



PRISONERS' LEGAL SERVICE INC.

Justice Behind Bars

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20 December 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary,

Re: Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

1. Prisoners' Legal Service (hereafter PLS) is a community legal service providing advice to prisoners and their families about matters related to incarceration. We have been operating for 27 years. PLS exists to promote justice, equity and the rule of law in the administration of punishment. We provide and promote access to justice through:
 - legal advice, information and assistance to prisoners and their families;
 - community legal education;
 - law reform and policy development.
2. PLS offers free legal advice, information, assistance, and referrals to Queensland prisoners and their families on matters relating to their imprisonment. In addition to our core work, we run two specific programs: a Financial counselling program and a Safe Way Home program providing prisoners with assistance drafting parole applications, including relapse prevention and reintegration plans.

Summary of Submission

3. Although we are supportive of many aspects of the proposed Bill, we are extremely concerned about the removal of protection against discrimination on the basis of criminal record. Australia has ratified the International Labor Organisation Convention III, the Discrimination (Employment and Occupation) Convention 1958 (ILO III).¹ In order to ensure our obligations are met under this convention, protection against discrimination in employment on the grounds of irrelevant criminal history is needed. It is our opinion that the best way to ensure

¹ ILO 111 was ratified by Australia in 1973 and incorporated into domestic law by virtue of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

this protection is by adding 'irrelevant criminal record' as a protected attribute to the list in clause 17. This addition will reduce social exclusion and ensure fair and reasonable treatment for all in relation to employment and other relevant matters.

4. When these legislative changes were announced, Robert McClelland MP said that there would be no diminution of existing protections currently available at the federal level.² In order to keep this promise, the Commission's jurisdiction to receive complaints about criminal record must be retained.

Irrelevant Criminal Record

5. Australia has upheld employment protections on the basis of irrelevant criminal record for many years through complaints to the HREOC and then AHRC. Complaints received by these bodies during these years of protection demonstrate that there is a strong need for continued vigilance. Prisoners' Legal Service also regularly receives enquiries about discrimination on the grounds of criminal history. In response we give legal advice on individual merits and often provide clients with the very useful AHRC resources.
6. An analysis of the data in AHRC Annual Reports confirms that criminal record is still a problematic area of discrimination in Australia. This data shows that the number of enquiries received in the last financial year about criminal history is approximately equal to the median figure for enquiries. More than three times as many enquiries were received for criminal history discrimination as for union activity and twice as many as for age (too young).³
7. After making initial enquiries some people will go on to make complaints. A consideration of complaints received by ground under the *Australian Human Rights Commission Act* confirms that this is a live and pertinent issue. Here criminal record is the second most used grounds of complaint, after ICCPR complaints. In many previous years, criminal record was the most used grounds of complaint (2006-2009).
8. This has been acknowledged as a trend by the AHRC who comment in their 2009-2010 Annual Report:

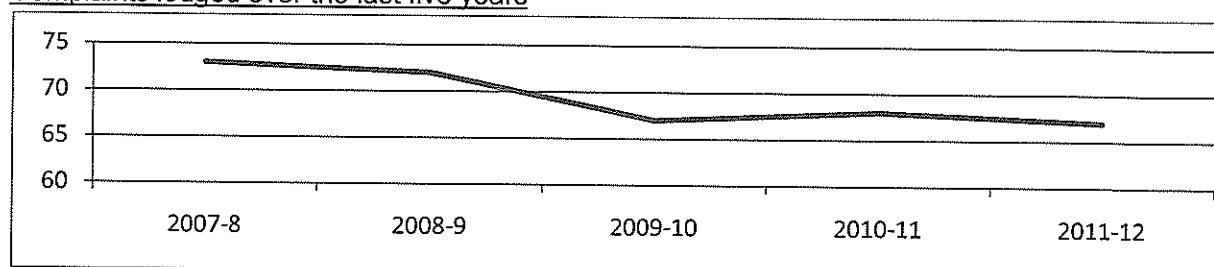
*"The majority of complaints received under the Australian Human Rights Commission Act related to alleged breaches of the International Covenant on Civil and Political Rights and discrimination in employment on the ground of criminal record. These have been the main subject areas of complaint for the past five years."*⁴
9. Over the last five years, a total of 1720 enquiries have been made and 347 complaints have been lodged on this ground. The following data clearly demonstrates that this ground is actively used and serves to functionally respect, protect and fulfil this important human right.

² Hon. Robert McClelland MP (Attorney-General), The Hon Lindsay Tanner MP (Minister for Finance and Deregulation, *Reform of Anti-discrimination Legislation*, Media Release, Minister for Finance and Deregulation, 21 April 2010, available at http://www.financeminister.gov.au/archive/media/2010/mr_292010_joint.html (accessed 11 December 2012).

