

ACCESS TO JUSTICE AND LEGAL NEEDS

# Taking justice into custody

THE LEGAL NEEDS OF PRISONERS

July 2008



LAW AND JUSTICE  
FOUNDATION

OF NEW  
SOUTH WALES



ACCESS TO JUSTICE AND LEGAL NEEDS  
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Anne Grunseit, Suzie Forell & Emily McCarron

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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This report is part of the Access to Justice and Legal Needs monograph series published by the Law and Justice Foundation of New South Wales. The Foundation seeks to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

The series is aimed at researchers, policy-makers, government, the legal community and others interested in legal need and access to law and justice. It is a scholarly, refereed series. Monographs are refereed by at least two appropriate external referees who are independent of the Foundation and any other organisations/authors involved in the publication.

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# Foreword

The purpose of the Law and Justice Foundation of New South Wales is to advance the fairness and equity of the justice system and to improve access to justice, especially for economically and socially disadvantaged people. In 2002 the Foundation commenced the Access to Justice and Legal Needs (A2JLN) research program, which aims to examine the ability of disadvantaged people to:

- ◆ obtain legal assistance
- ◆ participate effectively in the legal system
- ◆ obtain assistance from non-legal advocacy and support
- ◆ participate effectively in law reform processes.

The main purpose of the program is to provide a rigorous and sustained assessment of the legal needs of the community, especially disadvantaged people, and their ability to access justice. This will provide evidence to assist government, community and other organisations to develop suitable policies and to plan service delivery. The research is a challenging program involving an interconnected set of projects, employing a range of qualitative and quantitative methodologies.

One important feature of the A2JLN research program is the examination of the particular access to justice issues and legal needs of selected disadvantaged groups. This qualitative study focuses on the legal needs of prisoners. Other groups examined as part of the program include older people, homeless people and people experiencing a mental illness. Prisoners were included in the A2JLN research program because of the concentration of disadvantage experienced by 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. Prisoners were also included because there is available evidence

that they experience a unique range of barriers in meeting their legal needs, there is a dearth of research on this topic, and prisoners are a group that have been so far ‘missed’ by our legal needs survey research.

While all prisoners face or have faced criminal law issues, this study also highlights the range of civil and family law problems that arise when people are often suddenly removed from their daily lives. These issues add to the legal problems accumulated in the chaotic period prior to custody (such as fines, debts, other criminal matters) and legal issues that are particular to inmates (such as parole and prison disciplinary matters).

This report also illuminates how the personal capacity of inmates, the systemic environment, the pathways to legal help and the prison culture all intersect to affect the capacity of prisoners to address their civil, family and criminal legal issues as they move through the incarceration process. It outlines the barriers caused by those factors, and highlights specific policy and service delivery implications for those working in the sector, to improve access to justice for people in prison.

*Taking Justice into Custody* is primarily based on consultations with legal and non-legal service providers, NSW Department of Corrective Services staff, serving inmates and people recently released from prison. It has also drawn upon existing literature and available statistics. While the report ‘stands on its own’, it is complemented by data collected in the other quantitative and qualitative components of the A2JLN program. The following reports in particular should be considered:

- ◆ *Stage 1: Public Consultations* (2003)
- ◆ *Stage 2: Quantitative Legal Needs Survey, Bega Valley (Pilot)* (2003)
- ◆ *Data Digest* (2004)
- ◆ *The legal needs of older people in NSW* (2004)
- ◆ *No home, no justice? the legal needs of homeless people* (2005)
- ◆ *Justice made to measure: NSW legal needs survey in disadvantaged areas* (2006)
- ◆ *On the edge of justice: the legal needs of people with a mental illness* (2006).

Geoff Mulherin  
Director  
Law and Justice Foundation of New South Wales  
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# Abbreviations

A2JLN	Access to Justice and Legal Needs
ABS	Australian Bureau of Statistics
ADVO	Apprehended Domestic Violence Order
AJAC	Aboriginal Justice Advisory Council
ALIA	Australian Library and Information Association
ALS	Aboriginal Legal Service
ATSI	Aboriginal or Torres Strait Islander
AVL	Audio Visual Link
AVO	Apprehended Violence Order
BOCSAR	Bureau of Crime Statistics and Research
CJSN	Criminal Justice Support Network
CLC	Community Legal Centre
CRC	Community Restorative Centre
CSA	Child Support Agency
Cth	Commonwealth
Cth AGD	Attorney General's Department (Commonwealth)
DCS	Department of Corrective Services (NSW)
DIAC	Department of Immigration and Citizenship (Commonwealth)
DOCS	Department of Community Services (NSW)
DOH	Department of Housing (NSW)
DSP	Disability Support Pension
DUMA	Drug Use Monitoring in Australia project
DV	Domestic violence

FCA	Family Court of Australia
Foundation	Law and Justice Foundation of New South Wales
HREOC	Human Rights and Equal Opportunity Commission
IARC	Immigration Advice and Rights Centre
ICAC	Independent Commission Against Corruption
IDC	Inmate Development Committee
IDRS	Intellectual Disability Rights Service
IHS	Inmate Health Survey, conducted by Justice Health
LAQ	Legal Aid Queensland
LIAC	Legal Information Access Centre of the State Library
LRC	Law Reform Commission (NSW)
LRCWA	Law Reform Commission (Western Australia)
MIN	Master Index Number
MRRC	Metropolitan Reception and Remand Centre
NAIDOC	National Aborigines and Islanders Day Observance Committee
NESB	Non-English Speaking Background
NSW	New South Wales
NVivo	QSR NUD*IST Vivo software analysis program
OFT	Office of Fair Trading (NSW)
OIMS	Offender Integrated Management System
PAA	Prisoners' Aid Association
PIAC	Public Interest Advocacy Centre
PLS	Prisoners Legal Service
RTA	Roads and Traffic Authority (NSW)
SAAP	Supported Accommodation Assistance Program
SCRGSP	Steering Committee for the Review of Government Service Provision
SDRO	State Debt Recovery Office
SORC	Serious Offenders Review Council
SPA	State Parole Authority (NSW)
SSAT	Social Security Appeals Tribunal
TICA	TICA Default Tenancy Control System
VACRO	Victorian Association for the Care and Resettlement of Offenders
WAIS-R	Wechsler Adult Intelligence Scale-Revised test

# Glossary

AVL	Audio Visual Link enables prisoners to appear in court on screen from prison so that prisoners do not have to physically travel to court for certain hearings. It is also used by Legal Aid for some conferences between inmates and their lawyers.
Bail	An agreement to attend court to answer a criminal charge. The alternative to bail is remand in custody.
Case management	An internal NSW Department of Corrective Services (DCS) multi-disciplinary process to assess, plan and co-ordinate options and services to meet individual inmates' needs.
Classification 'classo'	A rating of the level of security in which an inmate must be held. Correctional centres are classified as maximum, medium or minimum security. Inmates are placed according to their classification.
Centrelink	The agency that administers social security payments in Australia.
Community Corrections	Community Corrections (also known as Probation and parole) is responsible for the management of offenders released on parole or probation within the community.
Court Net	The court administration system that maintains court records in NSW.
Deps Clerk	Short for Deputy Governor's Clerk. Historically the Deputy Governor was responsible for the custodial/security management of a prison, while the Governor was responsible for the administration of the prison. The Deputy Governor's role is now called Manager of Security. The title Deps Clerk is still used in prisons.

