



Justice Behind Bars

PRISONERS' LEGAL SERVICE INC.

PO Box 5162
West End Qld 4101
Administration: 07 3846 5074
Facsimile: 07 3844 2703
Email: pls@plsqld.com
Web: www.plsqld.com
ABN: 15 677 129 750

Prisoners' Legal Service (PLS)

Submissions to the Productivity Commission on access to justice issues

Prisoners' Legal Service has been operating for 28 years as a community legal service in Queensland providing advice and assistance to prisoners and their families about matters related to incarceration. We operate a free telephone advice service for prisoners and also provide written advice. Each year we conduct a tour of each prison in Queensland and provide face to face advice.

During the last financial year we provided 4534 instances of advice to prisoners and their families. Despite this high turnover, every month our phone records indicate that we are unable answer between 5000 -10 000 calls to our advice service. It is clear that if adequate legal advice could be provided to all prisoners, by a source that they trust, it would reduce the amount of unmeritorious action and ensure access to justice for prisoners.

Prisoners Legal Service is one of very few means of contact that prisoners can have with the outside world. They cannot telephone community or government services¹, access information on the internet, visit a community legal centre or proactively seek other assistance.

Prisoners represent a group with extremely high needs, often including a cross section of mental illness, addiction, homelessness, poverty and low levels of literacy and education. Despite the high levels of social and legal need, people in prison have almost no access to community and government services, aside from corrective services which are commonly a punitive rather than therapeutic focus.

For this reason, we encourage the specific consideration of the barriers facing people in prison in relation to accessing justice. We hope that the following submissions are of assistance in this regard.

- ¹ The prisoner telephone system specifically forbids telephone calls to be made to:
- i. a financial institution;
 - ii. a TAB or any gaming agency;
 - iii. a Government Agency (other than an approved service agency or a law enforcement agency as approved by the Manager, QCSIG as outlined in section 5.0 of this procedure);
 - iv. an information service (eg. services with numbers commencing with the digits 0055, 1800, 1900);
 - v. an official visitor;
 - vi. a paging service;
 - vii. another corrective services facility (unless approved); or
 - viii. a probation and parole office (unless approved).

(emphasis added)

A COMMUNITY LEGAL SERVICE PROVIDING FREE LEGAL ADVICE TO INCARCERATED PERSONS AND THEIR FAMILIES ON MATTERS RELATING TO IMPRISONMENT

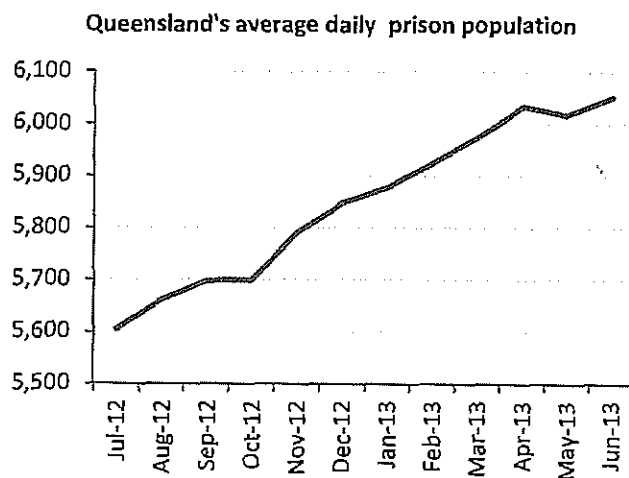
What are the characteristics of individuals who experience multiple problems? What types of disputes are they typically involved in?

Characteristics of Prisoners

Research indicates that prisoners in Australia are among the most disadvantaged people in our society.¹ The Law and Justice Foundation of New South Wales has acknowledged the “concentration of disadvantage in the prison population in terms of higher levels of mental illness, intellectual disability, histories of alcohol and other drug misuse, poverty, poor education, and unemployment than in the general NSW population.”² These factors inevitably result in an accumulation of problems, most of which become worse as a result of incarceration.

