctional administrators and that, at the very least, a person whose incarceration may be lengthened by several years due to a decision on any of the above matters, is at least entitled to the assurance that all relevant evidence has been considered (including her or his own submissions) and the decision is not tainted by improper purpose, bias, or incompetence.

Recommendations

17. That a commitment to procedural fairness should be enshrined in the "Purpose" statement at s 3 of the current Act.

18. That there should be effective, robust and consistent internal (departmental) and external (prison tribunal) merits review processes available to prisoners and others, such as family members, affected by decisions under corrective services laws and policies that seriously affect individual rights – particularly those that affect, or may affect, the length of a prisoner's period of imprisonment.

INDEPENDENT OFFICIAL VISITORS AND CHIEF INSPECTORS

DCS Proposals

To establish a new position of Chief Inspector, within the Department of Corrective Services, reporting to the Chief Executive.

To make the Chief Inspector responsible for recommending the appointment of Official Visitors, administering the Official Visitor scheme, ensuring that statutory reporting requirements are met, ensuring that prisoner complaints are being responded to and monitoring reports for systemic issues.

To give the Chief Inspector power to investigate systemic issues and inspect any correctional services facility.

Response

This is not a proposal for an *independent* Chief Inspector of prisons – it is a proposal for the internal appointment of a senior departmental bureaucrat who reports to the Chief Executive of Corrective Services. This person will not be, and will not be seen to be, independent of the DCS. The fatal flaw that afflicts the current OV scheme (lack of confidence from prisoners) will continue, and even deepen, if this proposal is implemented.

The discussion paper on Official Visitors refers, approvingly, to a number of inspectorial schemes in other jurisdictions – but glosses over the key element in these schemes – independence from the organisation and personnel responsible for the day-to-day management of the prisons! In all these jurisdictions this role is performed by a person who reports either to the Minister, the Parliament, an Ombudsman or a separate Department such as a Department of Justice.

We submit that the problems of the currently inadequate OV scheme and the confusion between the role of the OV and that of the Ombudsman would be solved at one stroke by transferring responsibility for the OV scheme to the Ombudsman's office.

There is an existing model for this proposal in existence in QLD in the placement of the Official Visitors' scheme for juvenile detention centres with the Children's Commission.

The Ombudsman's role is well-established by both statute and precedent. The office is independent of the department and well-accustomed to performing a role which is neither advocate for the complainant nor mouthpiece or apologist for the government instrumentality. It is also resourced with library and other facilities and specialist staff

who can train and advise prison OV's and offer them ongoing support and guidance in their work.

Even if a system of internal and external merits review were established there would still need to be OV/Ombudsman presence in the prisons, crucially with the power to look at all records, facilities etc. The reasons for this "presence" on the ground in prisons were powerfully enunciated by Kennedy in 1997 and we will not repeat them here.

If the OVs and Ombudsman were amalgamated then, we submit, the distinction between the role of the independent investigator of complaints and that of prisoner advocate (such as Sisters Inside or the Prisoners Legal Service) would be rendered much clearer. This is because the identity and role of the Ombudsman is so established, both in Australia and internationally, and much more formal than the relatively formless role of the current OVs.

It is our observation that due to the lack of a clear role, many OVs have been obliged to establish their own personal standards and guidelines. Some of the most diligent and skilled have done a remarkable job of this given the difficult circumstances. Overall, however, the result has been inconsistency, doubt and confusion and a lack of confidence in the system by most OVs, prisoners and corrections personnel.

Recommendation

19. That responsibility for administering the corrective services Official Visitor scheme should be transferred to the office of the Queensland Ombudsman.

ACCOMMODATION OF CHILDREN IN PRISON

The principle barrier to accommodating children with their primary carer at present is the lack of sufficient facilities. This problem is particularly acute in North Queensland. We submit that this particularly disadvantages ATSI women and children.

We oppose the proposal to stipulate that a child can never be accommodated with a male primary carer. Whilst we acknowledge that there are not currently suitable facilities for this to occur we submit that it should not be assumed that there will never be an ability to safely accommodate a child with their male primary carer in custody. If suitable and safe community custody facilities were available a child may be saved the trauma of separation from their primary carer and avoid institutionalisation. We recognise that these facilities could not be shared with violent or sexual offenders, would have to be carefully managed and supervised and would probably have to be limited to accommodation for fathers caring for their children.

VISITS

Recommendation

20. That the current presumption that visits will be non-contact (in s 124) should be reversed so that visits are presumed to be contact visits unless the General Manager of the prisoner orders otherwise on the basis of a reasonable belief that there is a risk that contraband may be smuggled into the prison on that visit or that there is some other serious risk posed by a contact visit.

