



Law Council  
OF AUSTRALIA

Office of the President

**13 September 2018**

Kristin Crawford  
Director, Human Rights Unit  
Attorney-General's Department  
3-5 National Circuit Barton  
ACT 2600

By email: [humanrights@ag.gov.au](mailto:humanrights@ag.gov.au)

Dear Ms Crawford

### **Australia's draft sixth periodic report to the Committee against Torture**

1. The Law Council is grateful for the opportunity to comment on Australia's draft sixth periodic report to the United Nations Committee against Torture (**Draft Report**).
2. The Law Council supports Australia's participation in the international human rights system. Pursuant to the Law Council's *Policy Statement on Human Rights and the Legal Profession*, the Law Council commits to promote the timely submission by Australia of periodic reports to international human rights treaty bodies, prepared in consultation with human rights and civil society organisations and in accordance with relevant reporting guidelines, as well as frank and constructive engagement by Australia with international human rights bodies.
3. While the Law Council commends the Australian Government for its preparation of the Draft Report, it is noted that the tight timeframe in which to provide input makes it difficult for non-government organisations to provide constructive suggestions for the Draft Report to ensure that an accurate picture of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) is presented to the United Nations.
4. Given the tight timeframe, Law Council has not been able to comment of each aspect of the Draft Report, and instead provides the following submissions that have been prepared by the Law Society of New South Wales (**Law Society of NSW**). The Law Council therefore puts these views of the Law Society of NSW to the Attorney-General's Department with the view to informing the Draft Report.

### **Health care for persons held in prison in New South Wales**

5. Paragraph 226 of the Draft Report asserts that "[w]hile in custody, detainees [in each state and territory] receive the same level of health care the general public would receive under the public health system". This statement fails to take into account key differences between custodial and public health in New South Wales (**NSW**). Section 19(2) of the *Health Insurance Act 1973* (Cth) disallows the payment of benefits under Medicare and the Pharmaceutical Benefits Scheme (**PBS**) for services rendered by, or on behalf of a state or territory government authority. This provision, which purportedly exists to

prevent a service from being funded twice, has the effect of excluding prisoners and young people in detention in NSW from Medicare and PBS subsidies.<sup>1</sup>

6. Additional issues with the standard of health care available to prisoners and young people in detention in NSW are as follows:

- Frontline staff at NSW Justice Health and Forensic Mental Health (**JH&FMH**) clinics are nurses, not General Practitioners (**GPs**). This limits their ability to review and treat patients and prescribe medication.
- Waiting times to see medical practitioners inside correctional centres in NSW are extremely long compared with those experienced by the general public. A 2015 report by the NSW Inspector of Custodial Services found that the average waiting time to see a primary health nurse across all correctional centres in NSW was 28 days. The waiting time to see a GP for people in a correctional centre was over a month on average, while the waiting times to see a mental health nurse and psychiatrist were 27 days and 42 days respectively.<sup>2</sup> By contrast, analysis completed by the Australian National University in 2014 found that across the country as a whole, Australians living in rural areas waited an average of 6 days to see their preferred GP in 2013 compared to 3.1 days in metropolitan areas.<sup>3</sup>
- The mental health services available to inmates in NSW are insufficient given the scale of the need arising from demographic and environmental factors. The Network Patient Health Survey conducted by NSW JH&FMH in 2015 reported that nearly 63% of the adult population in correctional centres in NSW had received a mental health diagnosis, most commonly depression and anxiety. In 2010, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health reported that in NSW 43% of prisoners met the diagnostic criteria for at least one mental illness, compared with 15% of adults in the general population. Psychosis was reported as 10 times more prevalent in prisons than in the community.<sup>4</sup>
- Basic dental care is notionally available in correctional centres, but in practice many people in these facilities routinely wait long periods to see a dentist or are released before they have the opportunity to see one. Common complaints include lack of review for loose teeth, gum disease, lost fillings, tooth ache, abscesses and dentures.
- In contrast to Victoria and the ACT, people in correctional centres in NSW have no express rights protection in relation to the right to access reasonable medical care and treatment.<sup>5</sup>

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<sup>1</sup> Chris Johnson and Simon Tatz, 'Prisoners could get Medicare without a heavy taxpayer burden' (2017) 29 *Australian Medicine* 5, 11.

<sup>2</sup> NSW Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW* (2015), NSW Government, 53.

<sup>3</sup> Australian National University, 'Double trouble with rural waiting times', 20 November 2014, <http://www.anu.edu.au/news/all-news/double-trouble-with-rural-waiting-times>.

<sup>4</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover* (3 June 2010), 14<sup>th</sup> session, agenda item 3, A/HRC/14/20/Add.4, 70.

<sup>5</sup> See *Corrections Act 1986* (Vic) s 47 and *Corrections Management Act 2007* (ACT) s 53.

## Treatment of persons with mental impairment in the criminal justice context

7. At paragraph 281, the Draft Report states that 'Australia is committed to ensuring that no one in Australia is deprived of their liberty on the basis of their disability'. In NSW, people with intellectual disabilities who exhibit challenging or violent behaviour are acutely vulnerable to contact with the criminal justice system and loss of liberty. Individuals in this cohort can face difficulties in obtaining appropriate residential supported accommodation when they are eligible to be released on bail, an issue that is not addressed in the draft Periodic Report.
8. In some cases, service providers withdraw their services following a person's interaction with police, effectively leaving them homeless and unable to be bailed and released from prison. As a result of some service providers being unwilling to accommodate clients with mental impairment or to organise alternative crisis accommodation, some individuals may remain in custody despite being eligible for bail.

## The use of conducted energy weapons (Tasers) in NSW

9. The Draft Report notes at paragraph 362 that 'States and territories maintain governance structures to report, record, monitor and evaluate the use of Tasers', and that this reporting is mandatory.
10. In NSW these governance structures are articulated in Police Force Standard Operating Procedures (**Taser SOPs**) which regulate the issue, return, deployment, discharge and post-deployment actions relating to use of Tasers. In accordance with the Taser SOPs, all Tasers are fitted with an audio-visual recording device (**Taser Cam**) which is activated when the Taser is in the 'armed' position. As the NSW Ombudsman noted in a 2012 report, however, footage obtained from Taser Cam is often obstructed, grainy, blurry or otherwise too close to the subject.<sup>6</sup> This limits the utility of Taser Cams as an inbuilt accountability mechanism and a safeguard against serious and unlawful use.

Should you have any queries, please contact in the first instance, Mr Nathan MacDonald, Senior Policy Lawyer, on (02) 6246 3721 or at [nathan.macdonald@lawcouncil.asn.au](mailto:nathan.macdonald@lawcouncil.asn.au).

Yours sincerely



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<sup>6</sup> NSW Ombudsman, *How are Taser weapons used by the NSW Police Force? A Special Report to Parliament under s. 31 of the Ombudsman Act 1974* (October 2012), 182.