The number of people in prison is steadily increasing however, prison growth is not evenly spread and the most disadvantaged can be seen to be making up the highest increases in prison populations. Australia wide, the increase in incarceration rates between 2000 and 2010 include a 58.6% increase in incarceration for Indigenous women, a 35.2% increase for Indigenous men, a 22.4% increase for non-Indigenous women and a 3.6% increase for non-Indigenous men.³

This year in Queensland prison numbers have risen beyond levels ever seen before, as demonstrated by the following table:



Source: Department of Community Safety, Annual Report 2012-2013⁴

As the number of people in prison grows, so too does the demand for community legal centres such as Prisoners' Legal Service. The dedicated staff, management and volunteers at PLS work

¹ Grunseit, A, Forell, S & McCarron, E 2008, Taking justice into custody: the legal needs of prisoners, Law and Justice Foundation of NSW, Sydney

² Ibid 21-22.

³ Steering Committee for the Review of Government Service Provision, 2011, Overcoming Indigenous Disadvantage, Fig 4.12.2.

⁴ p21.

hard to provide advice and assistance on matters related to incarceration to an increasing number of clients.

Some of the most vulnerable individuals in our prison system include Aboriginal and Torres Strait Islander people, women and people with mental illnesses. In many circumstances, these characteristics combine to create enormous barriers to justice for the person concerned.

Aboriginal and Torres Strait Islander people in prison

According to the Australian Bureau of Statistics, at 30 June 2012, the prisoner population in Queensland was 5,593 people.⁶ Of this number, 29.7% were Aboriginal or Torres Strait Islander.⁷ It is clear that Aboriginal or Torres Strait Islander people are over-represented in Queensland prisons. As a proportion, only 0.09% of the non-indigenous population is in prison, however almost 1 percent of the entire indigenous population is in prison. Of the people who contacted Prisoners' Legal Service in the last year, 23% have identified themselves as being either Aboriginal or Torres Strait Islander, or both.⁸ The 12 month prevalence of mental health disorders for Aboriginal and Torres Strait Islander people in prison was approximately 73 per cent in males and 86 per cent in females.⁹ This increases the barriers to accessing justice for this group.

Women in prison

In 2004, 121 women in prison in Queensland were surveyed and the results revealed numerous problems faced by the women and girls.¹⁰ Among these problems were issues in relation to discrimination and jail treatment.¹¹ Aboriginal and Torres Strait Islander women in particular are socially and economically disadvantaged and are overrepresented in prisons.

Women in prison experience high levels of legal need in relation to child custody, including Department of Child Safety disputes, family law issues, domestic violence, victims of crime (both as the victim and as the perpetrator), housing and debt.

People with mental illnesses in prison

Another characteristic that is prevalent within the prison population is mental illnesses. Not only do many prisoners experience some sort of mental illness prior to incarceration, but also the prison setting only further aggravates these issues. For example, our office has observed prisoners being transferred between long term solitary confinement cells and mental health institutions. In Queensland, solitary confinement can be carried on in perpetuity and we know of prisoners kept in this way for over a decade, exacerbating mental health issues. People in prison with mental illness suffer a substantially impaired ability to access justice and an increased likelihood of multiple legal problems. Prison officers are not equipped with the necessary tools or knowledge to deal with prisoners who have mental health problems. The

⁶ Australian Bureau of Statistics, *Prisoners in Australia* (2012), page 36

⁷ *Ibid.*

⁸ Prisoner's Legal Service, *Annual Report 2012 – 2013*

⁹ Heffernan et al, *Inside Out, The Mental Health of Aboriginal and Torres Strait Islander People in Custody*, Queensland Health, 2012.

¹⁰ de Simone, T. & d'Aquino, C. 2004, *Inside out: the access of women and girls to legal aid services*, Legal Aid Queensland, Brisbane

¹¹ *Ibid.*

focus in prison is on whether a prisoner's behaviour should be punished, rather than whether a prisoner's behaviour can be improved by addressing the underlying issues such as mental health.

Types of disputes

Prisoners' Legal Services specialises in prison law. This includes advice on government decisions affecting prisoners and their families such as visits, security classification, transfer, breach of discipline, right to information and parole. Parole is by far our most common query at the moment and this is evidenced in the Prisoner' Legal Services Annual Report for 2012-2013 whereby 2304 advices were given in relation to parole matters during a period of one year.¹²

Some of the other legal needs faced by prisoners include family law issues, child custody issues, housing difficulties, civil law issues and criminal law issues. Many of the civil law issues that exist in a person's life prior to incarceration, such as outstanding fines or debt, are only increased upon entering prison.

Some further legal needs of prisoners include:

Discrimination in Employment

23% of all complaints received by the Australian Human Rights Commission under the Australian Human Rights Act 1986 were on the basis of criminal record discrimination (July 2010 – June 2011)¹³. Over the last five years, a total of 1720 enquiries have been made and 347 complaints have been lodged on this ground.

