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## The Corrective Services Act (2006): An Erosion of Prisoners' Human Rights

Tamara Walsh\*

\*University of Queensland, [t.walsh@law.uq.edu.au](mailto:t.walsh@law.uq.edu.au)

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# The Corrective Services Act (2006): An Erosion of Prisoners' Human Rights

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## **Abstract**

In 2004, a range of Brisbane-based community organisations providing services to prisoners combined to fund an external research project investigating prison release practice and policy. It was intended that the project would be the first wide-scale independent investigation of corrective services law, policy and practice since that conducted by Kennedy in 1988.

# THE CORRECTIVE SERVICES ACT 2006 (QLD): AN EROSION OF PRISONERS' HUMAN RIGHTS

*Tamara Walsh\**

## **Introduction**

In 2004, a range of Brisbane-based community organisations providing services to prisoners combined to fund an external research project investigating prison release practice and policy. It was intended that the project would be the first wide-scale independent investigation of corrective services law, policy and practice since that conducted by Kennedy in 1988.<sup>1</sup>

The project, undertaken by myself, experienced a number of obstacles early on. Most importantly, access to prisoners and corrective services staff for interviews was denied by the Department of Corrective Services, under section 100 of the *Corrective Services Act 2000* (Qld) which stated that it is an offence to interview a prisoner<sup>2</sup> without the chief executive's permission, and the Department of Corrective Services' *Code of Ethics* which states that any public comment in relation to the Department or their work can only be made after an 'authorised person has given official permission'.<sup>3</sup> As a result of these external constraints, the project was restricted to an analysis of relevant (and publicly available) statistics; legislation, policies and procedures documents; reported judicial review decisions; and oral and written evidence from a total of 20 former prisoners and 18 prisoner service providers. While the number of respondents to the research was relatively low, the scope of consultation conducted compared well with

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\* LLB, BSW (Hons1), PhD. Lecturer and fellow of the Centre for Public, International and Comparative Law, TC Beirne School of Law, University of Queensland.

<sup>1</sup> J.J. Kennedy, *Commission of Review into Corrective Services in Queensland: Interim Report*, 1988 and J.J. Kennedy, *Commission of Review into Corrective Services in Queensland: Final Report*, 1988.

<sup>2</sup> 'Prisoner' was defined under s153 as a person in secure or open custody, and a person subject to any post-prison community-based release order. This expansive definition of prisoner is retained in the new *Corrective Services Act 2006* (Qld) s214.

<sup>3</sup> Queensland Department of Corrective Services, *Code of Ethics*, 2000.

that of the Department in its own review of the *Corrective Services Act 2000* (Qld).<sup>4</sup> Further, the data obtained from respondents was confirmed by the statistics and the reported case law. The research culminated in the *Incorrections* Report.<sup>5</sup>

In *Incorrections*, I argued that while corrective services law and policy in Queensland seemed to adopt a best practice approach to prisoner rehabilitation, in practice, the reality fell far short of the rhetoric. For example, while a best practice system of gradual release was established under the Act, very few prisoners were actually being released prior to the expiration of the full-term of their sentence, so most prisoners were released into the community without being subject to any kind of supervision.<sup>6</sup> And while the Act provided for the education and employment of prisoners for their rehabilitation, education and employment rates amongst prisoners fell well short of national averages.<sup>7</sup>

Since then, the new *Corrective Services Act 2006* (Qld) has been introduced and passed. Alarming, this Act eliminates many of the aspects of the old Act that were worthy of praise. In particular, the new Act erodes prisoners' access to gradual release; blatantly states that prisoners with mental illness or psychological impairment are to be treated in the same way as prisoners subject to disciplinary procedures; and practically eliminates the only existing means by which prisoners may communicate confidentially with lawyers and complaint-handling bodies.

Each of these changes, and many others besides, breaches a number of United Nations treaties, including the *International Covenant on Civil and Political Rights* (1966)<sup>8</sup> and the *Standard Minimum Rules on the Treatment of Prisoners* (1955).<sup>9</sup> They also directly contravene the *Standard Guidelines for Corrections in Australia*, a set of aspirational targets based on the *Standard Minimum Rules on the Treatment of Prisoners*, agreed to by

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<sup>4</sup> The Department consulted only 42 non-government stakeholders in its legislative review; see Dominic Katter, *Review of the Corrective Services Act 2000*, 2005 and Tamara Walsh, *Incorrections II: Correcting Government*, 2005.

<sup>5</sup> Tamara Walsh, *Incorrections: Investigating Prison Release Practice and Policy in Queensland and its Impact on Community Safety*, Queensland University of Technology, Brisbane, 2004. See also Tamara Walsh, 'Is corrections correcting? An examination of prisoner rehabilitation policy and practice in Queensland' (2006) 39(1) *Australian and New Zealand Journal of Criminology* 109.

<sup>6</sup> *Incorrections* at 76-79, 102-109.

<sup>7</sup> *Incorrections* at 82-84, 116-120. Indeed, prisoner education rates in Queensland are the lowest in Australia; see Productivity Commission, *Report on Government Services*, 2006 at 7.17.

<sup>8</sup> UN Doc A/6316 (1966), entered into force for Australia on 10 March 1976.

<sup>9</sup> UN Doc E/5988 (1977).

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corrective services in all Australian States and Territories.<sup>10</sup> The changes brought about by the new Act represent another move away from best practice and evidence-based approaches to policy and law reform. This article will examine the 'reforms' in light of human rights instruments, and will then address the question of whether any recourse is available to prisoners who fall foul of the new provisions.

### **Human rights implications of the new *Corrective Services Act 2006* (Qld)**

It is well-established that the incarceration of prisoners does not remove them from the protection of the law;<sup>11</sup> it has long been acknowledged that prisoners retain all civil rights that are not expressly or impliedly denied them.<sup>12</sup> Indeed, in recognition of this, the Victorian and Tasmanian *Corrections Acts* contain statutory charters of prisoners' 'rights'.<sup>13</sup> It is reasonable, therefore, to refer to international human rights instruments in determining the appropriateness of laws regulating the treatment of prisoners. Prisoners are, after all, human, regardless of what governments and the media would have us believe.<sup>14</sup> Indeed, the reality is that the majority of prisoners are amongst those most disadvantaged in our society: homeless, reliant on social security benefits

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<sup>10</sup> Conference of Correctional Administrators, *Standard Guidelines for Corrections in Australia*, Revised Edition, 2004 available at <http://www.aic.gov.au/research/corrections/standards/aust-stand.html>.