Forensic patient	An offender who has been found not guilty by reason of mental illness, unfit to be tried because of mental illness or who is awaiting trial for a serious offence where mental illness is thought to be a factor. Inmates already in custody who become mentally ill may also be classified as forensic patients.
Inmate Development Committee (IDC)	An elected body of inmates within correctional centres that meet to discuss and resolve inmate issues with senior management.
LawAccess	LawAccess is a free government telephone service that provides legal information, advice and referrals. for people who have a legal problem in NSW.
LIAC	The Legal Information Access Centre is a specialist legal information service run by the State Library of NSW. It provides information about the law through public libraries in NSW.
Lockdown	Where inmates are detained in their cells or wing areas as a result of a security or staffing problem.
MIN	A Master Index Number is an identity number given to an inmate when they are first incarcerated. They retain this number for all subsequent incarcerations.
OIMS	The Offender Integrated Management System is the internal DCS system supporting case management of inmates. It contains offender records relating to location and transfer history, classification plan, court appearance details, security, self harm details, demographic, and biometric identification details.
Offender Services and Programs	These programs and services for inmates in NSW prisons include education, psychologists, welfare officers, Indigenous support officers, alcohol and other drugs counsellors.
Parole	The formal release of a prisoner to live in the community prior to the end of their full sentence period, on the proviso that they adhere to certain conditions of that parole.
Pod (or Wing)	Accommodation area for inmates in prison.
Probation and parole	See ‘Community Corrections’

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Protective custody	The practice of accommodating inmates separately to the main inmate population for their own protection.
Recidivism	A return to criminal offending (or prison) after a person has been released from custody. The recidivism statistics used in this report refer to inmates who return to prison within two years of release.
Remand in custody	The detention of a person in custody who has been charged with a criminal offence but is yet to be tried or sentenced.
Segregation 'segro'	The practice of accommodating inmates separately to the main inmate population, to protect other inmates and staff.
Sentence	A term of imprisonment to be served.
Tenancy database	Private companies that hold information about potential tenants for use by landlords and real estate agents.
TICA	Refers to the TICA Default Tenancy Control System, an Australian default tenancy database, which provides information to property owners about potential tenants. See <a href="http://www.tica.com.au/iabout.htm">http://www.tica.com.au/iabout.htm</a>
The Way Forward	A model for operating correctional centres that involves a <i>'new custodial rank structure; a more efficient staffing policy based on the principle of having inmates engaged in structured activities; increased opportunities for inmates to be engaged in employment or programs; and a new staff award including flat overtime rates and no overtime rates for management.'</i> (NSW DCS, 2004a, pp. 6–7)
Throughcare	Post-release planning and service provision which commences before the prisoner is due for release.
Unconditional release	Release with no parole conditions after a full sentence has been served.





# Executive Summary

## Aim

The legal needs of prisoners project, *Taking justice into custody*, is part of a broader program of research being undertaken by the Law and Justice Foundation of New South Wales into the access to justice by, and the legal needs of, economically and socially disadvantaged people.<sup>1</sup> Prisoners have been included in this program in recognition of:

- ♦ 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
- ♦ the existence of previously collected evidence that prisoners experience a unique range of barriers in meeting their legal needs because of the nature of the prison environment
- ♦ the dearth of research on this topic.

This report examines the capacity of prisoners in NSW to:

- ♦ obtain legal information (for criminal, civil and family law matters)
- ♦ obtain legal advice and representation (including basic legal advice, initial legal assistance and legal representation)
- ♦ participate effectively in legal processes (including access to courts, tribunals, and prison disciplinary/administrative processes).

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<sup>1</sup> The Access to Justice and Legal Needs (A2JLN) research program is described in the foreword of this report.

Included under these aims was the ability of prisoners to obtain assistance with their legal issues from non-legal sources (including the NSW Department of Corrective Services (DCS) and external support agencies), as previous research has demonstrated the important role such assistance plays in resolving legal issues (see, for example, Forell, McCarron & Schetzer, 2005). The investigation examined the above issues in relation to not only the prisoners' existing legal troubles, but other legal problems that may arise or be prevented during their incarceration.

## Method

In this project, we used qualitative interviews to explore the experiences of prisoners and people recently released from prison. Through one-on-one interviews and a small number of focus groups, we also sought the perspectives of DCS staff and other legal and non-legal service providers who support both prisoners and ex-prisoners.

In total we interviewed 67 prisoners and ex-prisoners and 42 other stakeholders using semi-structured, open-ended questions. The prisoner sample for this project included 27 sentenced inmates and 19 inmates on remand, drawn from five NSW prisons. The ex-prisoner sample included 15 parolees and six unconditionally released inmates, who had been released from full-time custody in the last two years. Interviewees were asked a series of semi-structured, open-ended questions seeking information about their experience of different legal problems, what steps they had taken (if any) to remedy them and the current status of that problem.

The stakeholder sample for this project was drawn from DCS staff and other service providers. Nineteen DCS staff were interviewed, including prison welfare staff, a financial counsellor, parole officers, library staff, education officers, policy workers, 'Throughcare' workers, and department managers working both within correctional centres and in head office. Interviews were also conducted with 23 legal and non-legal service providers who provide support to prisoners and people recently released from prison.

## Legal issues experienced by prisoners

Prison inmates by definition have experienced or are experiencing criminal law issues. However, our research suggests that prisoners commonly face

a range of other civil and family law issues as well. Some arise from their chaotic lives and financial disadvantage prior to custody, including outstanding debt, unpaid fines, unresolved family law issues and apprehended violence orders. Imprisonment itself also may lead to further legal issues as the person is suddenly excised from their everyday life. Prisoners' housing, child custody arrangements, the retention of their personal effects, employment, the operation of any business and/or social security payments are all affected by their sudden separation from the community through incarceration. Legal issues particular to being a prisoner may also arise, such as bail, prison disciplinary action, classification and segregation issues, victims compensation restitution, and the threat of deportation. When they leave prison, ex-prisoners may experience legal issues relating to their parole and discrimination when seeking housing and employment. Our research also demonstrated that, upon release, prisoners may feel the impact of unresolved legal problems dating from a time prior to custody or during their imprisonment.

## Opportunities and barriers to access justice

Interviews with inmates, ex-inmates and the people who assist them, indicated that technically, there are opportunities for prisoners to obtain legal information, advice and representation and to participate in legal processes. Visiting legal advice services, prison libraries, prison staff and independent organisations, as well as telephone access, do much to facilitate the access that prisoners have to legal assistance. However, the interplay of the prison environment, inmates' own personal capacity, the pathways through which inmates can access help, and prison culture, all mean that in many instances, those opportunities are missed or somehow compromised.

### **Obtaining legal information in prison**

Our research indicates that prisoners obtained information about legal issues from a range of sources, including the prison library, welfare staff, other inmates, the visiting legal advice service, and from their own lawyers. Specific barriers that were identified in relation to inmates' access to legal information and advice included:

- ♦ 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)

- ♦ 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).

### **Legal advice and representation in prison**

Opportunities to engage and consult with a lawyer are available to inmates whilst in prison. Legal Aid's Prisoners Legal Service (PLS), for example, provides a visiting legal advice service to NSW prisons on a regular basis. Legal numbers are included on prisoners' phone cards and the number for LawAccess is automatically programmed in. Legal advice visits are catered for with designated areas and times for such visits to take place. However, despite these facilities, interviewees in the current study reported problems for inmates in securing and interacting with legal professionals. Problems included:

- ♦ inmates not being able to identify the correct process to secure legal advice
- ♦ access to the PLS 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 speciality 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.

