

# State INCorrections Network



Centre for Social Justice



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Prisoners' Legal Service



C.P.M.



ABORIGINAL & TORRES STRAIT ISLANDERS Corporation (QAIA) for Legal Services



F A P S

PO Box 3407  
South Brisbane Q 4101  
Phone: 07 3844 5066  
Fax: 07 3844 2788  
matilda@sistersinside.com.au



## Submission on the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

A submission by the State INCorrections Network

## **Introduction**

This submission has been compiled on behalf of a network of community organisations working with and concerned by the situation of prisoners in Queensland. We aim to address specifically the issue of prisoner disenfranchisement. The above listed groups have worked together for a number of years to raise awareness and achieve outcomes in the area of criminal justice policy as it applies to prisoners pre and post release.

We are concerned that the proposed bill would further alienate prisoners from the political system and our experience working with prisoners has shown that such a move is not constructive for our clients. We also have concerns about the undemocratic nature of such a move and query its necessity.

## **Disenfranchisement as Punishment**

The denial of the right to vote for prisoners is an archaic remnant from the ancient notion of *civilliter mortuus* or civil death. The purpose of this doctrine was a replacement for death by execution and to emulate the results natural death would produce in a civil manner. This purpose was clearly placed in the context of a criminal justice system that aimed only to punish those convicted of crimes.

The notion of punishment as the centerpiece for a criminal justice system has been superseded. Instead, the current Queensland Department of Corrective Services aim is "*fostering community safety and crime prevention through humane containment of prisoners...*" This is reflective of legislative requirements stating that the aim of the *Corrective Services Act 2000* (QLD) is "*community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.*"

The purpose of incarceration can thus be seen to have moved away from the notion of punishment through civil death. Instead rehabilitation, crime prevention and upholding community safety are said to be the current purposes of incarceration. This change in focus has been reflected in legislation, government policy, procedure and initiatives. Sentencing options have increased in recognition of this change, as has the existence of diversionary options such as the QLD Drug Court.

As such, the political change from punishment to community safety can be seen to be thorough and cover many facets of both our criminal justice system and our society. A legislative amendment aiming purely to punish incarcerated persons without regard to principles of rehabilitation or community safety can thus be seen to be outdated and contrary to current directions.

Moreover, disenfranchisement as a punishment can be seen to be a very blunt tool. Since the introduction of the State Penalties Enforcement Register in Queensland there has been a spike in the number of persons incarcerated for fine defaulting. 72% of prisoners will be incarcerated for a period of less than one year.<sup>1</sup> Therefore under the new Bill, a person incarcerated for being financially unable to pay fines will be punished by being deprived of the right to vote. As the new Bill is aimed at those with shorter sentences it will affect many such persons.

It is even conceivable that a person incarcerated for the inability to pay fines accumulated by failing to vote will be punished by not being allowed to vote. In such a scenario the punishment clearly does not fit the crime, the crime in this case being poverty. In fact, it is hard to imagine how disenfranchisement would ever be an appropriate punishment for a crime, nor how it would provide victims with any relief.

### **Enfranchisement: an Essential Democratic Value**

The purpose of voting for elected representatives can be said to ensure democratically chosen governance. This principle is enshrined in international law in Article 25 of the *International Covenant on Civil and Political Rights*, to which Australia is a treaty:

*'Every citizen shall have the right and the opportunity, without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of electors.'*

This principle is clearly supported by section 7 and section 24 of the Australian Constitution, requiring that the House of Representatives and the Senate be 'directly chosen by the people of the Commonwealth.'

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<sup>1</sup> DCS (2006) *Facts and Myths* [www.dcs.qld.gov.au](http://www.dcs.qld.gov.au)

A modern interpretation of this phrase should include, at least, all Australian citizens capable of making such a choice. The disenfranchisement of prisoners from this process implies that voting is a privilege which can be taken away as punishment rather than a responsibility or a right. Various democracies have excluded from the vote women, certain racial groups, religious groups, persons of lower classes, adults of younger age, slaves and other groups that do not hold hegemonic or systemic power. Over time such arrangements have been challenged both locally and internationally and the democratic status of such practices have been criticised.

Australia is no exception to this, having at various times excluded from voting women, those without property and, for the majority of federation, Aboriginal and Torres Strait Islander people. These undemocratic practices have since been overturned and it is doubtful whether many Australians would argue that a return to such policies is justified.

The Bill proposing prisoner disenfranchisement should be considered in this context. Moves towards enfranchisement support the view that voting is a responsibility and a right rather than a privilege and that our country gains democratic standing by allowing all persons capable of choosing to exercise the vote. In Australia, the fact that voting is compulsory demonstrates the responsibility aspect of voting and punishes people for failing to live up to this responsibility. The exclusion of prisoners from this responsibility and this right is undemocratic and unjustified.

Furthermore, an analysis of who is being imprisoned highlights the discriminatory effect of the proposed Bill. It demonstrates that this Bill will discriminate on the basis of race, ability, education and poverty.