<sup>11</sup> Richard Edney, 'Judicial deference to the expertise of correctional administrators: The implications for prisoners' rights' [2001] *Australian Journal of Human Rights* 5; Matthew Groves, 'Administrative segregation of prisoners: Powers, principles of review and remedies' (1995-1996) 20 *Melbourne University Law Review* 639 at 640.

<sup>12</sup> *Raymond v Honey* [1983] 1 AC 1 at 10, per Lord Wilberforce. For examples of rights necessarily denied to Australian prisoners, see Richard Edney, 'Judicial deference to the expertise of correctional administrators: The implications for prisoners' rights' [2001] *Australian Journal of Human Rights* 5 at footnote 27.

<sup>13</sup> See *Corrections Act 1986* (Vic) and *Corrections Act 1997* (Tas). Having said this, some of the shortcomings of these charters are recognized in Matthew Groves, 'International law and Australian prisoners' (2001) 24(1) *University of New South Wales Law Journal* 17 at 21-23.

<sup>14</sup> I am thinking particularly of comments such as that made by the Minister for Corrective Services, The Hon Judy Spence MP, in the Second Research Speech of the Corrective Services Bill 2006:

'The bill gets tough on prisoners and makes it clear that prisoners do not have the same rights to access things the way law-abiding community members do.'

And in the related media release:

'This new Bill makes it clear that going to jail means losing the rights that other law abiding people – the majority of Queenslanders – take for granted.'

for survival, undereducated or illiterate, underemployed, suffering from mental illness, and/or indigenous.<sup>15</sup> They are, therefore, most in need of the law's protection.

*Principles and purposes underlying the Act*

The logical place to start in an examination of the new Act is to note that it contains a number of changes in terminology. The Department of Corrective Services will now be known as 'Queensland Corrective Services';<sup>16</sup> the community corrections boards' will be renamed 'parole boards';<sup>17</sup> and the term 'strip searches' has been removed and replaced by the descriptor 'searches requiring the removal of clothing'.<sup>18</sup>

While changes to the way something is labelled may seem to effectuate no legal change on their face, it is clear that the Department is attempting to influence perceptions regarding these things, although the 'reforms' do not seem to be accompanied by a genuine revision, let alone improvement, of ideology.

The removal of the word 'Department' from the department's name follows the current trend in Queensland to de-departmentalise government departments; others include 'Education Queensland' and 'Queensland Health'. It seems that the motive behind such name changes is to encourage a perception of independence of the public service, and achieve a distancing of their activities from the political realm. Put blatantly, it seems that Ministers may be seeking to absolve themselves from responsibility for their portfolios, and to shield themselves from the foibles and failures that occur within their departments. Obviously, this is a direct contravention of the idea that 'ministerial responsibility' forms the backbone of responsible government (something we are trying to convince our law students still exists).

Similarly, the removal of the term 'strip search' from the Act is seemingly an attempt to dissociate these kinds of searches from the negative publicity they have attracted in recent years. It has now been established that strip searches are over-used in

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<sup>15</sup> See for example Eileen Baldry, 'Ex-prisoners, homelessness and the State in Australia' (2006) 39(1) *Australian and New Zealand Journal of Criminology* 20; Stuart Ross, *Bridging the Gap: A Release Transition Support Program for Victorian Prisoners: Final Evaluation Report*, 2003; Maria Boryzycki and Eileen Baldry, 'Promoting integration: The provision of prisoner post-release services' (2003) 262 *Trends and Issues in Crime and Criminal Justice*; Social Exclusion Unit (UK), *Reducing Re-Offending by Ex-Prisoners*, 2002.

<sup>16</sup> See The Hon Judy Spence MP, 'New Corrective Services Bill introduced to Parliament', Media Statement, 28 March 2006.

<sup>17</sup> *Corrective Services Act 2006 (Qld)* s216.

<sup>18</sup> *Corrective Services Act 2006 (Qld)* ss35-38.

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Queensland, or used in situations in which they are not reasonably necessary (particularly in women's prisons),<sup>19</sup> and it has been alleged that they are frequently executed in an unlawful manner.<sup>20</sup> Strip searches represent a direct contravention of the UN *Standard Minimum Rules on the Treatment of Prisoners*, which states in article 65 that prisoners should be treated in such a way that will encourage their self-respect. Their excessive use also breaches the prohibition against cruel, inhuman and degrading treatment enshrined in article 7 of the *International Covenant on Civil and Political Rights* and article 31 of the *Standard Minimum Rules on the Treatment of Prisoners*.

Having said this, one substantive change has been made to the manner in which strip searches are executed. The new Act adds a requirement that prisoners be given the opportunity to remain partly clothed during a strip search, including for example, allowing the prisoner to dress their upper body before being required to remove lower clothing.<sup>21</sup> This is consistent with the *Standard Guidelines for Corrections in Australia* which states in article 1.51 that searches should be conducted in a manner which ensures the 'dignity and privacy of the person being searched, as far as is practicable'. It is unfortunate that corrective services officers must be directed to conduct a search in this way, and cannot be trusted to respect prisoners' dignity and privacy in this manner without legislative direction.

The reversion to 'parole boards' from 'community corrections boards', a change introduced by the *Corrective Services Act 1988 (Qld)* following the Kennedy review,<sup>22</sup> essentially represents an admission, and a consistent formal legal and policy shift, to the effect that community corrections (in the multifarious sense of the term) no longer exists as a means of post-prison supervision; parole is now the sole order available for

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<sup>19</sup> Queensland Anti-Discrimination Commission, *Women in Prison Report*, 2006 at 72-76.

<sup>20</sup> See Debbie Kilroy, *Submission of Sisters Inside to the Anti-Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland*, 2004 at 25-27 and *Incorrections* at 99.

<sup>21</sup> See *Corrective Services Act 2006 (Qld)* s38(5).

<sup>22</sup> The first, and last, major external review of corrections in Queensland was undertaken by J.J. Kennedy in 1988. Kennedy described the system as completely ineffectual in its primary aim of rehabilitating prisoners, and noted that as long as this was the case, community safety would not be ensured. Kennedy proposed a range of reforms to the system, with an emphasis in 'correction', including radical new release practices, and wide-spread use of diversion; see J.J. Kennedy, *Commission of Review into Corrective Services in Queensland: Interim Report*, 1988 and J.J. Kennedy, *Commission of Review into Corrective Services in Queensland: Final Report*, 1988.

prisoners upon their release.<sup>23</sup> The associated erosion of gradual release, and its impacts on the lives of prisoners, are discussed below.