### **Effective participation in legal processes**

To participate effectively in a legal process a prisoner needs to be aware the process exists, know what to become part of that process and be able to signal that intention to the relevant authority. Again, procedures are in place to facilitate inmate participation in law processes, especially criminal law processes. However, during our interviews, we unearthed a number of barriers to inmates commencing and participating in criminal and civil legal processes. These included:

- ♦ limiting beliefs held by inmates (e.g. the perception that a legal process would have negative consequences or would not yield a satisfactory/fair outcome; inmates pleading guilty or choosing not to attend court for fear of leaving their current prison and losing their “place” and privileges, and the humiliation of being transported to court in a truck)
- ♦ lack of understanding about what transpired in a hearing or a misunderstanding about the outcome or obligations of a legal process (e.g. an inmate leaving court without understanding the sentence or the consequences of any conditions to which they agreed)
- ♦ lack of information about possible legal remedies and how to initiate and participate in a legal process when in prison, and about the progress of their own matter (e.g. court dates and which lawyer would be attending)
- ♦ inefficiencies in the process (e.g. inmates seeking assistance for the same legal problem from several different staff members and inmates needing to rely on other people to initiate or progress a legal process and this assistance not being forthcoming)
- ♦ lack of confidentiality (e.g. keeping sensitive briefs of evidence or other information in cells and conferring with counsel while in court cells)

- ◆ insufficient time/facilities to prepare cases (e.g. briefs of evidence being held up in the mail system; inmates not getting enough information about how their case is to be run; and, limited facilities to read briefs of evidence)
- ◆ lack of direct access by telephone to government departments
- ◆ restrictions on legal transactions inmates are allowed to make because they are inmates.

Particular issues were raised in relation to appearing in court by Audio Visual Link (AVL), including the perceived impact of appearing by AVL in prison uniform rather than civilian clothes, and the greater difficulties for inmates with cognitive impairment to follow proceedings by AVL.

Consequently, while there are opportunities for prisoners to access justice, there are situations where these opportunities break down. Our analysis shows that there are a number of factors which contribute to the breakdown of opportunities for inmates to access justice. These are analysed and discussed under four themes:

- ◆ the personal capacity of prisoners (prisoner capacity)
- ◆ the manner in which the various components of the justice and administrative system (prison, courts, advocates, authorities, etc.) operate and interact (systemic environment)
- ◆ features of the pathways and intermediaries inmates utilise to address a legal need (pathways and intermediaries)
- ◆ the role of culture operative in the prisons sampled in shaping inmates' legal needs and responses to those needs (prison culture).

## Prisoner capacity

Interviews conducted for this study indicated that prisoners' capacity to identify and deal with legal issues they are facing, and to actively participate in legal processes to resolve those issues, is affected by their own:

- ◆ histories and lives before prison
- ◆ financial capacity and resources
- ◆ prior experience in legal processes

- ◆ comprehension capacity
- ◆ life skills.

Prisoners commonly reported that their lives had been spiralling out of control prior to their coming into custody. Contributing factors included mental illness, alcohol and other drug misuse, difficult and unhealthy family relationships, criminal activity, prior custody and poverty. As a result, inmates often came to jail with multiple criminal and civil legal issues, were not necessarily aware of the extent of these issues, had limited documentation, and had often damaged relationships with formal and informal sources of support.

Of particular note was a tendency reported in the interviews for inmates to have made financial, family and other arrangements outside the formal legal processes. These included informal money lending, housing and custody arrangements. There were also examples of this extending to the use of violence to settle scores. A lack of trust in and marginalisation from formal legal processes, appeared to contribute to the reliance on alternative, less formal solutions. Choices concerning appropriate courses of action were further compromised by inmates' often limited financial resources and lack of appropriate documentation. Consequently, inmates commonly came to jail with multiple legal problems but little leverage to resolve those issues easily.

Given the significant systemic barriers they face to addressing multiple legal issues from inside jail, inmates need to be motivated, tenacious, articulate, patient, organised and familiar with the law and legal process to successfully address their legal needs. In contrast, the profile of the prisoners in NSW is characterised by high rates of illiteracy, mental health issues, alcohol and other drug misuse, and cognitive impairment. Many prisoners had limited or interrupted education. Periods in custody had served to decrease inmates' confidence and skills at being able to function constructively when they return to the community.

Without recourse to the necessary skills or support to address legal issues, inmates tended towards maladaptive interaction styles (e.g. passive or aggressive behaviour). Dangerously, the inability of some prisoners to comprehend legal information, advice or outcomes was sometimes overlooked by people who offer assistance, because previous experience before the courts or time inside was taken as a proxy for actual knowledge. Lack of capacity may also be masked by bravado or disinterest because people are too embarrassed, intimidated or overwhelmed to admit that they did not understand information or advice, or that they cannot read.

Difficulties understanding and engaging with lawyers and the legal process also appeared to alienate inmates from using the law in their own interest, with some prisoners actively avoiding legal help. Inmates whom we interviewed reported avoiding the legal system to redress injustice because, in their experience, it was intimidating, incomprehensible and unlikely to operate in their favour. When compelled to participate in the legal process, some people did so in a state of ignorance and ensuing anxiety.

## Systemic environment

As a consequence of being in prison and having legal needs, prisoners usually come into contact with a number of systems, such as the legal, custodial and bureaucratic systems. Features of, and tensions between, the systems have presented barriers to prisoners accessing justice.

Firstly, according to our interviewees, the level of resourcing within DCS and public legal services, such as the Legal Aid Commission of New South Wales (Legal Aid) and the Aboriginal Legal Service (ALS), seemed to threaten the capacity of these bodies to facilitate prisoners' access to justice. For example, the number of inmates requiring time with the PLS visiting legal advice service meant that each inmate may only have five or 10 minutes to discuss their case. Many felt that this was insufficient to convey their situation and absorb the advice offered.

Opportunities to contact a lawyer by telephone or during a legal advice visit, reach the library for legal information and get legal support through welfare staff can be compromised by conflicting priorities within the custodial system, such as the emphasis placed on security and efficient management of inmates in correctional centres.

There also seemed to be clashes between the custodial system and the legal systems and processes, making it difficult for inmates to access legal help. For example:

- ♦ the hours that lawyers were available often did not match the hours of operation within the prison (that is, when inmates were out of their cells)
- ♦ time-limited telephone calls from prison made it particularly difficult for inmates to get help through the receptionist and call centre based systems adopted by Legal Aid and other legal service providers



- ♦ lockdown at the prison could prevent an inmate receiving a legal visit or a consultation with the visiting legal advice service.

The AVL system was posited as a way that could circumvent some of the tensions between these external systems and internal custodial processes. However, its utility is tempered by the concern that AVL can add another layer of confusion for inmates who already have comprehension difficulties. Other initiatives, such as the recent implementation of the Centrelink outreach service, were also suggested as ways to ameliorate conflict between the different components of the broader justice system.

Finally, while procedures are in place enabling inmates to participate in their criminal matters, there are less systemic processes and facilities available to help prisoners resolve their non-criminal problems. For example, the procedures for prisoners to access government agencies such as the Department of Housing or the State Debt Recovery Office are variable, not always immediately apparent, involve a number of steps to reach and are consequently less reliable. The visiting advice service also did not routinely cover civil issues. However, the addition of the LawAccess number to inmates' phone cards (subsequent to our interviews) has the potential to substantially improve access to advice on civil matters.

## Pathways and intermediaries

Our interviews indicated that inmates rely to a high degree on other people to help address their legal issues. These people, or intermediaries, may act on the prisoners' behalf or as a relay point in the process of preventing, identifying or addressing a legal problem. Our analysis revealed that there are a number of features of these intermediaries and mediated pathways to legal help that facilitate an inmate's access to justice or act as a barrier.

Firstly, although there appeared to be numerous people prepared to assist with tasks associated with a legal problem, inmates often expressed confusion about who was the best person to approach, particularly in the first instance. Pathways to assistance with legal problems were fragmented and obscured by a number of practices: lack of information detailing appropriate contacts, several different staff groups covering the same task, tasks designated to one group being taken over by another, and different people within the one occupational group having varying degrees of knowledge and consequent capacity to assist. Inmates tend to respond to this uncertainty either by giving up the pursuit or

approaching several intermediaries for the same issue simultaneously, thereby doubling up on the use of resources and further entrenching the confusion surrounding the question of responsibility.