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.¹⁴ Conversely, economic exclusion can quickly lead to social exclusion, poverty and lack of self esteem.

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.

¹² Prisoner's Legal Service, Annual report 2012-2013

¹³ <https://www.humanrights.gov.au/discrimination-employment-basis-criminal-record>, accessed 5 November 2013

¹⁴ Naylor, B (2011) *Criminal Records and Rehabilitation in Australia*, EJP.

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.”¹⁵

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 half¹⁶. It is self evident that a reduction in re-offending leads to a safer community for 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.

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.”¹⁷*

Housing

Homelessness is one of the major concerns many prisoners face after their release. This issue was explored by the Public Interest Advocacy Centre in their report, *Straight from Jail to Homelessness*¹⁸ which suggests that “A lack of transitional housing and support for people leaving prison may be forcing many ex- inmates into some form of homelessness, and perpetuating a cycle of disadvantage and incarceration.”

Our office is also aware of people who are detained in prison for excessive periods simply because they are unable to obtain an appropriate address for bail or parole.

Incarceration can directly lead to homelessness, for example for people renting before incarceration. After arrest there is often not enough time to notify the landlord and make suitable arrangements for rent or the recovery of bond. This means failed rent payments leading to the loss of accommodation and belongings. In other cases, acquaintances can move in and accrue further debt or damage which is not within the person in prison's control.

Debt

This is a major concern for many prisoners. There are many different sources of the debt, including Child Support, Centrelink, victim compensation, penalties, fines, housing, mobile phone and credit card debt. Many people post release are unemployed or homeless. Research conducted by our office found that 49% of prisoners had committed a crime in order to pay a debt.¹⁹

The economic impacts arising from problems that are unresolved or escalate due to a lack of access to the legal system or legal assistance can be disastrous for a prisoner and their family. Often, a prisoner will incur debts prior or during their time in prison which become challenging

¹⁵ Interview with Phil Dodds, Catholic Prison Ministry, 18 December 2012.

¹⁶ Home Office, UK, *Breaking the Circle*, 2002.

¹⁷ <http://ilbijerri.com.au/productions/project/jack-charles-v-the-crown/>

¹⁸ <http://www.piac.asn.au/news/2013/08/straight-jail-homelessness-piac-report>, 2013.

¹⁹ Stringer, *A Prison and Debt Report*, 1999, UQ and Prisoners' Legal Service.

and problematic for the individual to then arrange payment or deferral due to limited phone access and resources. These debts then usually increase with interest and other late payment penalties causing severe financial hardship upon release. During periods of incarceration, prisoners family members often bear the pressure of these debts and have to deal with debt collectors at a time when they have already lost a breadwinner.

Avenues for civil dispute resolution

Complaint Resolution

Prisoners' Legal Service regularly encourages clients to use complaints resolution processes, including the ombudsman, health complaints and official prison visitors. It is disappointing that recommendations of these bodies are not binding and this can dampen enthusiasm for using these options. For clients engaged in litigation, we actively seek and encourage settlements out of court.

Case study

During our annual prison visit we discovered that many prisoners in far north Queensland had not undergone their scheduled security classification assessment as required under the Corrective Services Act 2006. We wrote to the authorised decision maker who then undertook the assessments. Classification assessments are a vital step in progression and planning of a prison sentence.

In addition to financial costs, timeliness, complexity and geographic constraints, what other issues affect accessibility?

The prison system itself should be considered a barrier to accessibility of civil justice.

Research undertaken by Law and Justice Foundation of New South Wales identified the common barriers suffered unanimously by prisoners in relation to accessing legal information and advice.²⁰

The lack of support and help can play a large role in deterring prisoners from accessing their legal rights and pursuing their legal matters. The lack of support services, community support, programs and legal assistance can dissuade many prisoners who would have otherwise attempted to pursue their legal matters.