Of further concern is the fact that in section 3 of the new Act, the 'Purposes' section, the commitment to addressing the 'culturally specific needs of Aboriginal and Torres Strait Islander offenders' that existed in the old section, has been removed. While a recognition of the need to take offenders' 'cultural background' into account has been retained, the removal of the explicit acknowledgement of the special circumstances of indigenous prisoners represents a blatant disregard of Guiding Principle 7 of the *Standard Guidelines for Corrections in Australia* which states that the 'design and management' of corrective services should 'take account of particular needs and disadvantages that may be faced by indigenous people'.

The removal of this 'purpose' from the Act is also a significant diversion from the *Aboriginal and Torres Strait Islander Justice Agreement* which was signed by all key Queensland Ministers (many of whom still are still members of Cabinet) in 2000.<sup>24</sup> The Agreement represented a formal commitment by the Queensland Government to acknowledge the impact that past policies and practices have had on indigenous people; to recognise the social values and cultural practices of indigenous people in the context of the criminal law; and ultimately, to reduce the rate of indigenous people coming into contact with the criminal justice system. By formally removing the protection of indigenous prisoners as a purpose of the Act, the Queensland Government is taking a step back from this Agreement.

### *Safety orders*

In addition to corrective services' retreat from the recognition of the special needs of indigenous prisoners, the needs of prisoners with mental illness are also compromised under the new Act.

The *Corrective Services Act 2006* (Qld) introduces a new process by which prisoners with mental illness are managed. Previously, two orders were available to prisoners in need of 'protection': a special treatment order and a crisis support order. Special treatment orders were available to protect a prisoner or to ensure the security or good order of a prison for a seven day period (unless the chief executive authorised a longer period).<sup>25</sup> A special treatment order usually resulted in the prisoner being placed in an

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<sup>23</sup> *Corrective Services Act 2006* (Qld) s179.

<sup>24</sup> Queensland Government, *Aboriginal and Torres Strait Islander Justice Agreement*, 2000, available at <http://www.datsip.qld.gov.au/pdf/justice.pdf>.

<sup>25</sup> See particularly *Corrective Services Act 2000* (Qld) s38.



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observation cell, a barren 'rubber room' with 24 hour lighting.<sup>26</sup> Crisis support orders were available in situations where a prisoner was considered at risk of harming themselves or another. Temporary orders (for up to five days) or longer orders (for up to three months, on the advice of a doctor or psychologist) could be made, and prisoners subject to such orders were generally housed in a 'crisis support unit', a specialised unit supposedly aimed at providing prisoners with mental illness with treatment and support.<sup>27</sup>

In *Incorrections*, I acknowledged that the laws related to the treatment of persons with mental illness were consistent with best practice on their face. However, I noted that, in practice, observation cells and crisis support units did not provide a therapeutic environment for prisoners with mental illness. Many former prisoners who participated in the *Incorrections* research reported that being placed in an observation cell for exhibiting symptoms of psychological distress had a detrimental effect on prisoners with mental illness. One former prisoner said:

I would wake up, all hours of the morning, thinking it was sunny, and I'd look out my window and it was still pitch black. It plays games with you, and it sends you mad. I heard some women kicking and punching the doors...<sup>28</sup>

Further, service providers reported that the crisis support units were often used as a 'behavioural management tool'.<sup>29</sup> It seemed, therefore, that these 'specialised units' were being used to deal not only with prisoners with mental illness, but also prisoners posing a disciplinary risk, despite the contrary impression given by the Act and corrective services procedures.<sup>30</sup>

The response of corrective services has been to replace these two orders with a single 'safety order'.<sup>31</sup> Under the new Act, safety orders can be issued both to remove a prisoner with mental illness from the general prison population, and to deal with a

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<sup>26</sup> Prisoners' and service providers' reflections on the use of observation cells are recorded in *Incorrections* at 121-122.

<sup>27</sup> Prisoners' and service providers' reflections on crisis support units are recorded in *Incorrections* at 120.

<sup>28</sup> See *Incorrections* at 121.

<sup>29</sup> *Incorrections* at 120

<sup>30</sup> *Incorrections* at 120-122; see also Queensland Department of Corrective Services, *Procedures – Offender Management – Crisis Support Order*, 6 October 2004.

<sup>31</sup> *Corrective Services Act 2006* (Qld) ss53-59.

prisoner who poses a risk to the good order of the prison,<sup>32</sup> thereby removing any pretence of differential treatment for these prisoners.

As a result, there is now no explicit recognition of the special needs of prisoners with mental illness, as compared with prisoners who are subject to disciplinary action, in the Act. This is in direct contravention of article 22 of the UN *Standard Minimum Rules on the Treatment of Prisoners* which states that sick prisoners who require specialised treatment should be transferred to specialised institutions with appropriately qualified staff, or otherwise, to civil hospitals. The new arrangement also breaches the *Standard Guidelines for Corrections in Australia* which states that prisoners with mental impairment should be individually managed in specialist health care facilities so that their special needs may be addressed.<sup>33</sup>

#### *Children accommodated with their mothers in prison*

The new Act does little to address the special needs of mothers and children in prison. It does not alter the current regime related to children being accommodated with their mothers in prison; that is, children less than school age are permitted to reside with their mothers, provided the chief executive decides this is suitable. Contrary to best practice<sup>34</sup> and article 2.55 of the *Standard Guidelines for Corrections in Australia*, these mothers and children are not accommodated in special units, or in domestic settings; rather, they are housed in larger than usual cells, often in high security facilities.<sup>35</sup>

However, one change regarding the treatment of these children is effectuated by the new Act. In *Incorrections*, I reported that children accommodated with their mothers in prison were being subjected to strip searches, and I called on the Department to investigate this as a matter of urgency.<sup>36</sup> The new Act goes some way towards addressing this concern by adding a section that states that children accommodated

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<sup>32</sup> *Corrective Services Act 2006 (Qld)* s53.

<sup>33</sup> See arts 1.40, 2.18, 2.36 and 2.37 and the 'Guiding Principles'.

<sup>34</sup> See particularly Madeline Loy, 'A study of the mothers and children's program in the New South Wales Department of Corrective Services, paper presented at the conference *Women in Corrections: Staff and Clients*, 2000; Cleo Lynch, 'The Parramatta Transitional Centre integrating female inmates into the community before release', paper presented at the conference *Women in Corrections: Staff and Clients*, 2000.

<sup>35</sup> *Incorrections* at 126.

<sup>36</sup> *Incorrections* at 126. I was not the first person to raise this as a concern. Sisters Inside had raised this many times prior to the *Incorrections Report*.