Secondly, a major issue that arose particularly in relation to custodial staff was the lack of consistency and clarity in the assistance given to prisoners. A prisoner may feel uncertain about who to contact for assistance, when, in their experience, one officer in a certain position may have been helpful, yet another officer in the same position at a different time had not been particularly useful. The assistance provided may depend on the mood, disposition or skills of the individual officer, rather than their position. This can reinforce uncertainty about where to go for help.

Thirdly, mediated processes seem to delay help, with many interviewees describing apparently cumbersome processes to achieve relatively simple tasks. As a consequence, inmates would in some cases abandon seeking help because they felt it would take too long. In other cases, inmates missed an opportunity to address a legal issue or prepare effectively for a hearing. As the contingencies increased with every pair of hands a matter passed through, so did the opportunity for a breakdown or delay to occur.

The final factor that affected the utility of intermediaries was the potential for exploitation or being (unintentionally) misled because of the relationship of dependency that mediated pathways create. This sub-theme was mainly an issue where personal intermediaries (as opposed to ‘professional’ intermediaries such as DCS staff or staff of other organisations) were used. Although inmate peers were an easily accessible and often a preferable source of assistance with legal problems, the sensitive nature of the matters could sometimes place an inmate at risk of privacy breaches. In other cases the inmate may lose money, property or have debts incurred in their name because they have had to ask friends or family to pay bills, mind property or oversee their finances. In yet other instances, inmates may be given incorrect or incomplete information.

## Prison culture

Our analysis also indicated that prison culture is a factor in shaping the degree to which inmates access justice and obtain assistance with their legal issues. The prison culture not only informs inmates’ behaviour but also that of legal service providers and those who assist prisoners in obtaining access to service providers. Our interviewees observed this occurring in a number of ways.

Firstly, inmates were defined and define themselves as being in opposition to correctional officers and/or even the justice system itself. For example, an inmate may not report an assault perpetrated by another prisoner because it betrays a code of behaviour that pits inmates against prison authorities. Consequences, such as stigmatisation, harassment or even violence, reinforce these notions. Consequently, although there were processes available that provided legal redress for inmates who are assaulted, they are not pursued because the prison subculture makes it unattractive or at least problematic.

Secondly, violence committed against inmates is conceived as unremarkable in the prison environment. An assault may not be reported because physical violence is part of the experience of prison or because such incidents can be resolved by responding with further violence. This normalisation and naturalisation of violence enhances informal resolution of issues and undermines the formal systems that aim to deliver justice to inmates.

Thirdly, common notions that ‘criminals’ do not ‘deserve’ justice may lead to prisoners not challenging circumstances where they do not feel they have been treated justly because they perceive that they are thought of as unworthy of assistance. Such perceptions persist even though the ‘lived’ experience of many inmates and the attitudes of those who help them are to the contrary. A number of examples were given in our interviews where unfair treatment was explained by the inmates to themselves as ‘criminals break the law therefore they deserve whatever treatment they get’.

Finally, a tendency to compliance, which is reinforced by prison culture, seemed to discourage inmates from being proactive about meeting their legal needs. Inmates may be less inclined to challenge perceived injustices, as non-compliance may attract disciplinary action or result in help being withdrawn. This passivity is a barrier in post-release life where the ex-inmate must be far more active in pursuing assistance.

## Conclusions and policy implications

*Taking Justice into Custody* builds a complex picture of prisoners’ legal needs and their capacity to access justice. To begin with, prison inmates are, as a group, disadvantaged. At the aggregate level they are under-educated, have high rates of mental illness and intellectual disability, have drug and/or alcohol addictions and are financially compromised. Our report indicates

that imprisonment tends to compound this disadvantage. Each time the person cycles through the justice system personal supports are strained, skills become atrophied, financial resources are depleted and the capacity to operate well ‘on the outside’ and without resort to unlawful means is further diminished. Many of the symptoms and causes of these problems have legal implications, with family breakdown, difficulties with housing, high levels of debt, and conflict with government authorities all generating and reflecting the disadvantage that prisoners experience.

Formal opportunities do exist for prisoners to address their legal needs, particularly for criminal legal problems, and to prevent new issues developing. Our research has revealed that prison libraries, knowledgeable staff, visiting legal services, and LawAccess assist inmates to identify and satisfy legal needs. However, what was also revealed was the vulnerability of these opportunities to being compromised by poor inmate capacity, the systemic environment, the mediated and at times convoluted pathways to assistance, and prison subculture. However, looking across these factors, a range of other observations and themes emerged from the analysis.

The first theme concerns the seemingly inverse relationship between the accessibility of legal help and the quality of that assistance. For instance, while other inmates were a very immediate source of assistance, the quality and relevance of advice given was variable. In contrast more reliable sources of assistance such as lawyers were much harder for prisoners to reach. The need to bring quality legal assistance within more direct reach of inmates and the improvement in resourcing more accessible sources were two clear implications for future policy. The recent placement of LIAC<sup>2</sup> materials into prison libraries and the addition of the LawAccess telephone number to inmates’ phone cards were two examples of such strategies.

A second theme concerned the mismatches between what inmates needed to access justice and what opportunities were available. For instance, legal processes often rely on written information, and yet many prisoners are poorly educated and face difficulties with literacy. Further, resources within the systemic environment often fell short of demand for them — telephones, public legal professionals and welfare staff for example were in high demand but often, apparently, short supply. There was also evidence of mismatches between the routine and realities of life inside prison and the way services

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<sup>2</sup> The State Library’s Legal Information Access Centre.

to prisoners were delivered. For example, lawyers were most accessible by telephone or in person at the times that inmates were more likely to be locked in cells unable to access the telephone. Similarly, restrictions on inmates' movements within prison could prevent their access to the prison library when it was open.

Disempowerment was a third theme concerning barriers facing prisoners when they try to prevent or address legal issues. The pervasive need for prisoners to rely on other people to carry out tasks on their behalf (such as calling government agencies, passing on messages and arranging legal visits) meant that inmates were often not in control of obtaining information and advice on their own behalf.

Consequences included delays, essential activities not taking place at all, and the creation of unequal power relationships that sometimes were to the detriment of the inmate. Additionally, the loss of skills and resources through repeated incarceration and concomitant reliance upon others may cumulatively erode inmates' capacity to address their legal needs on their own behalf even when released.

A final theme concerns how the capacity of prisoners to address certain legal issues varies at different stages of their incarceration. When first incarcerated, inmates are generally too unstable, stressed and focused on their criminal matters to have the capacity to focus on their longer term civil law problems. By the time they are in sentenced prisons, inmates appear to have more personal capacity to address these issues, but are faced with more systemic barriers to doing so (e.g. placement in a rural prison and less access to welfare or regular legal assistance). If civil law assistance was provided at a point in the incarceration when inmates were most able to engage with that assistance, the effectiveness of that assistance may be increased.

Table 10.1 on page 280 of this report summarises the changing capacity of inmates and the nature of their environment as they move through the incarceration process. It also shows the barriers they face, highlighting policy development and service provision issues.

It is important to recognise that some of the factors that affect prisoners' access to justice may not be easy to modify or will change slowly. These include the overriding priority given to security in jails, limited resources within both correctional and legal service delivery systems, the complex histories

of prisoners and the limited cognitive capacity of many inmates, particularly during the early stages of custody.