SUPERVISED AND UNSUPERVISED COMMUNITY RELEASE

DCS Proposals

- To address the current anomaly whereby prisoners serving less than two years (short term prisoners) cannot access conditional release until they have served two thirds of their sentence but prisoners serving over two years (long term prisoners) may access supervised community release on completion of half their sentence. (*Release from Custody* discussion paper)

- To replace the three current orders for supervised community release (Release to Work, Home Detention and Parole) with a single order (Parole) that can incorporate the various available degrees of supervision and type of accommodation. (*Community Release* discussion paper)

- To legislate for the automatic or "administrative" release, to parole, of short-term prisoners without the need for application to a Community Corrections Board. (*Community Release* discussion paper)

- To abolish some, unspecified, existing regional Community Corrections Boards and allocate their function(s) to other Boards. (*Community Corrections Boards* discussion paper)

- To provide legal authority for the use of teleconferencing for "appearances" by prisoners before Community Corrections Boards. (*Community Corrections Boards* discussion paper)

Response

We welcome the proposal to address the glaring anomaly, identified by prisoner advocacy groups in earlier submissions on the *Corrective Services Act* 2000, that disadvantages prisoners serving less than two years (short term prisoners) in relation to access to community release.

We also welcome the proposal for "presumptive parole" for short-term prisoners – a reform that we consider should be extended beyond sentences of under two years (see below).

We submit that Queensland sentencing law must also be reviewed, in conjunction with review of the CSA, in order to establish a logical sentencing system that meets current community expectations and delivers consistency and certainty for prisoners and their families.

We note the comments made in the DCS discussion papers regarding the popularity of imprisonment and probation orders and suspended sentences amongst Judges and Magistrates. We submit that judicial preference for these types of orders reflects the need for a sentencing system that delivers greater certainty in relation to timing of prisoner release and availability of community corrections support and supervision.

We submit that part of the ongoing problem with sentencing and community release in Queensland is one of terminology. Many people, including correctional personnel, journalists and politicians, refer to community corrections orders as "early release". This is a serious misnomer. Community-based orders form an important part of a prisoner's sentence and should be recognised as such.

Prisoners on community-based orders are subject to a range of restrictions on their freedom ranging from the very restrictive Release to Work orders through Home Detention and Parole. Many prisoners find these restrictions and requirements even more difficult than the time they spent in prison - they have far greater responsibilities and the temptations to revert, for example to past addictions, are all around them.

We submit that consideration should be given to amendments to the sentencing legislation to clarify that a sentence consists of a period of incarceration followed by a number of decreasingly restrictive community-based orders. This would answer the uninformed criticisms of those who complain that "prisoners serve less than half their sentence".

Political and bureaucratic imperatives have resulted in the current response to such criticisms: a sharp increase in the numbers of prisoners serving their "full time" and being released without supervision. This response is inadequate, counterproductive and even dangerous and must be addressed urgently.

Presumptive parole

We suggest that one way of overcoming this situation is to institute community release provisions similar to those currently provided for within the Federal *Crimes Act*, as follows:

- Prisoners serving 3 years or less can be ordered to be released "on recognizance" (a document, signed by the prisoner, specifying conditions to be observed following release) after serving a specified part of their sentence. For example a prisoner may be sentenced to 12 months imprisonment to be released on recognizance after serving four months. This four month period is called the "pre-release" period. Breaches of recognizance are dealt with by the courts.

- Where a prisoner is sentenced to one or more sentences of imprisonment that total three years or longer, including a life sentence, the sentencing court can fix a "non-parole period". Offenders are released on parole by the community corrections boards.

- Prisoners serving more than three years but less than ten receive presumptive parole, ie the boards have no discretion and *will* release the prisoner upon the expiration of the non-parole period.

- If a board is considering granting parole to a prisoner serving life or more than 10 years the decision must be made at least 3 months before the expiration of the non-parole period prisoner must be advised of the decision within 14 days of it being made.

- The period to be spent on parole by a prisoner who has less than five years of their sentence remaining when they are released on parole is the remainder of the sentence less any remissions.

  Example:
  A prisoner is sentenced to six years with a non-parole period of three years. The prisoner would usually be entitled to general remissions of one third of the six years, ie two years. The period s/he would spend on parole would therefore be the remainder of the sentence (ie three years) less two years remissions, ie they will spend one year on parole.

  Where the offender has five years or more of their sentence remaining when they are released to parole that period is not reduced by remissions. A life sentenced prisoner must spend a minimum of five years on parole. The period of their parole is to be specified in the parole order.

  Parolees, other than life sentenced prisoners, are supervised for a maximum of three years.

If parole was made automatic at half- time, it would reduce government expenditure considerably. That money could then be channelled into up-grading Community Correctional Services and in particular employing a greater number of Community Correctional Officers. At present there is insufficient officers to support and supervise parolees and provide them with the necessary support and guidance they require to successfully re-integrate with the general community.