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with their mothers in prison may be subjected to a general search<sup>37</sup> or scanning search,<sup>38</sup> but they cannot be required to submit to a personal search<sup>39</sup> or a search requiring the removal of clothing. Again, it is unfortunate that this must be legislated and corrective services officers cannot be relied upon not to treat these children as 'little prisoners'.<sup>40</sup>

### *Privileged mail*

It is generally agreed that prisoners should be able to communicate privately with certain individuals and institutions, particularly their legal representatives and those with whom they may wish to register an official complaint.<sup>41</sup> Article 36(3) of the *Standard Minimum Rules for the Treatment of Prisoners* states that 'every prisoner shall be allowed to make a request or complaint, without censorship as to substance' to the proper authorities. Further, article 6.9 of the *Standard Guidelines for Corrections in Australia* states that offenders should be able to lodge complaints, express concerns and seek redress without fear of retribution.

To this end, the old *Corrective Services Act 2000* (Qld) stated that 'privileged' mail could not be opened, searched or read by corrective services officials.<sup>42</sup> Privileged mail was defined in the regulations as mail sent to certain approved persons, including a prisoner's legal representative, the Minister, the Ombudsman, an official visitor, and the Human Rights and Equal Opportunity Commission.<sup>43</sup>

The new Act removes this protection of prisoners' privileged mail. Section 45(2)(b) of the *Corrective Services Act 2006* (Qld) states that 'privileged' mail may be opened and

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<sup>37</sup> That is, where a person is required to empty their pockets, remove outer garments, and display the contents of any luggage.

<sup>38</sup> That is, where a person is scanned, but not touched, by an electronic device or a 'sniffer dog'.

<sup>39</sup> That is, where light pressure is applied to the person's inner garments, but without contact with the genital, anus or breast areas.

<sup>40</sup> In the words of the Minister; see The Hon Judy Spence MP, Second Reading Speech of the *Corrective Services Bill 2006* (Qld) in Queensland Parliament, *Hansard*, 29 March 2006 at 943.

<sup>41</sup> Indeed, the United States Supreme Court has held that all prisoner mail should remain unsearched and uncensored, but rather should remain 'an open and substantially unimpeded channel for communication'; *Procunier v Martinez* 416 US 396 (1974) at 417 and *Pell v Procunier* 417 US 817 (1974) at 824.

<sup>42</sup> *Corrective Services Act 2000* (Qld) s35(1).

<sup>43</sup> See *Corrective Services Regulations 2001* (Qld) s7.

searched if a corrective services officer reasonably suspects the mail is not privileged mail. The officer is directed in section 45(3) not to read the mail, but section 45(4) goes on to say that in the event that they do, they are not to disclose its contents to another.

This change will mean that prisoners have no means of communicating privately with any member of the outside world (since prisoners' telephone calls are recorded and monitored<sup>44</sup>) and it may ultimately mean that prisoners subject to serious mistreatment will not lodge complaints for fear of the retributive consequences that may result. This is a serious breach of prisoners' human rights, particularly their right to be recognised as a person before the law.<sup>45</sup>

### *'Obstructionist' behaviour*

In addition to all of this, behaviour considered 'obstructionist' by the Department is more tightly regulated under the new Act; both that of prisoners and of prisoner service providers.

The offence of 'obstruct corrective service officer' existed under the old Act,<sup>46</sup> however in the *Corrective Services Act 2006* (Qld), the maximum penalty has been increased from 40 penalty units (a \$3000 fine) or one year's imprisonment, to two year's imprisonment without the express option of a fine.<sup>47</sup> Further, the defence of reasonable excuse that was available under the old Act has been removed.

The new Act also seeks more closely to regulate the activities of service providers funded by the Department. A new Chapter has been included in the new Act on the subject of service provider agreements.<sup>48</sup> Under these new provisions, service providers who receive funding from corrective services must enter into a 'financial assistance agreement'.<sup>49</sup> Far from being an 'agreement', this document is unilateral in nature; in it, corrective services mandates the terms of funding, outlines the circumstances in which the service provider will be considered in breach of the agreement, and proscribes the action that may be taken in the event of such a breach

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<sup>44</sup> Except for communications authorised by the chief executive between the prisoner and his/her lawyer, a law enforcement agency, the parole board or the ombudsman; *Corrective Services Act 2006* (Qld) s52.

<sup>45</sup> Article 16 of the *International Covenant on Civil and Political Rights*.

<sup>46</sup> *Corrective Services Act 2000* (Qld) s95.

<sup>47</sup> *Corrective Services Act 2006* (Qld) s124(b).

<sup>48</sup> *Corrective Services Act 2006* (Qld) Chapter 6.

<sup>49</sup> *Corrective Services Act 2006* (Qld) s252.

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(including de-funding).<sup>50</sup> Considering the strong advocacy role that many prisoner service providers undertake in Queensland, there is legitimate concern amongst stakeholders that this Chapter may be used to silence these providers, under the threat of de-funding. Indeed, some have noted that this simply formalises the current situation; Sisters Inside<sup>51</sup> has been prevented from entering Queensland prisons to provide support and counselling to incarcerated women since its lobbying activities culminated in the launch of an Anti-Discrimination Commission Queensland investigation in 2004.<sup>52</sup>

### *Gradual release*

Perhaps the most worrying change in the new Act relates to the erosion of gradual release. In *Incorrections*, I positively acknowledged the Department's formal commitment to gradual release. The *Corrective Services Act 2000* (Qld) provided a range of 'post-prison community-based release' options, including release to work,<sup>53</sup> home detention and parole.<sup>54</sup> The Act set up a scheme whereby those sentenced to imprisonment for more than two years could apply for a post-prison community-based release order which could be tailored to the reintegration needs of the particular prisoner by combining two or more of the available release options. While the empirical research reported on in *Incorrections* established that these release options were rarely used, and prisoners were invariably released without supervision upon the expiry of their full term,<sup>55</sup> the capacity for something better was enshrined in the legislation.

The new Act abolishes two of these gradual release options; parole is now the only post-prison community-based release order available.<sup>56</sup> A program that gradually

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<sup>50</sup> *Corrective Services Act 2006* (Qld) s235(1)(k), (l).

<sup>51</sup> Sisters Inside Inc. is a world renowned independent community organisation which exists to advocate for the human rights of women in the criminal justice system, and to address gaps in the services available to them; see [www.sistersinside.com.au](http://www.sistersinside.com.au).

<sup>52</sup> Anti-Discrimination Commission Queensland, above n19.

