



JUSTICE BEHIND BARS

Date: 27 April 2020

Our Ref: HB

Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane, QLD, 4000

By email only: lacsc@parliament.qld.gov.au

Dear Committee

RE: Corrective Services and Other Legislation Amendment Bill 2020

We write to provide submissions in relation to the *Corrective Services and Other Legislation Amendment Bill 2020* (Qld) (the Bill).

PLS is an independent community legal centre that provides legal advice and assistance to prisoners on matters relating to their incarceration, including parole decision making, placement in solitary confinement and complaints about the prison system. PLS practices primarily in administrative law and holds significant expertise about the operation of the *Corrective Services Act 2006* (Qld) and how it impacts the prisoner population in practice.

This submission provides feedback on Clause 11 of the Bill which seeks to insert a new provision which restricts particular categories of prisoners from being accommodated in low security facilities.

Low security facility eligibility

PLS strongly opposes any policy or legislative reform that imposes a blanket restriction on particular categories of prisoners from accessing low security facilities.

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A free service providing assistance to prisoners with parole applications, prison law matters and financial counselling



PLS respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of this land and acknowledges their Elders, past, present and emerging.

We consider that any policy or legislation which seeks to prevent particular categories of prisoners from progressing to low security facilities:

- is contrary to evidence-based, best practice for successfully re-integrating prisoners back into the community;
- undermines the good order of correctional centres;
- has adverse implications on prisoner well-being; and
- engages a range of significant human rights concerns.

We submit that every prisoner's placement decision should be considered on an individual basis. In assessing a prisoner's suitability for low security, the starting point should be an evidence based assessment of their individual risks and needs, not a blanket prohibition that is contrary to best practice to achieving community safety.

Best practice and community safety

It is well recognised that providing prisoners with less supervision and support over time is the best way to help them successfully reintegrate into the community. Research has consistently demonstrated that recidivism rates are lower for those prisoners who have participated in forms of gradual release that facilitates their staged re-entry into the community.¹ Providing all prisoners with the opportunity to be gradually reintegrated through low security placement is in the best interests of both the prisoner and the wider community.

The existing policy was introduced in several stages following a prisoner convicted of sexual offences and a prisoner serving a life sentence escaping from low security. In 2016, the policy was described by Walter Sofronoff QC (as he then was) in the *Queensland Parole System Review* (QPSR) as '*an over-reaction to political events*' and '*contrary to the public interest*'.² He went on to conclude that:

'it is vital that there be adequate preparation for such release. Being accommodated in a low security facility, with the potential for resettlement leave, is in my opinion an essential part of ensuring the community safety'.³

In rejecting the recommendation of the QPSR to review the policy, the Government noted that the possibility of escape by prisoners convicted of sexual offences or subject to life

¹ *Queensland Parole System Review* (Final Report, November 2016) 38. *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) 388; United Nations Office on Drugs and Crime, *Introductory Handbook on the Prevention of Recidivism and the Social Integration of Offenders* (Report, December 2018) 37; T Walsh, *Incorrections: Investigating prison release practice and policy in Queensland and its impact on community safety*, November 2004, 10.

² *Queensland Parole System Review* (Final Report, November 2016) 18-9.

³ *Queensland Parole System Review* (Final Report, November 2016) 19.

imprisonment has 'high potential' to undermine confidence in the low security program. **PLS believes it is irresponsible for Government to adopt a position aimed at appeasing public concerns when doing so comes at the expense of community safety.**

The Queensland Productivity Commission's (QPC) recent *Inquiry into Imprisonment and Recidivism* found that Queensland has the lowest proportion of prisoners held in low security settings and that, on average, 92% of prisoners are detained in high security settings.⁴ The policy precluding particular categories of prisoners from being accommodated in low security settings was identified as one of the reasons for these figures.⁵ The QPC Report further identified that each month, over 1000 prisoners are released back into the community and that over 50 per cent of prisoners released back into the community will reoffend and return to prison or a community corrections order within two years.

PLS considers that adopting punitive policies which are contrary to best practice are contributing to high numbers of parole suspensions and recidivism rates. **The majority of prisoners being released into the community are coming directly from high security correctional centres.** PLS is regularly contacted by prisoners released in these circumstances who are struggling with the extreme 'shock to the system' they experience upon release. It is illogical to restrict particular categories of prisoners from progressing when doing so results in these individuals being released directly from high security facilities into the community.

The Government's current position does not prepare prisoners for the challenges associated with living outside of the artificial and highly regulated living environment of a high security correctional centre. It is particularly problematic for prisoners serving life sentences who require gradual release due to the length of their incarceration and the likelihood they have experienced some degree of institutionalisation.