However, here are some key elements that would address a number of the barriers identified in this study:

- ◆ bringing quality legal help (information, advice, representation and access to processes) closer to inmates so as to reduce the number of intermediaries between the inmates and quality assistance (e.g. direct access to legal assistance telephone lines and visiting civil legal advice services)
- ◆ providing legal help in formats that can be used by inmates, given that some inmates have a reduced capacity to comprehend material and retain information (e.g. lawyers spending more time with inmates to help them understand the advice or providing legal information in DVD format)
- ◆ providing clear access points to legal help (e.g. a single telephone number or contact point)
- ◆ recognising points in the incarceration process when it may be most beneficial to engage with inmates to address their civil legal needs (e.g. once prisoners are sentenced or past the early remand period)
- ◆ having greater awareness of the routines and limitations facing prisoners in accessing legal services, and incorporating such awareness into the legal processes (e.g. legal services being aware of when prisoners are out of their cells and available, or that a prisoner should not be left on hold during a telephone conversation as they can only make time-limited calls)
- ◆ having greater cognisance of how prison culture may affect the decisions inmates make about where and how to seek help with their legal problems
- ◆ providing some continuity of legal service provision from inside to out of jail (e.g. having access to the same telephone help line inside and out of jail).

Satisfying legal needs from within the prison environment can be a complex process. Isolation from services, the formal and informal regulation of movement and interactions, personal capacity and the conflicts between components of the justice system all affect how opportunities to access justice are exploited or missed. However, our research shows that many strategies are successful in

bringing legal assistance to prisoners, by engaging with the prevailing conditions and working within the limitations of imprisonment. Consequently, while it is true that many circumstances exist to impede access to justice for inmates, it is certainly possible to successfully address the legal needs of prisoners and to give people in custody the opportunity of accessing justice.





# 1 Introduction

This report describes a study conducted by the Law and Justice Foundation of New South Wales (the Foundation) on the legal needs and access to justice of prisoners in New South Wales (NSW). This project is part of the Foundation's broader program of research into the legal needs of economically and socially disadvantaged people, and their access to justice. Prisoners were included in the Access to Justice and Legal Needs (A2JLN) research program in recognition of:

- ♦ the concentration of disadvantage experienced 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
- ♦ the existence of previously collected evidence that prisoners experience a unique range of barriers in meeting their legal needs because of the nature of the prison environment
- ♦ the dearth of research on this topic.

## Project aim

The aim of this research was to explore the capacity of prisoners to:

- ♦ obtain legal information (for criminal, civil and family law matters)
- ♦ obtain legal advice and representation (including basic legal advice, initial legal assistance and legal representation)
- ♦ participate effectively in legal processes (including access to courts, tribunals, and prison disciplinary/administrative processes).

Included under these aims was an exploration of the ability of prisoners to obtain assistance with their legal issues from non-legal sources (including the NSW Department of Corrective Services (DCS) and other external organisations and agencies' staff) as previous research has demonstrated the important role such assistance plays in resolving legal issues (see, for example, Forell, McCarron & Schetzer, 2005). The investigation examined the above issues in relation to not only the prisoners' existing legal troubles, but other legal problems that may arise or be prevented during their incarceration.

## Legal and administrative context

To place this study in context, there needs to be some assessment of whether accessing legal information, gaining legal representation and participating in legal processes for prisoners is incompatible with the function of imprisonment, as administered by the DCS. A discussion of the broader legal and administrative context of the project is given below, preceded by a brief background to relevant prison policy in NSW.

### **The Nagle Royal Commission**

In 1978 the Report of the *New South Wales Royal Commission into New South Wales Prisons* was handed down by the Honourable Mr Justice Nagle. The *Nagle Report* (Nagle) exposed the excessive violence and brutality within NSW prisons at that time, and made 252 recommendations for substantial reform of the system. The closed and secretive administration of the system as it was then was also highlighted as an area of concern. The *Nagle Report* is a key reference as it signalled a new direction for the administration of corrections in NSW.

A fundamental premise of the report was that prisoners should be perceived as citizens — with the legal rights and protections of other citizens. On this basis, the report outlined five principles to guide future planning for Corrective Services. In summary, these principles were that the intervention of prison should be only used as a last resort, for the shortest possible time, at the lowest appropriate security classification, recognising that it is the deprivation of liberty itself, which is the penalty, not the harshness of the time served. Nagle also proposed that an 'inmate should only lose his liberty and such rights as expressly or by necessary implication result from that loss of liberty' (NSW Royal Commission into NSW Prisons (Nagle), 1978, pp. 53–55). In other

words, within the constraints of their imprisonment and the law, prisoners should have the same ‘access to justice’ as other citizens.

Notably, Nagle not only commented on the need to alter the fundamental principles underlying correctional policy, but examined the capacity of the system at the time to apply these principles. He observed:

*The provision of a right to legal representation and assistance is meaningless if its exercise is frustrated or inhibited by inadequate facilities.*  
(Nagle, 1978, p. 478)

Nagle not only focused on the policy context, but also examined the capacity of prisoners *in practice* to get the help they needed to address their legal issues. In terms of facilitating access to the law and lawyers, Nagle specifically recommended that:

*... legal visits should not be restricted in any way. Prisoners should be given unlimited access to bona fide legal representatives in conditions that permit private conversation and joint access to documents.* (Nagle, 1978, p. 713)

*... Prisoners should have full access to legal advisers and the Courts. They must be able to initiate proper procedures speedily and in the length of time provided by the law. Provision should be made for legal aid.* (Nagle, 1978, p. 722)

While there was considerable resistance from within the prison system, most of Nagle’s 252 recommendations were implemented by the government (Vinson, 1982; Grabosky, 1989). These changes were commenced in the first years after the inquiry, by the newly appointed Corrective Services Commission, chaired by Dr Tony Vinson (Zdenkowski & Brown, 1982, pp. 86–90). Commentators described the new Commission as ‘demonstrat[ing] profound concern for the rights of individual prisoners’ (Grabosky, 1989).

Pertinent to this study was that in 1981, the Legal Aid Commission of New South Wales (Legal Aid NSW or Legal Aid) established a limited interim service to prisoners, providing representation at visiting justice hearings and an advice service in some jails. In 1986, the Prisoners Legal Service (PLS), a specialist service for prisoners within the criminal law division of Legal Aid was permanently established (Legal Aid NSW, 2006a pp. 9–10). The PLS continues to operate in NSW prisons.

The notion of ‘prisoner as citizen’ was not unique to the Nagle *Report*. Rather, it was part of and reflected a broader theoretical shift in the way

that imprisonment was being understood (see Coyle, 2002, 2005). In short, the emphasis was shifting from imprisonment as the simple containment of offenders, to a focus of rehabilitating or resocialising offenders back into the community. The view of the prisoner as an ‘imprisoned citizen’ rather than as a person who had forfeited their citizenship was also reflected in the changing role of the prison officer. Lombardo (1981; 1989 pp. 2–6) described a shift in the role of prison officers from simple custodians to having a ‘human service’ role. Their formal and informal interactions with inmates were seen to contribute to the goals of imprisonment; both custodial and rehabilitative. The position description and applicant guide for correctional officers today reflect this change (NSW DCS, 2006a).

### **Subsequent inquiries**

Since the *Nagle Report*, the NSW prison system has been subject to a number of other inquiries, most of which dealt primarily with broad policy concerns of the appropriateness and impact of imprisonment. Key reports from these inquiries which have covered issues relating to the legal or access to justice needs of prisoners include:

- ◆ NSW Women in Prison Task Force report (1985)
- ◆ Royal Commission into Aboriginal Deaths in Custody, *Regional report of the Inquiry into New South Wales, Victoria and Tasmania* (1991)
- ◆ NSW Law Reform Commission (LRC), *People with an Intellectual Disability and the Criminal Justice System [Report 80]* (1996)
- ◆ NSW Legislative Council Standing Committee on Social Issues, *A Report into Children of Imprisoned Parents* (1997)
- ◆ NSW Legislative Council Standing Committee on Law and Justice, *Crime Prevention through Social Support: Second Report* (2000). Part three of the report focused on prisoner recidivism and return to the community
- ◆ NSW Legislative Council, *Select Committee Inquiry on the Increase in Prisoner Population* (2001). This report explored aspects of the legal system which may be related to the increasing prison population, such as bail laws, policing practices, sentencing trends, and court delays
- ◆ Audit Office of NSW, *Performance Audit, Prisoner Rehabilitation*, 2006a.