<sup>53</sup> Where a prisoner undertakes work in the community under community corrections surveillance, which at a minimum included one phone check per week and one physical check per week; see Queensland Department of Corrective Services, *Procedures – Offender Management – Post-Prison Community-Based Release Orders*, 1 July 2001.

<sup>54</sup> *Corrective Services Act 2000* (Qld) s141.

<sup>55</sup> *Incorrections* at 102.

<sup>56</sup> *Corrective Services Act 2006* (Qld) Chapter 5, Part 1.

releases a prisoner into a less restrictive environment over time consistent with their supervision requirements (for example, by moving from release to work, to home detention, to parole) is no longer possible. Further, parole is only available to those serving sentences of more than three years, unless the sentencing court explicitly set a parole period.<sup>57</sup> Maintaining the integrity of the court's orders will go some way towards addressing the frustrations that many prisoners have experienced when they have reached their parole eligibility date and yet been denied parole.<sup>58</sup> However, since the vast majority of prisoners serve sentences of less than three years,<sup>59</sup> it is likely that only a very small proportion of prisoners will be eligible for any form of supervised gradual release.

This is in direct contravention of the *Standard Guidelines for Corrections in Australia* which states at Guiding Principle 3 that corrective services should 'maximis[e] opportunities for community-based rehabilitation and integration of offenders'. It is also in breach of article 60(2) of the *Standard Minimum Rules for the Treatment of Prisoners* which states that 'necessary steps' should be taken to ensure a 'gradual return to life in society' for prisoners under appropriate supervision. Article 61 goes on to state that the treatment of prisoners should emphasise not their exclusion from the community, but their continuing part in it.

The erosion of gradual release is clearly contrary to best practice principles, and represents an obvious departure from an evidence-based approach. It is well-established that prisoner rehabilitation, and community safety, are best ensured by the release of prisoners over time to less and less restrictive environments, based on a rehabilitative release scheme, rather than being released absolutely at the expiration of their full-term, so that they may be progressively prepared for community life.<sup>60</sup>

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<sup>57</sup> *Corrective Services Act 2006 (Qld)* s179.

<sup>58</sup> See *Incorrections* where one former prisoner is reported to have said (at 105): 'Prisoners arrive in prison with an expectation that they will only be in custody until their parole eligibility date, and when they understand the truth of such matters, it seriously impedes their attitude towards rehabilitation'.

<sup>59</sup> The Australian Bureau of Statistics reported in *Prisoners in Australia* (2005) that on 30 June 2005, 56% of prisoners in Queensland were serving a sentence of less than five years, and 38% of prisoners were serving a sentence of less than two years. Taking flow-through into account, it must be concluded that very few prisoners will be eligible for non-court-ordered parole.

<sup>60</sup> See for example Lisa Ward, *Transition from Custody to Community: Transitional Support for People Leaving Prison*, 2001; Gary Hill, 'The Correctional System of Greece – The Prison System and Aftercare' (2000) July *Corrections Compendium* 20.

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### *Classification*

Intimately related to the issue of gradual release is prisoner classification. Best practice suggests that prisoners should be accommodated in facilities that provide an appropriate level of supervision relative to their security and escape risk.<sup>61</sup> Under the *Corrective Services Act 2000* (Qld), prisoners were classified as maximum, high, medium, low or open security;<sup>62</sup> the idea being that prisoners would, during the course of their sentence, aim to progress through the various classifications by demonstrating 'good conduct and industry'. In *Incorrections*, I noted that one problem with the current system was that, due to the paucity of beds in lower security facilities, and the fact that they are never filled to capacity, many prisoners classified as medium or low were housed in high security facilities.<sup>63</sup> Thus, the achievement of a lower security classification<sup>64</sup> was not being matched by any attendant benefits.

The response in the new Act has been to reduce the number of classification categories to three – maximum, high and low – apparently to ensure a closer match between prisoners' classification and the facility in which they are housed.<sup>65</sup> The consequence of this is that those previously classified as medium and low will now be classified as high security, and thus will continue (legitimately) to be held in high security facilities.<sup>66</sup>

This arrangement is in direct contravention of article 1.37 of the *Standard Guidelines for Corrections in Australia* which states that prisoners should be placed at the 'lowest level of security appropriate for their circumstances'. In particular, it is well-established that female prisoners do not pose a significant threat to community safety or institutional good order, and therefore, it is generally accepted that they should be subject to a specialised classification system and should normally be housed in minimum security

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<sup>61</sup> See for example the 'Guiding Principles for the Management of Prisoners' in the *Standard Guidelines for Corrections in Australia*; Robert B Levinson, 'Developments in the classification process: Quay's AIMS approach' (1988) 15(1) *Criminal Justice and Behaviour* 24.

<sup>62</sup> Those classified as low or open security were eligible to be placed in open security facilities (often farm complexes), rather than residing in secure facilities.

<sup>63</sup> *Incorrections* at 102-103, 107-108.

<sup>64</sup> And an achievement, indeed, it is. Respondents to the *Incorrections* research reported that prisoners found it extremely difficult to progress through the classification process – indeed, the vast majority of prisoners were released at the end of their full-term still classified as high security; *Incorrections* 102-107.

<sup>65</sup> *Corrective Services Act 2006* (Qld) s12.

<sup>66</sup> *Corrective Services Act 2006* (Qld) s363(3).

facilities.<sup>67</sup> Article 1.41 of the *Standard Guidelines for Corrections in Australia* explicitly states that the management of female prisoners 'should reflect their generally lower security needs'. Yet the majority of women in prison in Queensland will now be classified as high security and will continue to be housed in high security facilities.<sup>68</sup>

Further, for those prisoners who have worked hard to achieve their lower security classification, there is a significant risk that their re-classification as a high security risk will have a grave impact on their morale and their attitude towards their rehabilitation. A change such as this is contrary to best practice, which suggests that classification systems should be utilised in case management to create achievable goals that prisoners can aim towards. This is so that benefits will flow to prison managers in the form of prisoners' 'good conduct and industry'.<sup>69</sup> Further, the UN's *Standard Minimum Rules for the Treatment of Prisoners* recognise at article 67(b) that the purpose of classification should be to 'facilitate [prisoners'] treatment with a view to their social rehabilitation', and the *Standard Guidelines for Corrections in Australia* recognise the need for prisoner management systems to be predictable, structured and transparent.<sup>70</sup> The changes to prisoner classification under the new Act have the opposite effect.