The fastest growth in prisoner numbers has been amongst Indigenous women. A Government report reveals that the number of indigenous women imprisoned between 2000 and 2004 rose 25 per cent, while the number of Indigenous men in jail rose 11 per cent.<sup>2</sup> The same report found that Indigenous Australians are now 11 times more likely to be imprisoned than other Australians and indigenous juveniles are 20 times more

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<sup>2</sup> Council of Australian Governments (2005) Overcoming Indigenous Disadvantage, Australian Government Productivity Commission.

likely to be detained. In 2004-2005 24.9% of Queensland prisoners were Indigenous Australians.<sup>3</sup> This represents a 343% increase in Indigenous women in prison.<sup>4</sup>

Such statistics demonstrate the disproportionate number of Indigenous Australians in prison. The disenfranchisement of prisoners in this context would detract from the effect of the 1967 referendum, which recognized Indigenous Australians and allowed them to vote.

In addition, many of those incarcerated have or have had some form of disability. A total of 57.1% of women in prison in Queensland have been diagnosed at some time with a mental illness<sup>5</sup>. NSW statistics indicate that 46% of reception and 38% of sentenced inmates had suffered a mental illness in the previous year.<sup>6</sup> In Queensland, 61% of female prisoners reported some form of treatment for an emotional or mental illness during their lifetime.<sup>7</sup>

Many prisoners have low levels of education and may have resulting literacy problems. They are amongst the poorest of our population and are likely, particularly in the case of women, to have suffered violence, including sexual violence. In fact, studies show that 98% of women in prison had experienced physical abuse prior to incarceration and 89% had experienced sexual abuse<sup>8</sup>.

Such statistics demonstrate that it is the most severely marginalised and disadvantaged in our society who are the most likely to be incarcerated. These are people who have already been disenfranchised from political processes through lack of literacy and education. There are already many barriers to ensuring that the voices of such persons are heard and taken account of by government bodies. In this context it is an appalling suggestion to remove the one connection still remaining with the political system. For many this may lead to a complete disengagement with the political processes. Our democratic system needs the voices of such persons to be heard more clearly than

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<sup>3</sup> DCS (2005) Annual Report 2004-2005, DCS, Qld Government.

<sup>4</sup> ATSIC (2004) Social Justice Report, HREOC, Australia.

<sup>5</sup> DCS (2002) Queensland Women Prisoners Mental Health Survey DCS, Qld Government, [http://www.dcs.qld.gov.au/Publications/Corporate\\_Publications/Strategic\\_Documents/health\\_survey.pdf](http://www.dcs.qld.gov.au/Publications/Corporate_Publications/Strategic_Documents/health_survey.pdf), p ii

<sup>6</sup> NSW Chief Health Officer (2003) Prisoner Health Mental Health, NSW Health, NSW Government.

<sup>7</sup> Australian Institute of Health and Welfare 2004. Australia's health 2004, Canberra: AIHW, p219

<sup>8</sup> Sisters Inside (2001) Walking the Talk, SIS.

those without such disadvantage, in order to ensure that steps towards equality are effective. It would be more effective if prisoners were encouraged with courses and study to learn to understand more about how the Australian political system works.

The government of the day must be held accountable for their treatment of prisoners as they are responsible for ensuring that prisoners needs are cared for. Removing prisoners from voting systems may lead to the disregarding of such needs as there would be no votes from within prisons. We are concerned that this could very well lead to a dangerous neglect of duty of care.

### **Responsibility is Rehabilitation**

As stated earlier, the purpose of a modern prison system is purportedly rehabilitation and community safety. A major part of many rehabilitative programs and initiatives aim to ensure that responsibility is taken for actions. To take away someones responsibility in order to teach them responsibility does not make sense. Such responsibilities do not disappear and prisoners often have difficulty reconnecting upon release. While the responsibility of voting is only a small part of this picture, it is nevertheless important.

There is no evidence to show that people have been deterred from crime through the deprivation of voting rights. Rather, crime prevention strategies such as the provision of adequate housing, the alleviation of poverty and ensuring stable employment can be seen to be the most effective in ensuring that prisoners do not return to prison.<sup>9</sup>

The groups involved with this submission work regularly with prisoners, pre and post release to ensure that they do not return to prison. Our experience emphasises that the deprivation of responsibility in prison can lead to reduced engagement upon release and a higher chance of return to prison.

### **Conclusion**

A democracy needs the voices of all of those capable of participation to participate in various meaningful ways. One of the only regularly facilitated ways for this to happen is through voting. As such we need prisoners to vote in order to achieve the purpose of the vote; a democratically elected government. If we disenfranchise this most

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<sup>9</sup> Walsh (2004) INCorrections, QUT.

disadvantaged sector of our community every member of the community will lose through the loss of democratic values.

Australia once was a colonialist nation that restricted voting on the basis of land ownership, gender, age or race. We are now a nation that recognises principles of equality as essential to the democratic process. This bill represents a step backwards from such principles.

The 'civil death' justification for denying prisoners the vote is archaic and no longer relevant to today's criminal justice emphasis on rehabilitation. Disenfranchisement will neither meet the purpose of rehabilitation nor is it an effective deterrent. The extension of disenfranchisement to those serving shorter sentences will be all the more likely to effect those incarcerated for crimes related to poverty and homelessness, such as public order offences and inability to pay fines.

Finally, the effect of the bill will be discriminatory and will further alienate and disenfranchise those who are the most marginalised by the present political environment and will silence the voices that are already heard the least. For these reasons we propose that steps be taken to ensure that all prisoners be given the vote and that the aspect of the current bill dealing with disenfranchisement not be passed.