The Law and Justice Foundation set out in their article, *Taking Justice into Custody*, specific barriers that were identified in relation to inmates' access to legal information and advice included:²¹

- lack of information about a service or process (e.g. how to request information from the library; how to secure legal representation and how to book an appointment with the visiting legal advice service)

²⁰ <http://www.tascinc.org.au/wp/wp-content/uploads/2013/11/Joint-Submission-to-Productivity-Commission-CRRLJ-NRLJA.pdf>

²¹ <http://www.lawfoundation.net.au/report/prisoners>

- the quality and currency of legal information (e.g. incomplete or out-of-date legal resources in libraries and wrong advice or information from workers, friends or other inmates)
- the length of time it takes to get legal information or advice (e.g. to make a request from a law library if there is no direct access and lawyers not being able to return telephone calls)
- restricted access to legal information due to lockdown, classification or placement on protection/segregation (e.g. inability to physically access the library)
- the requirements and/or limitations of the process of obtaining information compared to the inmates' capacity (e.g. the need for prisoners with poor literacy to complete forms to request help; the provision of written information to prisoners with poor literacy; and, advice sessions being too short, particularly given the cognitive capacity of some inmates).

Further, the study extended to the prisoners opportunities to engage and consult with lawyers whilst in prison. Despite the basic facilities available to the inmates, the interviewees in the Law and Justice Foundation study reported problems for inmates in securing and interacting with legal professionals. Problems included:²²

- inmates not being able to identify the correct process to secure legal advice
- access to the Prisoners Legal Service NSW being undermined by: lack of information about the service in some prisons; the service being over-subscribed; legal advice sessions in jails not taking place or being too brief; the range of advice offered being dependent upon the specialty of the attending lawyer; and the inmates' failure to attend scheduled appointments
- inmates' communication with their lawyers being compromised by: the limited availability of telephones; no facility for lawyers to return calls; delays in getting lawyers' telephone numbers onto phone cards; the expense of the telephone calls if the inmate is moved to a prison away from the lawyer's location (e.g. to a rural prison when the lawyer is in Sydney)
- inmates not getting to see a lawyer before attending court or being confident a lawyer will be present when they attend court
- legal visits in court cells being too brief and not always confidential
- quality/utility of the advice session being compromised by the inmate's mental and emotional capacity, the complexity of information provided, and the (perceived) assumptions by the lawyer about the inmate and inmates in general.

What are the costs to the community and individuals as a result of these barriers?

Lack of support and access to justice can lead to negative results both for the community and for the individual people involved. Scarce access to legal advice or information can result in prisoners bringing inappropriate actions or failing to take any action to secure their rights. People in prison are deprived of the opportunity to resolve disputes in a way that is commensurate with standards in the community. The cost to the community is apparent as

²² <http://www.lawfoundation.net.au/report/prisoners>

there is a reduced likelihood of reintegration into the community and an increased likelihood of reoffending on part of the prisoners.

The use of technology

PLS is a truly statewide service and approximately 55% of our service provision takes place outside of Brisbane. This is only possible through our inclusion as one of a handful of free services on the prisoner telephone system (ARUNTA).

People who contacted PLS did so via numerous channels. The most popular form of communication was telephone, with 67% of people calling the PLS advice line. Written letters made up 23% of advice. Video conferencing is also used for communication. Online service delivery and email is not possible for people in prison as they have no access to the internet.

PLS uses technology to cost-effectively expand services state-wide by offering free telephone and video conferencing to prisoners. This facility reduces expenses as it lessens the need for physical prison visits.

How important is pro bono work in facilitating access to justice? How much pro bono work is currently undertaken, by whom and for whom? What areas of the law, which groups, or geographic locations is pro bono particularly important for?

Case study: Safe Way Home Project

PLS established the Safe Way Home project in 2007, based on a previous program called the Gradual Release Assistance Program. The aim of the initiative is to provide advice and assistance in relation to parole and community leave of absence matters. On the 4th October 2013 the Queensland Attorney-General, the Hon. Jarrod Bleijie, officially launched the parole assistance program. Both DLA Piper and Allens Linklaters have partnered with PLS to assist disadvantaged prisoners across Queensland through the Safe Way Home project. The contribution of DLA Piper and Allens Linklaters has significantly expanded the capacity of PLS to facilitate access to justice. In order for PLS to successfully further the public interest, improve access to justice and protect human rights, pro bono work is vital. The provision of pro bono legal services in this particular area is imperative because of the nature of the prison population. Pro bono assistance is targeted to those most in need, including prisoners with a disability, Aboriginal and Torres Strait Islander prisoners and women in prison. PLS could not, without pro bono partnerships, continue to meet the increasing needs of prisoners in Queensland.

What lessons can be learnt from the criminal justice system that could improve access to and outcomes from the civil justice system or interactions between the two?