#### *Removal of the right to judicial review*

Of further concern is the fact that the new Act removes prisoners' right to judicial review of classification and transfer decisions.<sup>71</sup> It does this by stating that Parts 3, 4 and 5 of the *Judicial Review Act 1991* (Qld) (the Parts that deal with statutory orders, statements of reasons and prerogative writs and injunctions) do not apply to decisions

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<sup>67</sup> James Austin and Patricia Hardyman, *Objective Prison Classification: A Guide for Correctional Agencies*, United States Department of Justice, Washington DC, 2004 pp49-57; Canadian Human Rights Commission, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Canadian Human Rights Commission, Ottawa, 2003; Debbie Kilroy, *Submission of Sisters Inside to the Anti-Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland*, 2004.

<sup>68</sup> As was reported in *Incorrections* (at 107), there are around 350 women in prison in Queensland, but only 62 beds available in low security facilities.

<sup>69</sup> Austin and Hardyman, above n67 at 59-60

<sup>70</sup> *Standard Guidelines for Corrections in Australia* (2004) art 1.37

<sup>71</sup> *Corrective Services Act 2006* (Qld) ss17 (classification), 71 (transfers).



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of this nature.<sup>72</sup> Indeed, the new Act goes so far as to state that review is not available even for a classification or transfer decision that was made in jurisdictional error.<sup>73</sup>

The effect of these provisions is that prisoners are now (on the face of the law) unable to obtain a remedy in relation to a classification or transfer decision: neither a statutory order, nor a remedy under a prerogative writ or injunction.<sup>74</sup> Nor are they able to obtain a statement of reasons in relation to the decision. According to the Act, their only means of redress is via an internal review procedure, whereby the chief executive (ie. the Director-General) reviews their case and makes a determination, without necessarily giving the prisoner a fair hearing.<sup>75</sup>

There are many reasons why a prisoner would want to seek judicial review of a classification or transfer decision. As noted above, prisoners' classification impacts heavily on the manner in which they are managed, and the kind of institution in which they are accommodated. Further, progressing through the classification system has proved so difficult (often for no legitimate or apparent reason)<sup>76</sup> that many prisoners have turned to the courts to act as an arbiter in situations where they believe they have been treated unfairly or subjected to bias.<sup>77</sup> With regard to transfers, being moved to another institution might mean that a prisoner is accommodated so far away from their family and community that visits are impossible, and phone calls are expensive.<sup>78</sup> It is well-established that maintaining contact with family members is

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<sup>72</sup> See ss 17(1) (classification), 71(4) (transfers).

<sup>73</sup> For example, where there was no power to make the decision, or the decision-maker exceeded their powers (*Craig v South Australia* (1995) 184 CLR 163 at 179); see ss 17(2) (classification), 71(5) (transfers).

<sup>74</sup> Section 41(1) *Judicial Review Act 1991* (Qld) states that prerogative writs are no longer to be issued by the Court.

<sup>75</sup> See ss16 (classification), 71(1)-(3) (transfers). There is no requirement in the Act that the Director-General provide the prisoner with a reasonable opportunity to prepare and present their case, and of course there is no requirement that the prisoner be provided with an oral hearing, despite the fact that, without one, many prisoners would certainly be disadvantaged (mainly due to their lack of literacy skills); see *Chen Zhen Zi v Minister for Immigration* (1994) 121 ALR 83.

<sup>76</sup> See *Incorrections* at 103-107.

<sup>77</sup> See *Bartz v Department of Corrective Services* [2000] QSC 336, *Crowley v Chief Executive, Department of Corrective Services* [2001] QSC 219 and *Onea v Chief Executive, Department of Corrective Services* [2002] QSC 420 where classification/transfer decisions were set aside by the Queensland Supreme Court.

<sup>78</sup> Prisoners are required to pay for their own phone calls; see *Corrective Services Act 2006* (Qld) s50(1)(b).

critical to a prisoner's rehabilitation, a fact which is recognised in article 1.39 of the *Standard Guidelines for Corrections in Australia* which states that prisoners should be enabled to 'reside as closely as possible to their family, significant others or community of interest'.<sup>79</sup> Yet transfers have the capacity to substantially limit the amount of contact a prisoner has with these people.

While few prisoners actually availed themselves of their 'right' to judicial review under the old Act<sup>80</sup> its availability was regarded as a stop-gap by prisoners, at least against blatant unlawful action on the part of government decision-makers.<sup>81</sup> Removal of the capacity to have these decisions reviewed by a judge is a contravention of articles 1.24 and 6.10 of the *Standard Guidelines for Corrections in Australia* which state that prisoners should be able to appeal to an external body in situations where their grievance is not resolved to their satisfaction, and it is a clear example of a move by corrective services away from the principles of fairness, accountability and transparency it purports to uphold.<sup>82</sup>

### **The enforceability of privative clauses: Legal avenues for redress**

The restriction of prisoners' access to judicial review seems dubious, particularly to lawyers, who are professionally socialised to value the rule of law. The question then becomes whether there is any capacity for prisoners or service providers to seek legal redress against this. Two possible avenues will be discussed here: first, whether prisoners can assert a 'right' to judicial review, and second, whether the principles of natural justice might assist.

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<sup>79</sup> See also Gearoid O'Loingsigh, *Getting Out, Staying Out: The Experiences of Prisoners Upon Release*, 2004 at 22-23; Social Exclusion Unit (United Kingdom), *Reducing Re-Offending by Ex-Prisoners*, 2002 at 111-116.

<sup>80</sup> See Queensland Legal, Constitutional and Administrative Review Committee, *The Accessibility of Administrative Justice: Discussion Paper*, 2005, Appendix B. See also Mark Plunkett, 'The Corrective Services Bill 2006 and judicial review of corrective service decisions', paper presented at the forum *The Crime of Punishment: No More Natural Justice for People Living in Prison*, 15 May 2006, Banco Court, Brisbane at 3.

<sup>81</sup> This was expressed at the forum *The Crime of Punishment: No More Natural Justice for People Living in Prison* held at the Banco Court in Brisbane after the release of the *Corrective Services Bill 2006* (Qld).

<sup>82</sup> See for example the 'Guiding Principles for the Management of Prisoners' and article 6.9 of the *Standing Guidelines for Corrections in Australia*; Queensland Department of Corrective Services, *Policy Framework*, 2006.