A recent report on interventions for prisoners returning to the community, commissioned by the Justice Branch of the Commonwealth Attorney-General's Department provides the most comprehensive and recent review of post-release issues facing prisoners in this country (Borzycki, 2005).

Overall, the number of inquiries into corrections in the last five years is indicative of the state of change both in correctional environments around Australia and in correctional practices. The *Standard Guidelines for Corrections in Australia*, jointly issued by the departments of each Australian state and territory responsible for corrective services, described these many changes as follows:

*Changes that (sic) have included: an exponential growth in prisoner numbers; the introduction of contracted correctional services to many jurisdictions; a re-appraisal of evidence-based programmes that address offending behaviour; an increased focus on 'throughcare' (sic); the introduction of services for victims; and an increased focus on prisoners and offenders making reparation for their crimes.* (Standard Guidelines for Corrections in Australia, 2004, p. 2)

Thus, the present research has been undertaken in a context where the ground is shifting. As the statistics presented in Chapter 2 indicate, the prison population is increasing, causing strain on the operation of correctional centres. To house this increasing population, more prison are being built, with an increasing proportion of prisons being privately operated. The management of centres is also changing under *The Way Forward* policy currently being implemented in NSW. This policy changes staffing ratios and use of overtime to increase cost-efficiency (NSW DCS, 2006b, p. 25).<sup>1</sup> These changes in turn may affect inmates' access to justice. Also evident is an increasing policy focus on 'Throughcare'<sup>2</sup> services for inmates, with a view to reducing re-offending by addressing the needs of prisoners as they move through the system and back into the community, post-release. While post-release support has been

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<sup>1</sup> *The Way Forward* is described by the DCS Commissioner as 'a new model for operating correctional centres designed to achieve safe and effective management and substantially improve operational cost efficiency'. It involves a 'new custodial rank structure; a more efficient staffing policy based on the principle of having inmates engaged in structured activities; increased opportunities for inmates to be engaged in employment or programs; and a new staff award including flat overtime rates and no overtime rates for management'. (NSW DCS, 2004a, pp. 6–7)

<sup>2</sup> 'Throughcare' refers to 'the coordinated and integrated approach to reducing re-offending by people who are the responsibility of Corrective Services, from their first point of contact with the Department to the completion of their legal orders and their transition to law-abiding community living'. (NSW DCS, 2002, p. 3)

a concern in NSW since the 1950s (North, 1976)<sup>3</sup>, this focus on reducing re-offending forms the basis of the current policy position.

### **Current policy position**

The stated mission of DCS, as set out in their 2004–2007 Corporate Plan, is ‘reducing re-offending through secure, safe and humane management of offenders (NSW DCS, 2004b, p. 1). The values and principles outlined in the plan, which guide Corrective Services in NSW include (inter alia):

- ◆ commitment to the safety and welfare of offenders supervised in custody and/or in the community
- ◆ commitment to rehabilitation and re-settlement of offenders. (NSW DCS, 2004b, p. 4)

Consequently, the current strategic objectives of DCS, to reduce re-offending by providing a safe and supportive environment both within and to some extent beyond the prison walls, formed the starting assumption for our investigations.

Preliminary investigation of the literature concerning prisoners suggested a relationship between legal need and re-incarceration. In particular, studies have identified the detrimental impact of accumulated legal and other social problems on the ability of a released prisoner to become re-established in the community and avoid offending (Borzycki, 2005; Baldry, McDonnell, Maplestone & Peeters, 2003; Aboriginal and Torres Strait Islander Social Justice Commissioner, 2002; Dutreix, 2000; Stringer, 1999). Problems cited include debt (including fines), housing and family matters such as child residency. Given this, the aims of the administration of prisons to maintain the welfare of prisoners when incarcerated and reduce their chance of re-offending once released may be negatively affected if legal matters are not attended to during incarceration. Therefore the role of prisons as broadly stated by DCS administration is compatible with facilitating prisoners’ capacity to address their legal needs in prison.

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<sup>3</sup> In 1951, Civil Rehabilitation Committees were established in city and rural areas to assist released inmates to make the transition back to the community. Funded by government, the committees comprised of welfare organisations, churches, individuals, the probation and parole service and, eventually, other government services (e.g. the Department of Labour). The committees aimed to provide material and practical support and guidance to released prisoners and their families. They also aimed to ‘work for better community understanding in the problems associated with the rehabilitation of prisoners’. (North, 1976, p. 183). The committees became the forerunner of the Community Restorative Centre (CRC), which was set up as a non-government agency in 1963. CRC still provides services to those recently released from prison (see <http://www.crcnsw.org.au>).

More specifically, it appears that there is no barrier at law that precludes imprisoned people from securing legal advice and participating in legal processes. For example, Section 77 of the *Crimes (Administration of Sentences) Act 1999* (NSW) provides that inmates may attend courts (including Children's, Federal and Family courts) whilst incarcerated. Further, while the right to legal representation for any person, including prisoners, is not enshrined in Australian law<sup>4</sup>, the DCS Operations Procedures Manual for all prisons in NSW makes the following provision in relation to accessing legal resources:

- ◆ *Inmates may require access to legal resources for advice or instructions in matters, which may or may not, concern their detention and associated legal process.*
- ◆ *Governors must ensure that inmates have access, and are not impeded in their attempts to gain access, to legal resources.*
- ◆ *This may include their own legal representative, the Prisoner's Legal Service, Chamber Magistrates and other Court officers.*
- ◆ *All governors are to ensure all inmates have access to the latest versions of the Crimes (Sentencing Procedure) Act 1999 and the Crimes (Sentencing Procedure) Regulation 2000; the Crimes (Administration of Sentences) Act 1999 and the Crimes (Administration of Sentences) Regulation 2001, and the Department's Operations Procedures Manual complete with amendments. These are to be maintained at the correctional centre's library, or in a designated location accessible to inmates. (NSW DCS, 2006c, s. 8.7)*

In summary, access to legal advice and legal processes is not denied to the prisoner at law. Moreover, the administering government department commits to supporting prisoners' access to legal resources. This project consequently investigated the prisoners' legal needs and their capacity to access justice from the starting point that, at law, their access to legal assistance is preserved and should not be unduly compromised by their incarcerated state. However, it is clear that, by its very nature, incarceration presents a very real and literal barrier. Consequently, the actual experience of prisoners in accessing legal assistance and advice, and participating in legal processes whilst incarcerated,

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<sup>4</sup> The High Court in *Dietrich v R* (1992) 109 ALR 385 stated that an indigent accused charged with a serious criminal offence has no right to legal representation at public expense, but does have the right to a fair trial. Hence, if a person charged with a serious criminal offence is without legal representation, and the subsequent trial is for that reason unfair, any conviction represents a miscarriage of justice and must be quashed by an appellate court.

remains in question and forms the basis of this study. This project attempted to examine whether prisoners and services providing and facilitating access to justice within this framework successfully negotiate the unique challenges posed by imprisonment.