In the Prisoners' Legal Service Discussion Paper No. 2 entitled "Parole in Queensland" (April, 1989),we pointed out that "the (Community Corrections) Board is in the problematic position of having to administer a system without the guidance of Government policy, and with the burden of responsibility for acts that it cannot predict or control. Even with the best professional advice, it would not be possible for the Board to ever be satisfied about the likelihood of a parolee re-offending, yet it has developed a policy of releasing only those prisoners which it considers are least likely to re-offend. The result of such a policy is the continued imprisonment of many prisoners who may not re-offend". Such prisoners are currently released, at the end of their full sentence, without any support or supervision.

Remissions

We submit that a remission system should be retained and reinstituted in QLD, to apply not only during the term of incarceration but also during supervised release.

Remissions would thereby not only reward good conduct in custody but also provide a form of incentive for good behaviour through the transition period from supervised to unsupervised release.

Presumptive parole would alleviate concerns that prisoners are serving time past their parole eligibility date in the hope of being released with remission. Presumptive parole, would provide automatic supervised release with no choice of election between parole and remissions. This would therefore satisfy the need for supervision within the community.

We propose that remissions be earned on a monthly basis and thereby provide an incentive for good behaviour and co-operation whilst incarcerated. Earned remissions would then decrease the parole period to one-third off the sentence. Therefore the prisoner would have supervised release at the minimum, between one-half and two-thirds of their total sentence.

We refer to the report of the 1988 Commission of Review into Corrective Services in Queensland (the Kennedy Report) at page 121:

> *I believe that as a general principle, it should be accepted that all prisoners should have a period of supervision in the community prior to release from the sentence on the basis that: corrections are better undertaken in the community setting; and community supervision is a better idea than release on remission.*

Mr Kennedy also recommended, at recommendation 44 that:

> *In the calculation of the period of supervision after transfer from prison, any remissions earned while in prison be taken into account.*

Right of Appearance before Community Corrections Boards

We are concerned at the proposal to reduce the number of regional community corrections boards. In our view it is important that the persons charged with responsibility for making decisions in relation to community release of prisoners should live and work as close as possible to the communities from which those prisoners come. This is of vital importance in relation to ATSI communities in the northern part of the State.

We also believe that each prisoner has a right to personally appear before the Board that will make the decision regarding her or his release from prison.

We submit that decisions on community release are decisions which affect liberty and therefore very high standards of procedural fairness are required in order to meet the requirements of natural justice.

We submit that the right to appear in person and make oral submissions should be afforded to all prisoners applying for community release and we refer to the following administrative law cases on circumstances in which a right to appear in person is mandatory in support of this submission:

- Where the credibility or veracity of an applicant is at issue (*Jeffs v New Zealand Dairy Production and Marketing Board* [1967] 1 AC 551 @ 568)

- Where personal charcteristics are at issue (*Excell v Harris* (1983) 51 ALR 137)

- Where the allegations are grave (*Ansell v Wells* (1982) 32 ALR 41@63)

- Where persons to be heard cannot express themselves effectively and cannot obtain professional assistance (*Goldberg v Kelly* 397 US 255 (1970)

We submit that illiterate, intellectually disabled, ATSI and NESB prisoners will be severely disadvantaged if decisions are made affecting their liberty "on the papers" and with no right to personal appearance – or using technology such as video-link which they may never have experienced before and which could cause considerable confusion and distress.

We believe that applicants for community release should be permitted to appear personally, in their own clothes and outside the prison context so as to avoid sub-conscious prejudice on the basis of their incarceration.

We also believe there should be a right to legal representation in applications for community release, or at least the ability to permit this in cases where there are special circumstances or legal points at issue or where the prisoner is disadvantaged by educational level, illiteracy or NESB or ATSI status.

We oppose in the strongest possible terms the current policy whereby high security prisoners must, and medium security prisoners may, be shackled throughout their appearance before a community corrections board. This practice is, we believe, in breach of ***Rule 33*** of the ***UN Standard Minimum Rules for the Treatment of Prisoners*** regarding ***Instruments of restraint:***

> *Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:*
>
> *(a) As a precaution against escape during a transfer,* ***provided that they shall be removed when the prisoner appears before a judicial or administrative authority;***
>
> *(b) On medical grounds by direction of the medical officer;*
>
> *(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.*

Recommendations

21. That all prisoners be eligible for community-based release on completion of half their sentence – unless their sentence includes an earlier parole recommendation.

22. That there be a presumption that all prisoners complete the final part of their sentence in a community setting – with varying degrees of supervision and support from Community Corrections as determined by Community Corrections Boards.

23. That prisoners be eligible for remission of their sentence, on grounds of good conduct and industry, following their release to community supervision.

24. That prisoners should have a legal right to personal appearance and legal representation before Community Corrections Boards considering community release.