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### *A 'right' to judicial review?*

Access to judicial review of government decisions has become so entrenched that it is generally considered to be a 'right', protected either by statute or at common law.<sup>83</sup> Indeed, its genesis lay in the rule of law, and the idea that a decision that went beyond the scope of a decision-maker's power was of no legal effect because the decision-maker had failed to comply with the law.<sup>84</sup> However, it is well-established that a statutory or common law right can be abrogated at any time by a valid Act that is inconsistent with such a right.<sup>85</sup>

Privative clauses (laws which seek to remove the jurisdiction of the courts to review legislation) have received much attention at the federal level, both in the case law and the literature.<sup>86</sup> The conclusion of the courts at Commonwealth level has been that Parliament may be able to prevent the courts from reviewing non-jurisdictional errors (for example, where the decision-maker failed to take a relevant consideration into account, or took an irrelevant consideration into account), but it cannot prevent the courts' review of decisions in jurisdictional error (for example, where the decision-maker lacked the power to make the particular decision).<sup>87</sup>

In addition to this, the High Court's interpretation of section 75(v) of the Constitution has influenced its views with regard to the reviewability of administrative decisions at Commonwealth level. This section outlines the inherent jurisdiction of the High Court

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<sup>83</sup> John McMillan and Neil Williams, 'Administrative law and human rights' in *Human Rights in Australian Law*, Federation Press, Sydney, 1998 at 64; Mark Aronson and B Dyer, *Judicial Review of Administrative Action*, Law Book Company, Sydney, 2004, at 85-93.

<sup>84</sup> See particularly *Church of Scientology v Woodward* (1982) 154 CLR 25 at 70. See also Bradley Selway QC, 'The principle behind common law judicial review of administrative action: The search continues', (2002) *Federal Law Review* 8.

<sup>85</sup> See *Potter v Minahan* (1908) 7 CLR 277 at 304; *Sorby v Commonwealth* (1983) 26 ALR 237 at 241-242. Although, see AW Bradley, 'Administrative Justice: A Developing Human Right?' (1995) 1 *European Public Law* 347 for a contrary view in relation to judicial review.

<sup>86</sup> Particularly in the context of refugee law; see *NAAV v Minister for Immigration and Multicultural Affairs and Others* (2002) 193 ALR 449 and *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476. For a broad discussion of privative clauses, see particularly Mark Seymour, 'Privative clauses in administrative law: Recent developments' (2003) 77(11) *Australian Law Journal* 757.

<sup>87</sup> See *Craig v South Australia* (1995) 184 CLR 163 at 179. It should be noted, however, that more recent cases suggest the distinction between jurisdictional and non-jurisdictional error may be becoming increasingly blurred; see particularly *Re Refugee Review Tribunal; Ex parte Aala* (2000) 176 ALR 219; *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 180 ALR 1 at [82].

and sub-section (v) states that all matters in which a writ of mandamus<sup>88</sup> or prohibition,<sup>89</sup> or an injunction, is sought against an officer of the Commonwealth come within this inherent jurisdiction. On this basis, the High Court has declared that it cannot be prevented from reviewing and granting relief in respect of a decision that is beyond power.<sup>90</sup>

Of course, the situation at State level is very different.<sup>91</sup> The States do not have paramount Constitutions, so strictly speaking their Constitution Acts have no greater force than any other Act of Parliament.<sup>92</sup> A further impediment in Queensland is that section 41(1) of the *Judicial Review Act 1991* (Qld) explicitly states that prerogative writs are abolished, and cannot be issued by the Supreme Court of Queensland. As stated above, the provisions within the *Corrective Services Act 2006* (Qld) that remove access to judicial review ensure that neither statutory orders, nor prerogative writs, are capable of being utilised, so there appears to be no available remedy.

Yet the Supreme Court of Queensland has stated in a number of cases that it cannot be prevented from reviewing decisions made without jurisdiction, apparently adopting 'complete absence of power' reasoning; that is, if the decision is made outside the scope of the Act, the Act does not apply to it, and thus the Act cannot prevent the

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<sup>88</sup> That is, a prerogative order compelling a Crown official to do something.

<sup>89</sup> That is, a prerogative order compelling a Crown official to stop doing something.

<sup>90</sup> See particularly *Plaintiff S-157S157/2002 v Commonwealth of Australia* (2003) 195 ALR 24, Gaudron and Gummow JJ (with whom McHugh and Hayne JJ agreed) at 614 at [51] Gaudron, McHugh, Gummow, Kirby and Hayne JJ; *R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598; *Darling Casino Ltd v New South Wales Casino Control Authority* (1998) 191 CLR 602 at 633. See also DF Jackson QC, 'Development of judicial review in Australia over the last 10 years: the growth of the constitutional writs' (2004) 12(1) *Australian Journal of Administrative Law* 22.

<sup>91</sup> See Michael Sexton and Julia Quilter, 'Privative clauses and State constitutions' (2003) 5(4) *Constitutional Law and Policy Review* 69 at 73.

<sup>92</sup> See Denise Meyerson 'State and federal privative clauses: not so different after all' (2005) 16(1) *Public Law Review* 39 at 50.

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courts from reviewing it.<sup>93</sup> Indeed, such an approach seems to apply to both jurisdictional and non-jurisdictional errors.<sup>94</sup>

Further, there is a section of the *Constitution Act 2001* (Qld) that suggests some relief may still be available. Section 58 reads as follows:

- (1) The Supreme Court has all jurisdiction necessary for the administration of justice in Queensland.
- (2) Without limiting subsection (1), the court—
  - (a) is the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State; and
  - (b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.

This section establishes the Supreme Court of Queensland as a superior court of record; as such, nothing can be considered outside its jurisdiction unless there is a clear statement to this effect.<sup>95</sup> Further, as the High Court said in *Ainsworth v Criminal Justice Commission*, 'it is now accepted that superior courts have an inherent power to grant declaratory relief' to determine legal controversies.<sup>96</sup> So, it seems that at the very least, declaratory relief would be available to a prisoner in respect of a decision that was beyond the scope of the decision-maker's power.

In addition to this, section 27B of the *Acts Interpretation Act 1954* (Qld) states that in situations where a government decision-maker is required to give written reasons (or grounds) for a decision, the instrument giving the reasons must set out the findings on material questions of fact and refer to evidence or other material on which those findings were based. Sections 15 and 26 of the *Corrective Services Act 2006* (Qld) state

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<sup>93</sup> Most recently, see *Batterham v QSR Ltd* [2006] HCA 23 particularly per Kirby at [54] and [66] at [26]. See also *Squires v President of the Industrial Court of Queensland & Ors* [2002] QSC 272 per Mullins J at [34]; *Carey v President of the Industrial Court of Queensland and Department of Justice and Attorney-General* [2004] QCA 62 per McPherson JA at [4] and [22]; *Emerald Developments Pty Ltd v Minister for Environment, Local Government, Planning and Women* [2006] QSC 073 at [39]. Further, see Plunkett above n80 at 9.

