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The Hon Amanda Fazio MLC
Chair
General Purpose Standing Committee No 3
Parliament House
Macquarie Street
Sydney NSW 2000

Submission to Inquiry into Corrective Services Legislation Amendment Bill 2006

We welcome this opportunity to comment on the provisions of the Corrective Services Legislation Amendment Bill 2006. We thank the committee for granting us an extension of time to make a submission.

The Shopfront Youth Legal Centre provides a free legal service for homeless and disadvantaged young people aged 25 and under. We represent and advise young people on a range of legal issues, with a particular emphasis on criminal law. Although the majority of our clients are offenders, most have also been the victim of criminal offences (including serious physical and sexual assaults).

The Shopfront Youth Legal Centre is strongly opposed to the Correctional Services Legislation Amendment Bill 2006.

Many arguments against the Bill have already been aired in Parliamentary debate. We note that a number of Members of the Legislative Council, of various political persuasions, have expressed opposition to the Bill (see NSW Legislative Council Hansard of 7 June 2006). We share the concerns expressed by these individuals and by the medical profession.

The reasons for our opposition to the Bill can be summarised as follows:

Bill is based on an ethically flawed premise

The Premier, the Hon Morris Iemma, has stated, "I find the notion of serious criminal offenders being afforded this type of privilege totally repugnant." No doubt many people would share this view.

No matter how morally repugnant this may seem, the alternative (which is sought to be achieved by this Bill) is even more so.

The arguments expressed in support of the Bill have sinister undertones of eugenics. It is imbued with the notion that certain members of the “criminal class” ought not to reproduce. This has no place in a civilised and democratic society.

Interference with right to medical treatment and with reproductive rights

We do not agree with Mr Iemma that the storage of reproductive material is a “privilege”. It is a standard procedure offered to people who are undergoing certain types of cancer treatment. In our view, any attempt to stop prisoners from having access to this service is an unjustified infringement on the right of access to medical treatment.

It is often said that offenders forfeit their rights by committing serious crimes. While prisoners may forfeit their right to liberty for a period, , they do not forfeit their basic human rights. One of these is the right of access to medical treatment.

This right is recognised in section 72A of the *Crimes (Sentencing Procedure) Act* 1999, which provides:

“An inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, of other inmates and of any other person.”

We submit that “health” includes fertility and reproductive health.

The Bill also infringes a number of basic human rights enshrined in Article the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Australia in 1980. These include:

- the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 8);
- the right of men and women of marriageable age to marry and found a family (Article 23);
- The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7).

We submit that the Bill also contravenes the Standard Minimum Rules in relation to the Treatment of Prisoners (adopted by the United Nations in 1955), particularly Articles 22, 25 and 26.

Implications of the Bill on medical ethics and practice

Concerns have been raised by members of the medical profession that the Bill may seriously compromise their ethical duties. We share these concerns. In particular, we refer to and endorse the comments of Dr Alex Wodak in his submission dated 24 July 2006.

Irreversible and long-term consequences

A person who is denied the opportunity to have his or her reproductive material stored before undergoing cancer treatment faces the prospect of being infertile for life.

We acknowledge that it may be appropriate to withhold certain services (for example, access to assisted reproductive technologies) to prisoners while serving

their sentences. However, this does not justify taking irreversible action that will affect their lives well after the expiry of their sentence.

Denying an inmate suffering from a disease such as cancer the right to preserve reproductive materials is tantamount to a punishment that could extend long after he or she has completed his or her sentence. It also puts the inmate in the untenable position of having to decide whether to accept treatment and perhaps become sterile, or to refuse treatment in the hope that he or she will survive and be able to have children at a later date.

It is also important to note that this legislation may apply to persons who ultimately have their convictions quashed.

Broad application of the Bill

The Bill applies to males and females, adults and juveniles who are imprisoned or awaiting sentence for strictly indictable offences. In the Second Reading speech, the Hon Tony Kelly gave the examples of murder, sexual assault and kidnapping. However, many other less serious (and in some cases non-violent) offences also fall into this category. Common examples include robbery and aggravated break, enter and steal.

Therefore it is possible for a child who participates in a robbery armed with a replica gun to be effectively condemned to infertility for life if he suffers from a disease during his term of imprisonment that may require chemotherapy or radiotherapy.

Bill is inconsistent with rehabilitation of offenders

Given its long-term ramifications, this Bill is inconsistent with the goal of rehabilitation. It is well-established that rehabilitation is one of the fundamental principles that must be taken into account when sentencing offenders.

This is especially so when it comes to juvenile offenders. It is a principle enshrined in the *Children (Criminal Proceedings) Act 1987* and in the United Nations Convention on the Rights of the Child (in particular Article 40), and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The Commentary to Beijing Rule 17 states that 'strictly punitive approaches are not appropriate.' In sentencing a juvenile offender, 'just desert and retributive sanctions...should always be outweighed by the interest of safeguarding the well-being and the future of the young person.'

We acknowledge that there is much judicial authority to the effect that "grave adult offences" committed by young people call for a strong element of general deterrence. However, this does not mean that rehabilitation is to be discarded altogether.

Since 1993, the Shopfront Youth Legal Centre has worked with hundreds of young people (both juveniles and young adults) who have committed serious offences. These include strictly indictable offences such as robbery in company, aggravated break enter and steal, and aggravated dangerous driving occasioning death. In most cases the offending behaviour is closely linked to a mental illness or to a serious drug problem that developed in the context of an abusive childhood.

We have had the privilege of observing many of our clients make the transition to adulthood, and to a healthy and law-abiding life. One example is Juanita (not her

real name) who came to Australia as a refugee while very young. Her childhood was traumatic and, sadly, she turned to illicit drugs in her early teens. Almost inevitably, she commenced offending as a juvenile and this extended into adulthood. She was convicted of serious offences including robbery, and this culminated in a period of imprisonment.

Juanita is now in her late 20s and has been drug-free and crime-free for several years. During this period she has pursued higher education, gained employment in the social welfare field, married, and had a child. She lives a stable, responsible and law-abiding life, and by all accounts she is an excellent parent.

Although Juanita has done exceptionally well, she is not an isolated example. Even serious offenders are capable of rehabilitation, and should be afforded every opportunity to make the best of their lives once they have completed their sentence.

We would be pleased to elaborate on any aspect of this submission if required. Please feel free to contact Jane Sanders at jane.sanders@freehills.com or on 9360 1847.

Yours faithfully

Jane Sanders
Principal Solicitor