COMMUNITY COALITION ON CORRECTIONS

SUMMARY OF AMENDMENTS PROPOSED TO THE *CORRECTIONS MANAGEMENT BILL 2006*

LIST OF DEFECTS

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The following is a summary of amendments to the *Corrections Management Bill* 2006 that the Community Coalition on Corrections proposes should be made to rectify the defects that the Coalition has identified. More detail is given in an accompanying paper.

1 HEALTH SERVICES ARE ANSWERABLE TO THE CORRECTIONAL AUTHORITIES AND NOT TO THE DEPARTMENT OF HEALTH

Health services in the prison should be appointed by and answerable to the Department of Health and not the Department responsible for corrections as the Bill provides.

> It is the "the chief executive" of the Department of Justice and Community Safety and not of the Department of Health who, under cl. 21(1) "must appoint a doctor for each correctional centre." The terms of conditions of the appointment of the doctor, including powers of dismissal and reappointment, are thus in the hands of an authority that may have an interest in not accepting the doctor's professional advice.
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> Nurses and other medical professionals whose role in maintenance of health treatment in the prison will also be crucial are in an even more subservient position to the correctional authorities. There is not the guarantee that they are to be employed in only therapeutic duties as cl. 21(1) provides for the doctor. Indeed, the only reference to the appointment of other health professionals is in cl. 22 in connection with their performance of non-therapeutic functions like body searching under cls. 115-16 and in future regulations made under cl. 52(4).

2 NO PROVISION FOR THE REVIEW OF DECISIONS OF CORRECTIONAL AUTHORITIES HAVING ADVERSE IMPACTS ON THE HEALTH OF DETAINEES

The Bill contains no realistic means for the resolution of differences of opinion on health issues between health professionals and correctional authorities. Such issues can arise in the context of a particular prisoner (e.g. the prisoner's segregation under cl. 91) or of the impact of a prison practice on the health of detainees generally.

The correctional authorities may, for example, disregard a direction of the doctor "to protect the health of detainees (including preventing the spread of disease at correctional centres)" if he or she "believes, on reasonable grounds, that compliance would undermine security or good order at the correctional centre" (cl. 21(5)).

3 ACCESS BY HEALTH PROFESSIONALS NOT GUARANTEED

There is no general right of access of the medical staff to the prison and detainees. As the Bill stands, the doctor appointed under cl. 21 for the care of the prisoners would be subject to directions of the correctional authorities.

4 HEALTH WORKER-PATIENT CONFIDENTIALITY NOT SECURED

There seems to be no provision to ensure that health records of prisoners are kept confidential from the prison authorities. Those delivering health services should follow professional standards of patient confidentiality. Without this being openly recognised and respected by the correction authorities, health care within the prison will be severely compromised because prisoners will be reluctant to communicate with prison medical staff. The example of New South Wales should be followed where the prison health service is by statute entrusted with "keep[ing] medical records of offenders and other persons in custody" (s. 236A(d), *Crimes (Administration of Sentences) Act* 1999 (NSW)).

The obligation to protect confidentiality should be recognised as applying all who provide health services and not just medical practitioners.

5 CORRECTIONAL AUTHORITIES CAN OVERRIDE MEDICAL ADVICE ON TRANSFER TO EXTERNAL HEALTH FACILITIES

By clause 53, the corrections authorities have power to override the advice of the prison doctor that a detainee should be transferred to an external health facility:

6 THE BILL PROVIDES FOR UNETHICAL COERCIVE MEDICAL INTERVENTIONS

The Bill should not, as it does, empower the correctional authorities to order a doctor to carry out procedures without the consent of the detainee concerned and for reasons other than the treatment of a serious medical condition. This arises in the conduct of drug and alcohol testing ordered by the correctional authorities (cl. 133) and applying restraint or administering drugs to prevent escape (cl. 139(4)). The issue also arises in the doctor's conduct of a body search with a nurse present, not only in the event that a detainee has ingested or inserted something in his or her body "that may jeopardise the detainee's health or wellbeing" (cls. 115 & 116) but also in the event that the detainee has:

- "a prohibited thing concealed in or on the detainee's body that may be used in a way that may pose a risk to the security or good order at a correctional centre; or
- "has evidence of the commission of an offence or disciplinary breach concealed in or on the detainee" (cl. 115).

7 THE BILL PERMITS SOLITARY CONFINEMENT AS A DISCIPLINARY MEASURE WHICH IS BOTH INHUMANE AND MEDICALLY HARMFUL

The Bill allows solitary confinement as a disciplinary measure even though this is likely to have serious impacts on the health of detainees. This should not be allowed.

8 OTHER SEGREGATIONS ARE PERMITTED WITHOUT CONSISTENT REGARD TO THE HEALTH AND WELLBEING OF DETAINEES

Health and well being should be a mandatory consideration for all the many grounds for segregation provided for in the Bill. Corrections authorities should be obliged to avoid separate confinement wherever possible and to take into account the advice of the doctor in all cases, not just in the case of segregation on the grounds of safety and health.

9 THERE IS AN OBLIGATION TO LIMIT EXPOSURE OF DETAINEES TO RISK OF INFECTION BUT NOT TO RISK OF INJURY

Cl. 52(1)(d) obliges the corrections authorities to "ensure that as far as practicable, detainees are not exposed to risks of infection." There should also be an obligation not to expose detainees to injury.

10 THE BILL IMPOSES AN OVERRIDING COERCIVE REGIME THAT DOES NOT REFLECT ACT AND NATIONAL DRUG POLICY

As it stands, the Bill would permit the exercise of discretions in ways contrary to the ACT and national drug strategies. The Bill should reflect ACT and national drug strategies by including among its objectives the minimisation of harm associated with drug (including alcohol) use in prison. The terms "harm minimisation" and "harm reduction" are not used in either the Bill or its explanatory statement.

11 NO PROVISION IS MADE FOR SYSTEMATIC INDEPENDENT INSPECTION AND MONITORING OF PRISON CONDITIONS AND PRISON HEALTH SERVICES

The Bill makes no provision for the systematic monitoring and review of prison conditions including review of health services in the prison. The Bill creates an authoritarian structure with only limited and *ad hoc* provision for outside independent inspection. Provision should be made for a standing community Prison Advisory Board with a mandate to call for information and make inspections and for an independent expert monitoring of the well-being of detainees and the health service within the prison.

12 THE BILL PERMITS OBJECTIVES OF WELL-BEING AND REHABILITATION TO BE OVERRIDDEN UNJUSTIFIABLY BY OVERARCHING ILL-DEFINED CONCERNS FOR SECURITY

In cl. 8(a), the Bill gives wide and unjustified scope for correctional authorities to override the objective of "reformation and social rehabilitation" which should be the "essential aim" of the prison. The Bill does so on the ground of ill-defined and minimal concerns for security.

13 DENIAL OF OUTSIDE CONTACT ON THE GROUND OF COMMUNITY DISTRESS

Community distress is set down as a ground for denying telephone contact (cl. 47(6)(d)), mail (cl. 48(5)(d)) and visits from family members and others (cl. 49(4)(d)). The ground could be used to deny particular prisoners in the public eye

with outside contact and to frustrate legitimate media investigation into conditions in the prison. Reference to community distress should be deleted.

14 THERE ARE AN UNACCEPTABLE NUMBER AND BREADTH OF GROUNDS FOR NOT MEETING RELIGIOUS, SPIRITUAL OR CULTURAL NEEDS OF DETAINEES

The Bill allows correctional authorities to derogate excessively from the obligation under cl. 54 to make provision for religious, spiritual and cultural needs of detainees including access to ministers of religion and religious services.

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