<sup>94</sup> See particularly the recent Queensland case of *Emerald Developments Pty Ltd v Minister for Environment, Local Government, Planning and Women* [2006] QSC 073 at [39]. See also the New South Wales case of *Timbarra Protection Coalition Inc v Ross Mining NL* (1999) 46 NSWLR 55.

<sup>95</sup> *Re Totalisator Administration Board of Queensland* [1989] 1 Qd R 215; Plunkett, above n80 at 9

<sup>96</sup> (1992) 175 CLR 564, per Mason CJ, Dawson, Toohey and Gaudron JJ at 581.

that where a prisoner seeks an internal review by the chief executive of a classification decision, the chief executive must provide the prisoner with an 'information notice about the chief executive's decision'.<sup>97</sup> On this basis, regardless of corrective services' explicit attempt to prevent prisoners from obtaining a statement of reasons for decisions made about their classification, prisoners would be entitled to information, including the factual bases for the decision, under the *Acts Interpretation Act 1954* (Qld).<sup>98</sup>

It must be concluded, therefore, that the Supreme Court of Queensland could probably still grant (at the very least) declaratory relief to prisoners in situations where the classification or transfer decision at issue was beyond power, and a prisoner could probably obtain 'reasons', in the form of factual bases for the decision, for a classification decision. The Queensland Government's attempt to prevent judicial review of transfer and classification decisions may, therefore, prove ineffective.

#### *A 'right' to natural justice?*

In addition to this, or perhaps as an aside, the internal review procedures established under the *Corrective Services Act 2006* (Qld) may not sufficiently comply with the rules of natural justice. In the Second Reading Speech of the *Corrective Services Bill 2006* (Qld), the Minister for Corrective Services stated, in the context of the removal of judicial review for certain decisions, that prisoners would continue to have 'unfettered access to complaint mechanisms such as official visitors' and internal review procedures.<sup>99</sup>

It is now generally accepted that natural justice requires that a person be granted an opportunity to be heard before a decision is made against them<sup>100</sup> and that the decision be made by a non-biased decision-maker, who has approached the task with an open mind and is free from preconceptions.<sup>101</sup> The applicable test for non-pecuniary bias in an administrative context is whether, in the circumstances, a

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<sup>97</sup> The situation as regards transfer decision is less clear, since s71 which deals with the reconsideration of such decisions does not require the chief executive to provide any written information to the prisoner regarding his/her decision. Rather, s71(3) says that after reconsidering the decision, the chief executive may 'confirm, amend or cancel' it.

<sup>98</sup> See Plunkett, above n80 at 2.

<sup>99</sup> Queensland Parliament, *Hansard*, 29 March 2006 at 943.

<sup>100</sup> See for example *Re Macquarie University; Ex parte Ong* (1989) 17 NSWLR 113; *Herscu v Queensland Corrective Services Commission* [1995] 2 Qd R 481.

<sup>101</sup> *Webb v R* (1994) 181 CLR 41 at 53 (per Mason CJ and McHugh J) and 67-75 (per Deane J).

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reasonable apprehension of bias might be entertained,<sup>102</sup> that is, the test is an objective one. In *Incorrections*, I reported on the perceptions of prisoners regarding the objectivity (or lack thereof) of decision-makers within the Queensland corrective services system. Respondents were overwhelmingly of the belief that internal review mechanisms were not free from bias. Official visitors, for example, were generally perceived to be 'part of the system',<sup>103</sup> a fact reflected in the significant decrease in the number of complaints dealt with by official visitors in recent years.<sup>104</sup> Indeed, even the independence of the Queensland Community Corrections Boards was questioned by respondents, with many indicating that Ministerial Guidelines dictate the decision-making process, even to the point of being slavishly followed.<sup>105</sup>

There is, therefore, a strong perception amongst prisoners and their advocates that internal review, and review by official visitors, of decisions will not be free from bias. If no other review mechanism is available to prisoners, it might be concluded that the rules of natural justice are breached by such an arrangement.

### Conclusion

In article 9 of the Guiding Principles in the *Standard Guidelines for Corrections in Australia*, a commitment is made to ensure that corrections policies, programmes and services are 'informed by research, and reflect sound evidence-based practice'. Yet, in Queensland in the past two years, at least two independent reports have been released, both of which have made serious allegations of prisoner mistreatment and unlawful corrective services practices.<sup>106</sup> The Department of Corrective Services

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<sup>102</sup> *Webb v R* (1994) 181 CLR 41 at 53 (per Mason CJ and McHugh J) and 67-75 (per Deane J).

<sup>103</sup> *Incorrections* at 107

<sup>104</sup> There was a decrease of 19% between 2001/02 and 2002/03 in the number of complaints dealt with by official visitors; Queensland Department of Corrective Services, *Annual Report 2003/04*, 2004.

<sup>105</sup> There has been at least one application for judicial review based on this allegation. In *Butler v Queensland Community Corrections Board* [2001] QCA 323, the applicant argued that Ministerial Guidelines were slavishly followed by the Board. The Supreme Court of Queensland dismissed the application. See *Incorrections* at 108.

<sup>106</sup> They are *Incorrections* and the Anti-Discrimination Commission Queensland's report. In addition to this, many reports authored by service providers and advocates, including Sisters Inside and the State Incorections Network, have been released during this time (available at [www.sistersinside.com.au](http://www.sistersinside.com.au)).

drafted a response to each of these reports,<sup>107</sup> yet neither of these responses conceded any of the points made. Rather, the Department's response in both cases was publicly to condemn the reports, claiming that the issues raised had already been investigated and dealt with by the Department; that many of the recommendations had already been implemented on the Department's own initiative; and even to deny that any adverse findings were made against the Department.<sup>108</sup> This is despite the fact that many of the recommendations made in these reports were subsequently acted upon by the Department.<sup>109</sup>

As further steps away from aspirational targets, in the form of the *Standard Guidelines* and United Nations treaties, are taken, Queensland prisoners are being increasingly dehumanised and silenced. In a policy environment characterised by lack of transparency and denial of accountability, the prospect for prisoners' human rights to be realised is grim indeed.

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<sup>107</sup> See Queensland Department of Corrective Services, *Response to the Incorrections Report*, 2005; Queensland Department of Corrective Services, *Response to the Anti-Discrimination Commission Queensland Women in Prison Report*, 2006.

<sup>108</sup> Ibid. See also The Hon Judy Spence MP, 'Report shows no discrimination of women in Queensland jails' Media Statement, 8 March 2006.

<sup>109</sup> For example, as discussed above, *Incorrections* raised the issue of children accommodated with their mothers in prison being unlawfully searched, and this problem was addressed in the new Act.