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Mr B McConnell
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Dear Mr McConnell

Thank you your letter of 30 April 2007 on various matters associated with the Alexander Maconochie Centre (AMC).

I understand you met with John Paget, Sean Moysey and Dr Pene Mathew from my Department on 15 March 2007 to discuss the *Corrections Management Bill 2006.*

As discussed with you, clause 21 addresses rule 22 of the UN *Standard Minimum Rules for the Treatment of Prisoners,* which requires every institution to make the services of a medical practitioner available to detainees. Clause 21 of the Bill is an expression of the government imposing an obligation upon itself to appoint a doctor for each correctional centre. It is not authority to control the doctor.

A doctor appointed under the Bill would be a doctor who is registered to practice in the ACT under ACT laws.

Clause 21 is modelled on section 20 of the New Zealand *Corrections Act 2004,* New Zealand also being. a human rights jurisdiction. The starting point for the prison and for this Bill is the *Human Rights Act 2004,* consequently the international instruments and international jurisprudence on this issue are also the starting point.

The Plain English Guide to the *Human Rights Act 2004* notes that:

> The [Human Rights Act] HRA is not an isolated piece of domestic legislation but part of an international body of thinking and case law on human rights. Section 31 of the HRA allows Territory officials to draw on sources of international law and judgments of foreign and international courts for guidance on how to interpret what human rights mean in the ACT. The rights set out in Part 3 are drawn from the [International Covenant on Civil and Political Rights] ICCPR but it will also be appropriate to refer to other international instruments to see how those rights should be applied in a particular situation. International instruments include Conventions and Declarations such as the Convention on the Rights of the Child, and rules such as the UN Standard Minimum Rules for the Treatment of Prisoners.

There are few limitations on the exercise of the therapeutic doctor's functions and where those limitations are made they are a means to resolve the impasse between therapeutic imperatives and custodial imperatives should a situation actually reach that point. Clause 21(5) is one, clause 53 is the other. These powers are constructed in a manner that requires the Chief Executive to demonstrate the validity of their decision: they have to justify the decision. In administrative law terms the decision must be rational, in human rights law the threshold is higher as the decision must be rational and proportionate.

Human rights instruments and jurisprudence places the onus upon the prison administration to provide access to health care equivalent to the care available to the community. That obligation is reflected in the

breadth of clause 52 of the Bill. Conversely, United Nations resolution 3/194 of 18 December 1982 obliges health personnel who provide therapeutic treatment not to be involved with custodial matters.

> Principle 3
> It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

It does not mean that corrections officers provide the treatment - or that treating practitioners become corrections officers - it means that whoever has responsibility for the administration of prisons must ensure healthcare is provided consistent with the standards in their community.

I should also emphasise that any decision in the Bill must also be exercised in a manner consistent with the *Human Rights Act 2004.* Section 30 of the *Human Rights Act 2004* creates a duty that all public officials, including tribunals and courts, must act consistently with human rights unless the law clearly authorises otherwise.

With respect to the Bill as a whole, I trust you will take some comfort from the pleasing support it has received from the International Commission of Jurists and that the Legislative Assembly Standing Committee on Legal Affairs in its scrutiny report has raised no significant issues.

Rather than exchange letters on the complex issue of performance indictors, including those dealing with correctional performance published by the Productivity Commission in its annual *Report on Government Services,* I would invite you to discuss this matter when at your next meeting with Mr Paget.

On those matters, I make three points. Firstly, I am advised that over 50% of the performance indicators in the ACT Corrective Services *Drug, Alcohol and Tobacco Strategy* relate to changes in behaviour. Secondly, whatever performance indicators are finally approved must be tightly focused; a plethora of indicators will serve no-one's purposes. Finally, with respect to your suggestions concerning post release surveys, I draw your attention to the proper limitations placed on corrections once a prisoner is no longer in its legal custody.

I thank you again for your continuing interest in and contribution to the AMC project.

Yours sincerely

Simon Corbell MLA
Attorney General
28.5.07