Undermines good order

We submit that the correctional system's legitimacy depends on objectivity, equality of access and the distribution of both benefits and deprivations on a fair and equitable basis. It is a core feature of corrective services that prisoners who demonstrate their rehabilitative efforts through positive institutional conduct will be rewarded.

The benefits and privileges associated with low security placement serves as one of the greatest incentives to demonstrate and promote positive and responsible behaviour and performance.⁶ As such, the removal of the pathway to low security placement removes one of the most important moderating tools of staff in managing prisoners' behaviour.

⁴ *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) xxxviii, 388.

⁵ *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) xxxviii, 355.

⁶ Prison Reform Trust, "Incentives and Earned Privileges", available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/IEP%20Briefing%20Prison%20Reform%20Trust.pdf>.

Prisoners are more likely to accept that the prison is run fairly if it protects their rights, ensures respectful treatment and provides legitimate reasons for decisions that disadvantage them. Decisions made arbitrarily without regard to the merits of a prisoner's individual circumstances undermine the legitimate authority of corrective services.

Progression, well-being and rehabilitation

It is the experience of PLS that restricting particular categories of prisoners from progressing to low security facilities adversely impacts their well-being and hinders their rehabilitation.

In a low security facility, there are less restrictions imposed on a prisoner's movements, such as not needing an escort or identification card or requesting permission to move between buildings. Prisoners can also be physically active without depending on the availability of activities officers, and there are no periods of lock down overnight or during the day for officer training. Additionally, there are less frequent interruptions from authorities, such as fewer head counts and no disruptions due to codes or security lock downs.

Prisoners in low security are able to join a community and engage in activities that are not available inside high security; including cooking, gardening, making grocery lists and attending barbeques. They are also provided the opportunity to assume increased levels of responsibility, such as walking outside the complex to attend educational programs and participating in additional work, vocational training and programs.

Requiring prisoners to remain in a high security environment that fosters dependency and hinders independence is not in keeping with best practice. The inability to progress impacts prisoners' self-worth and results in many being unable to see any meaningful future. For these reasons, international bodies have highlighted the importance of progression and providing prisoners with opportunities to develop self-respect to protect against the crushing nature of a lengthy sentence.

The Council of Europe have identified that:

"...During the prison period, progression may be an important antidote to mental deterioration by providing specific goals that can be achieved within a foreseeable period of time".⁷

Rule 91 of the Mandela Rules states that:

"The treatment of persons sentenced to imprisonment...shall have as its purpose, so far as the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility."⁸

⁷ Council of Europe, *Management by Prison Administrations of Life-Sentence and Other Long-Term Prisoners*, Strasbourg, 2003, 20.

⁸ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* A/RES/70/175 (8 January 2016, resolution adopted 17 December 2015) r 91.

The *Human Rights Approach to Prison Management Handbook* identifies that the potential damage to a prisoner's well-being due to the length of the sentence is one of the most important issues in the management of life sentence prisoners and comments that:

*'prison administrators will need to help prisoners to plan their sentences in such a way as to maintain their sense of self-worth and avoid the dangers of institutionalisation.'*⁹

Human rights concerns

PLS considers that the current policy engages a range of significant human rights concerns. Formalising the policy into legislation does nothing to alleviate those concerns and only makes it more difficult for Government to retract from current practice. In particular, we consider the following human rights protected under the *Human Rights Act 2019* (Qld) are engaged by the existing policy and any legislation which proposes to formalise it into law:

- Right to liberty and security of person;
- Right to humane treatment when deprived of liberty;
- Right to privacy; and
- Protection of families and children.

We acknowledge the *Human Rights Act 2019* (Qld) allows restrictions to be placed on human rights. However, restrictions are only permissible where they are reasonable and justifiable. There is no evidence to justify making a distinction between particular categories of prisoners being accommodated in low security facilities. Indeed, research has established that life sentence-prisoners have the lowest rate of recidivism of any category of prisoner following release.¹⁰ Best practice and international standards clearly articulate that all categories of prisoners should be provided with the opportunity to progress to low security correctional centres, particularly prisoners serving life sentences.

For the reasons provided above, we consider that the proposed amendment is not reasonable and cannot be justified. We urge that consideration be given to abolishing the existing policy and that amendment which seeks to formalise this practice into law be abandoned.

Yours faithfully



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⁹ *A Human Rights Approach to Prison Management* (2009) 159.

¹⁰ I Potas, *Life Imprisonment in Australia*, Australian Institute of Criminology, No 19, August 1989, 2; M Gottschalk, *Days without end; Life sentences and Penal Reform*, 15 January 2012, Prison Legal News.