## Scope

### Target group

One of the first issues that needed to be defined was the target group of our project. Broadly speaking, the term ‘prisoners’ could include people who have been arrested and are in police custody, people in jail or juvenile detention, and people who are detained by the Department of Immigration and Citizenship (DIAC). While all of these groups may face access to justice issues, the focus of our study was on prisoners whose ‘confinement was the responsibility of a corrective services agency’. That is, people who were held in full-time custody in a NSW correctional centre. Periodic detainees and those on home detention were excluded from the project. However, offenders in police/court cell complexes managed by DCS are included.<sup>5</sup> The sample was further restricted to adults as the Juvenile Justice System (covering people aged younger than 18 years) is sufficiently different to the adult system to warrant separate investigation.

However, to fully appreciate legal need in this context, we have also drawn upon the experience of people recently released from jail. Their experiences remain pertinent to the legal needs of serving inmates for several reasons:

- ◆ the impact of legal problems which arose prior to or during incarceration may well not be felt until a person leaves custody
- ◆ people who are no longer in the jail environment can provide a different perspective on their experiences in jail
- ◆ we have conceptualised incarceration as a process– from arrest, through imprisonment (on remand, and/or as a sentenced prisoner) to release, whether conditional or unconditional. To understand the legal needs and access to justice issues facing prisoners, the whole process must be considered

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<sup>5</sup> Parts of this report concerns inmates’ time in police cells. While some police cell facilities are under the authority of the police alone, other cells located at police stations are designated and part of the DCS such as the holding cells at Surry Hills in Sydney.



- ♦ a history of incarceration may directly affect the legal needs of people recently released from jail and their capacity to access justice.

For these reasons, while the primary focus of the project was on prisoners, we also interviewed ex-prisoners and report some data on the legal issues and access to justice issues facing people recently released from jail.

## **‘Access to justice’**

*I’d like more access to justice but less access to the courts*

— Respondent in Genn (1999, p. 1)

The term ‘access to justice’ may be taken to refer to the removal of practical barriers to the law and legal processes (e.g. physical access, costs, complexity,) or more broadly, to a rethink of the role of law in contemporary society (Renouf, 2003). In this study, like previous projects conducted within the Access to Justice and Legal Needs (A2JLN) research program, the term has been drawn at a fairly structural level. We have considered ‘access to justice’ in terms of the range of personal, systemic and cultural factors (and the interplay between these factors) which may impair or facilitate the capacity of prisoners to access and use legal information and advice. Given the very literal barriers presented by incarceration, we have also included access to formal legal representation, courts and tribunals, and the effectiveness of that access.

While we recognise that ‘access to justice’ can be construed more broadly than this, we have not, in this study, analysed broader notions of ‘rights’ or ‘justice’, beyond what the law currently states. Rather, the project has endeavoured to investigate issues of access to justice according to the law as it stands. However, the legal landscape for prisoners differs in some ways from that of other citizens. There are some laws and regulations that apply only to prisoners (such as the law and regulations surrounding parole or behaviour in prison). There are other laws which specifically *exclude* prisoners or certain prisoners from particular privileges or ‘rights’ held by other citizens (such as the right to vote in an election). These are described in Appendix 1.

## **Legal needs**

In order to appreciate the access to justice issues that prisoners experience, we first had to establish what types of legal problems are faced by prisoners, or are likely to develop during the course of, or as a result of imprisonment. We have explored criminal, civil and family law issues facing inmates, as well

as the circumstances associated with those problems developing. In terms of assistance with legal problems, we have looked at help provided by legally trained professionals, as well as the assistance provided by non-legal advocacy and support agencies/personnel, both within and outside the jail system, to resolve or prevent legal problems.

In addition to the above, in our examination of prisoners' ability to access justice we have analysed both the capacity of inmates to access 'end product' events such as legal advice or court attendance, as well as the intermediary steps that lead to those events. This includes, for example, the ability to obtain information about how to contact a lawyer from prison or how to get to visit the prison library. These intermediary steps, as will be shown in subsequent chapters, are especially important in the prison environment and have assumed a prominent role in our discussion of access to justice. Accordingly, 'access' to justice has been treated more broadly than just physical access to legal information, advice, representation, or legal processes. It has been taken to include the *efficacy* of that access, for example the quality of a prisoner's interaction with their lawyer.

## Report structure

This report is divided into three main parts: background, results and analytic chapters. The first part provides the broader context to the study and includes a description of prisons and prisoners in NSW along with a review of the literature on prisoners and their legal needs (Chapter 2). This part also includes the method used to collect the data for this analysis in addition to a description of the inmate sample (Chapter 3). The second part reports on the raw results of the study, specifically: the legal issues reported by interviewees in the sample (Chapter 4) and the opportunities and barriers to access justice described by the interviewees (Chapter 5). The third part of the report contains the analysis and discussion chapters. Four analytic chapters (Chapters 6–9) examine the factors underlying the barriers described in Chapter 5. The discussion and policy implications chapter (Chapter 10) also includes the conclusion.

# 2 Background

## Prisons and the prisoner population in NSW

One reason for our focus on the legal needs and access to justice of prisoners is that there is a concentration of disadvantage experienced within the prison population across a range of indicators, and there is evidence that prisoners may experience a unique range of barriers in meeting their legal needs. This section draws on existing statistics and literature concerning the level of disadvantage experienced by prisoners as a group and what is known about their legal needs. The profile of the NSW prison population provided in this chapter is largely drawn from NSW DCS and Justice Health statistical collections and empirical research, and only refers to inmates in full-time custody.

### Prisons in NSW

As at early 2007 there were 31 government operated prisons operating in NSW, one privately operated prison and fourteen 24-hour court cell complexes (SCRGSP, 2007, Table 7A.2). Currently, only eight per cent of NSW inmates are held in the privately run prison, compared to, for example, Victoria where 42 per cent of inmates are held in privately operated prisons (SCRGSP, 2007, Table 7A.1). A new 600-bed prison opened in Western NSW in September 2007, and two more prisons are being built (a facility for Indigenous prisoners and another 500 bed facility). Two existing correctional centres are also being expanded.

The recurrent net cost of corrective services in NSW in 2005–06 was \$189.70 per prisoner per day (excluding capital costs). By way of comparison, \$10.40 is spent per offender per day in community corrections (SCRGSP, 2007 Table 7A.7).<sup>6</sup>

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<sup>6</sup> Community corrections is the community based management of court-ordered sanctions, post-prison administrative arrangements and fine conversions for offenders which principally involve the provision of one or more of: supervision, programs or community work (SCRGSP, 2007a, p. 7.39).

### ***Prison staffing***

Prison officers are tasked with maintaining the security and good order of the prison (King, 2006). It may also be the case that prison officers help inmates' to access justice, for instance by providing information, and by ensuring there is ample security available (e.g. in the form of escorts, etc.) for services (such as the library or legal visits) to be facilitated. As well as custodial staff, all prisons have education and specialist program staff, including psychologists and alcohol and other drug workers. All prisons apart from Junee have specialist welfare staff. However, at Junee prison, "welfare" is part of the custodial officers' 'case management' role. DCS describe the case management of inmates as:

*... a collaborative, multi-disciplinary process which assesses, plans, implements, co-ordinates, monitors and evaluates options and services to meet an individual's needs. (NSW DCS, 2006c, s. 2)*

In a study of the changing role of prison officers in South Australia, King (2006) observed that conceptualising the prison officer as 'case manager' 'can involve a winding back of the engagement of other human service specialists, such as psychologists and social workers in the prison environment' (p. 151).

Given the assistance they provide, custodial and non-custodial staff ratios in different parts of the prison system could have a bearing on inmates' access to justice. While staff-prisoner ratios are not publicly reported, figures may be extrapolated from published documents.<sup>7</sup> Our analysis of these data indicate that while the average numbers of prisoners in the system has increased dramatically in recent years, the prisoner to staff ratio (in custody and periodic detention) has remained fairly consistent since 1999: at around 2.2 prisoners to each staff member.<sup>8</sup> However, because these figures describe the average number of staff (custodial and non-custodial) in all prisons, periodic detention centres, courts and transport services, they may mask considerable variations in staff ratios *within* the system (e.g., between periodic detention centres, correctional centres and transport services, between different correctional centres or wings, between custodial and non custodial staff, on different shifts etc). To our knowledge, no more detailed figures were available at the time of writing.