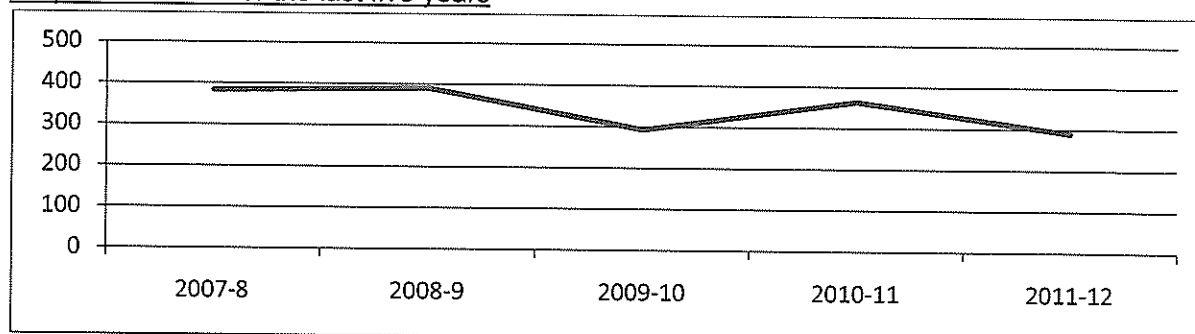
³ AHRC Annual Report 2011-2012.

⁴ P72, AHRC Annual Report 2009-2010.

Complaints lodged over the last five years



Enquiries made over the last five years



10. Apart from the inherent value in protecting human rights, providing protection against discrimination on irrelevant criminal history has great benefits for society. Employment is recognized as a key factor in stopping the cycle of crime. Employment provides income, structure, social contact and self worth.⁵ Conversely, economic exclusion can quickly lead to social exclusion, poverty and lack of self esteem.

11. A social worker who works with prisoners after their release has commented:
"I've seen heaps of positive stuff come out of ex-prisoners finding employment. I saw a guy who got out after 8 years in prison and I got him a job in a car yard. Within two weeks he had been promoted and has now been offered further promotions. We were upfront about his criminal history and his employer did not mind. In fact, his employer has said "You're a keeper; we are not going to be losing you". Finding employment meant that he has been able to obtain accommodation, support his four kids and keep free of crime. He is now a productive member of society and has a bright future ahead of him.

On the other hand, I have seen many guys who do not get the jobs they apply for and you know it is because of their criminal record. This is really discouraging for them and can mean that they have to stay in boarding houses and are more likely to return to drugs and crime."⁶

12. The role of employment in rehabilitation is well documented with a UK study showing that employment can reduce re-offending by between a third and a half⁷. It is self evident that a reduction in re-offending leads to a safer community for

⁵ Naylor, B (2011) *Criminal Records and Rehabilitation in Australia*, EJP.

⁶ Interview with Phil Dodds, Catholic Prison Ministry, 18 December 2012.

⁷ Home Office, UK, *Breaking the Circle*, 2002.

everyone. Stopping irrelevant discrimination on the basis of criminal history removes a barrier to employment and increases the chances of breaking the cycle of crime.

13. The impact of a criminal history has been poetically described by Jack Charles in his play *Jack Charles v The Crown*, when he said: "*Whitefella way: the Convict Stain endures, lingers, and your past Shadows, Stalks your present, and Stymies, Jinks your future.*"⁸ These words remind us that Aboriginal and Torres Strait Islander people continue to be overrepresented in our criminal justice system and that the removal of this protection will have a discriminatory effect on these already disadvantaged peoples. It will be a set back for government goals of health and income equality.
14. In many cases, criminal record may be relevant. However, there are many stereotypes of criminals based largely on ignorance, tabloids and fictional media. This is not a good enough reason to deny someone a equal treatment. Three State jurisdictions provide protection against discrimination on the basis of criminal record.⁹ It is not acceptable for the Federal government to go backwards in protections for human rights in a bill that otherwise enhances and increases rights.
15. Including 'irrelevant criminal record' as a protected attribute in clause 17(1) will ensure that protection against discrimination is enhanced, rather than reduced. It will mean there is protection against discrimination in all relevant areas such as employment, accommodation and the provision of government services. Equality of opportunity should be available to all people across in all areas in order to promote a fair and just society.

Thank you for your consideration of these matters. Please do not hesitate to contact me if you require further information.

Yours faithfully

Matilda Alexander
Coordinator/Solicitor
Prisoners' Legal Service Inc

⁸ <http://ilbijerri.com.au/productions/project/jack-charles-v-the-crown/>

⁹ Australian Capital Territory *Discrimination Act 1991* (ACT) "spent convictions"; Northern Territory *Anti-Discrimination Act 1996* (NT) ("irrelevant criminal record"); Tasmania *Anti-Discrimination Act 1998* (Tas) ("irrelevant criminal record").