

## Speech to National Access to Justice and Pro Bono Conference

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### Prisoners and barriers to their access to legal services

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#### Introduction

On Monday morning this week I received a phone call from a prisoner at Tasmania's Risdon Prison. Despite assurances earlier this month, after an intervention by me and senior Justice Department officers, that he would be moved to the minimum security division of the prison, he had been told last week he would not be going after all. The prisoner is not the subject of any disciplinary proceedings or investigation. He is, it seems, being used as a pawn in a broader investigation.

When I first looked at this prisoners' case he was, at that stage, told he was under investigation but no particulars were given to him.

Welcome to the capricious and authoritarian world of prison life. A world where the law of the jungle applies - despite there being statute books sitting on the shelves of prison administrators' offices which list the rights of prisoners to be treated fairly, with dignity and respect.

As one former prisoner and now writer with *The Guardian* Erwin James rightly puts it:

*People outside rightly believe that there are rules in prison. Indeed, in any prison governor's office in any prison in the country, there is a big book entitled Prison Rules. But on a prison landing, in a prisoner hierarchy, there are no rules, other than those that determine the survival of the fittest. Not the fittest as in the most athletic, although a healthy measure of athleticism is certainly a helpful survival aid. But the fittest as Spencer and Darwin would have understood it – the most fitted to a particular environment.<sup>1</sup>*

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<sup>1</sup> E. James (2010) Criminal Justice in our Lawless Jails; *guardian.co.uk* 25 March.

The consequences of the culture of abandonment of fairness and justice within prison walls are self evident. If you do not treat human beings in a manner that respects the inherent dignity that is in all of us; if you do not have clear rules and guidelines which are applied consistently and not arbitrarily for ulterior motives; if you dehumanise people by viewing them as being 'bodies' stripped of rights, then you ensure that those people are returned to civilian society embittered, paranoid, and violent. Who can blame them?

### How lawyers can help prisoners

It is for these reasons that the legal profession has a duty and an obligation to ensure that it provides prisoners with advice and assistance not just when they are in the dock but when they are in their jail cell.

I am talking here about the provision of legal services to prisoners concerning the way in which they are treated when in prison. It is fair to say that outside of some excellent specialist prisoner legal services – including here in Queensland the Prisoners Legal Service (PLS) – few lawyers get involved in this type of work.

One assumes this is the case for two reasons – one, generally prisoners cannot afford to pay for legal advice and second, legal aid schemes won't fund internal prison law cases. And, as Matilda Alexander of the PLS rightly points out, prisoners cannot phone government agencies, access Internet information or visit a community legal centre.

There is however huge demand. I am most grateful to Matilda Alexander of the PLS for providing me with some very useful data which gives an insight into the demand and diversity of legal services within the prison system.

Firstly, as to demand. In Queensland alone QLS data shows it dealt with, in the period July 2008 to July 2010, 8,023 matters. This service provides advice to around 4000 prisoners a year.

There is no reason to believe that the numbers in other jurisdictions are anything other than proportionately similar.

And what type of matters does the QLS advise and advocate on for prisoners? Transfers within and between prisons; parole board matters and complaints about prison conditions all feature prominently, as do lack of access to medical and other support services and programs.

The experience in Tasmania is similar, albeit at a smaller scale. I want now to talk to you about the prison law and advice that I provide through Prison Action and Reform (PAR) in that State.

PAR was established a decade ago after the tragic deaths in custody of a number of young prisoners in Tasmania. PAR has always been a fluid and small group, but it is recognized by government, the media and the community as being the advocacy group for prisoners in Tasmania.

I practice at the independent Bar in Tasmania and offer my services to PAR on a pro bono basis.

There are around 550 prisoners in Tasmania, nearly all of whom are located at Risdon Prison, which is 15 minutes drive from central Hobart. A very small number of prisoners live at Hayes Prison Farm, which is about 45 minutes from Hobart.

PAR reaches prisoners in two ways. Firstly, prisoners have the phone number of my Chambers in Hobart on their phone system. Secondly, prisoners write to me or have another prisoner ring me and pass on a request to see me.

In order to filter the number of requests, I generally ask prisoners to put their issues and any documentation they have in writing to me so I can make an assessment of what needs to be done prior to conferring with them either face to face or by phone.

I would classify the matters I deal with and the method of dealing with them in the following way:

Classification issues – speak with the appropriate Justice Department official and also prison official to get clarification and explanation and even a reversal of decision for the prisoner.

Access to programs and issues relating to prison programs – the major issue here relates to sex offenders, education programs and medical care. Parole authorities insist on prisoners having completed sex offender treatment programs, irrespective of the circumstances of the prisoner. Some prisoners, despite being motivated to, cannot get access to such programs. Others find difficulty in completing them or find they are not suitable programs. I work with prisoners on these issues. On education and medical care the issues here are about access and ensuring prisoners' rights to medical care and education are respected by the authorities.

Parole and release – there is no more important day for a prisoner than when they appear before the parole authorities. Yet in Tasmania, as in nearly all other jurisdictions, there is no automatic right of legal representation for prisoners. PAR writes submissions for prisoners, including reminding the parole authorities

of relevant case law in the area, and helps prisoners prepare their own submissions.

Of course, prison authorities around Australia are notoriously unaccountable for their actions. The misuse of power within prisons by officers and management is chronic and in Tasmania the situation is no different.

However, the presence of PAR at least makes them think twice you might say. And it can lead to changes. Two examples will suffice to illustrate this point.

A few months ago a prisoner was disciplined after an internal inquiry found he had assaulted another prisoner. The prisoner being disciplined told PAR he had never had a chance to respond to the allegations. PAR raised this with the Director of Corrective Services who acknowledged this had been the case and he agreed to review the matter again.

On a number of occasions PAR has advocated on behalf of prisoners who are not given reasons for their reclassification. Now however, as a result of PAR's advocacy, prison authorities have been instructed to provide reasons for this important decision.

### Conclusion

Prisoners are perhaps the most disadvantaged people in society when it comes to being protected from authoritarian decision-making. And prisoners are often living with mental illness, have limited numeracy and literacy skills and have limited access to the outside world. The capacity for undermining their rights by prison authorities looms large on a daily basis.

As lawyers our obligation to society is to give a voice to those who do not have one of their own – prisoners fall into that category.