Prison law provides an interesting parallel between civil and criminal justice systems. Prison law is a form of civil law dealing with government decision making as it applies to prisoners. However, prison law and criminal law often deal with the question of liberty.

An important sentencing principle in the *Penalties and Sentences Act 1992* (Qld) is that imprisonment is only used as an option of last resort. This principle is entirely absent from guidelines used by the Parole Boards in Queensland. Decisions about granting parole and returning people to custody on suspicion of a breach are as influential in respect of the quantum of punishment as the decision of the sentencing court. Accordingly, the decisions in relation to parole should be subject to the same level of procedural safeguards, resourced legal representation and guided by the same sentencing principles.

The resources and time devoted to the front end (criminal justice) versus the back end (civil justice) of a sentence are not equal or proportionate. The Queensland Parole Boards comprise of 20 members and in 2009-2010 considered a total of 11932 matters over the course of 140 meetings, or an average of 85 matters per meeting.

Legislation prohibits representation before the Parole Boards by a lawyer, whereas Legal Aid is often available for front end matters such as adjournments, committals, bail applications, trials and sentencing. Similar questions of liberty are at stake in criminal matters as in parole applications, challenging parole refusals and returns to custody on a breach of parole.

There is no statutory body with the power to consider appeals from decisions of the Parole Boards, if the effect on the sentence would be excessive, in a similar way to the Appellate jurisdiction of the Queensland Courts. There is no opportunity for merits review of decisions about parole. The power to return a prisoner to custody can be exercised by a Regional Probation and Parole Manager prior to consideration by a Parole Board. There is no requirement for a prisoner to be provided with information about why they are returned to custody at this stage and no opportunity for them to be heard.

Additional problems with the parole processes are faced by the high number of prisoners with low literacy. The only way to apply for parole is by way of a written application, many prisoners are severely disadvantaged in the application process.

Prisoners Legal Service has 2 funded workers to provide assistance state-wide to prisoners who need help with parole. With over 8000 prisoners released per year, this funding is insufficient to meet demand.

Short term prisoners whose parole is cancelled are unlikely to have a further application for parole considered prior to their release from custody at their full time date. This means that they will lose one of their only opportunities for gradual release.

In our opinion, if the civil justice system gave the same level of resourcing and accountability for matters relating to liberty as the criminal justice system access to justice would be greatly enhanced.

Do legal assistance service providers deliver the right mix of services (in terms of forms of assistance and across the various areas of law)? Do they complement each other or are there areas of overlap? Is the current model of legal assistance service delivery efficient, effective and appropriately focused on specific legal needs?

Case Study

A woman with multiple breaches of parole due to alcohol use, homelessness and low self esteem had her parole cancelled. We helped to address these issues and advocated at our

regular Parole Board meetings to have her released to parole. She was released on parole and has remained breach free.

Case Study

A prisoner with an intellectual disability was struggling to file a Judicial Review application with the assistance of other inmates. We obtained instructions to act and the matter was heard, resulting in the release of our client on parole.

Case Study

A foreign prisoner with limited English comprehension required help preparing his written parole application. We conducted interviews with an interpreter to get instructions and prepare a relapse prevention and reintegration plan. Parole was granted and prisoner deported home.

Case study

Ms X requested bankruptcy application forms. We visited her and provided information about bankruptcy. We assessed her situation, debts and assets to ensure that bankruptcy would clear the debts and there would be no outstanding issues. We explained how to complete the bankruptcy application and provided the relevant forms and info kit. Ms X then applied and was declared bankrupt. This will ensure that she will be debt free after release and able to have a fresh start.

Case Study

We helped Mr Y with 2 credit cards, total debt approx. \$25,000. We negotiated with creditors to place a 3 month moratorium on the accounts while he was incarcerated. After release, Mr Y got on Centrelink and we negotiated a further temporary payment arrangement with the creditors to stop the accounts going to collections. This gave him some time to get back to work so that he could pay off the debts without collection activity being commenced against him.

Conclusion

When considering access to justice it is important to specifically consider the issues of people in prison. The high levels of social and economic disadvantage in prison, when combined with reduced capacity due to incarceration mean that unmet legal needs remain an issue with ongoing impacts for the person in prison, their family and their community of return.

Despite this high unmet legal need, people in prison are often invisible in studies about access to justice. Without a considered and targeted approach to addressing the legal need of this group, social and economic disadvantage will continue to increase with detrimental effects on the whole community.