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<sup>7</sup> Staffing figures can be found in NSW DCS, 2003, p. 132 and NSW DCS, 2006b, p. .93. Inmate figures are drawn from NSW DCS, 2006d, p. 12).

<sup>8</sup> Staff includes all operational staff involved in the care or custody of inmates AND periodic detainees: governors, custodial staff, industries staff, court security and transport, programs staff including welfare and psychologists, and education staff. To ensure an appropriate comparison, 'prisoners' include inmates in jails and court cell complexes, as well as those in periodic detention.

## Prisoners in NSW

In 2005–2006 there was a daily average of 9 101 prisoners in NSW (SCRGSP, 2007, Table 7A.1). The highest number of full-time prisoners on any one day was 9 354 (NSW DCS, 2006b, p. 7). The number of people coming to prison has been steadily rising in the last 10 years and DCS predict that the average daily prison population will be 10 000 by the year 2010 (NSW DCS, 2005a, p. 9).

### *Imprisonment rates*

The imprisonment rate of people in full-time custody in NSW is 173.4 per 100 000 of adult population, higher than the Australian imprisonment rate of 156.4 per 100 000 (Table 2.1). At 2 199.7 per 100 000, the imprisonment rate for Indigenous Australians in NSW is more than 16 times higher than for non-Indigenous Australians.

**Table 2.1: Imprisonment rates (per 100 000 adults) in NSW and Australia, 2005–06**

	<b>NSW</b>	<b>Australia</b>
All prisoners	173.4	156.4
Male prisoners	327.0	295.8
Female prisoners	24.4	21.1
Indigenous prisoners	2 199.7	2 030.6
Non-Indigenous prisoners	134.9	118.7

Source: SCRGSP, 2007, Table 7A.4

In 1999 the NSW Legislative Council commenced a Select Committee inquiry into factors responsible for a notable increase in the prisoner population in the previous five years (NSW Legislative Council, 2001). The inquiry concluded in 2001 that:

*The causes of the increase in the prison population are complex. The prison population can fluctuate considerably as a result of legislative, judicial and policy changes, irrespective of any changes in actual crimes committed. There has been no evidence from agencies such as the Bureau of Crime Statistics and Research (BOCSAR) to support the proposition that an increase in actual crime, as opposed to increase [sic] in police activity, is an underlying cause of the increased prison population.*

*A major increase in the remand population appears to be the most significant contributing factor to the increase in the total number of people in custody. Other factors include longer sentences and increased police activity. The underlying causes of these factors are, however, less clear. (NSW Legislative Council, 2001, p. xv)*

Since the above report was published, the NSW imprisonment rate has risen in consecutive years from 153.2 per 100 000 in 2000–01 to 173.4 per 100 000 in 2005–06 (SCRGSP, 2006, Table 7A.24). Contributing to this has been an increase in the proportion of convicted offenders in the District and Supreme Courts sentenced to full-time imprisonment (from 48% in 1990–1993 to 69.2% in 2002) (Indyk & Donnelly, 2007, p. 10) and amendments to the *Bail Act 1978* (NSW) in 2002 (Fitzgerald & Weatherburn, 2004). Further, in October 2005, legislation came into effect that changed the waiting time for reapplication to 12 months (Legal Aid NSW, 2006a, p. 16). Prior to this inmates could have their parole reconsidered soon after an unsuccessful application (NSW Legislative Assembly, 2004, p.12 098).

### **Inmate population by stage of incarceration**

Imprisonment can be viewed as a process rather than a static state. While the course of this process may vary from inmate to inmate, it invariably commences with the arrest of the offender by police and often detention in police cells for at least some period. If bail is refused, this is generally followed by placement in a remand jail, movement to a sentenced jail following conviction, possible movement to a lower security facility towards the end of the sentence, release, and for some, a period of supervised parole.

Table 2.2 provides data about the numbers of inmates at each of these stages: in court cells, on remand, serving a sentence and, where available, released (on parole or unconditionally). Two distinct types of information are presented. The first, drawn from the Inmate Census (Corben, 2006a), provides a count of inmates as at June 30 2006. This type of ‘snapshot’ data:

*... provides a picture of persons in prison at a point in time (30 June 2006), and does not represent the flow of prisoners during the year. The majority of prisoners in the annual prisoner census were serving long term sentences for serious offences, whereas the flow of offenders in and out of prisons consists primarily of persons serving short sentences for lesser offences. (Australian Bureau of Statistics, 2006a, p. 3)*

The second type of information describes the flow of inmates through the prison system during the 2005–06 financial year (NSW DCS, 2006d).

**Table 2.2: Inmates in NSW Correctional Centres on 30 June 2006 and in the 2004–05 year**

<b>Stage</b>	<b>'Snap shot' Number of inmates on June 30 2006</b>	<b>'Flow' Number in the 12 months (July 05–Jun 06)</b>
Court/police cell complexes – DCS managed	52 (daily average 105)	12 590 Received into cells but released without transfer to a correctional centre
Remand (unsentenced)	2 100	10 488 Received into full-time custody on remand
Sentenced	6 951	7 453 Commenced a full-time sentence
Full-time custody in a correctional centre (remand and sentenced)	9 051	14 760 Received into full-time custody at correctional centres, including those who were transferred from court cell complexes <sup>1</sup>
Transitional Centres <sup>2</sup>	27	-
Released – on parole	-	4 759
Released – unconditional (full sentenced served)	-	2 183
<b>Total released</b>	<b>-</b>	<b>6 942</b>

**Sources:** Snapshot: Corben, 2006a (pp.19, 49,53); Flow: NSW DCS 2006d (pp.16–18)

<sup>1</sup> The total number received into full-time custody does not equal the sum of unsentenced and sentenced inmates because some inmates are counted twice: as remandees and as sentenced prisoners — if they were remanded and then sentenced in this period.

<sup>2</sup> Transitional Centres house inmates temporarily released under section 26 (2) (j) of the *Crimes (Administration of Sentences) Act*.

### ***Offenders in police/court cells***

Offenders who have been refused bail may be placed in a police or court cell complex. While there were only 52 people held in police/court cell complexes managed by DCS on 30 June 2006, 12 590 offenders were held in police cells during 2005–06 but discharged without being transferred to a correctional centre (Table 2.2). This figure is *in addition to* those who commenced custody in the court cells before being transferred to prison.

### ***Remand inmates***

A 'remand' prisoner is a person charged with a criminal offence who has been ordered by the Court to be detained in custody while awaiting trial or sentencing (WA Department of Justice et al., 2004, p. 4). In the inmate census, only 23 per cent of all full-time inmates were on remand. However, as Table 2.2 indicates, nearly 10 500 people spent some time on remand during 2005–06. Fifty-three per cent (5 602) of these inmates were remanded for less than 30 days. Of interest is a 2001 review of remand statistics undertaken by DCS, which found that 56 per cent of remand inmates received into custody

in March 1999 were discharged *without* a custodial sentence, most leaving within a month (Thompson, 2001, p. 7).

As at 30 June 2006, 41 per cent of unconvicted (remand) inmates were housed in maximum security facilities and a further 36 per cent in medium security (Table 2.3). As a point of comparison, two thirds of the convicted (sentenced) inmates are held in *minimum* security facilities. As described earlier, inmates in maximum security face greater security restrictions including less time out of their cells — potentially affecting their capacity to access legal help.

**Table 2.3: Inmate security classification, 30 June 2006**

<i>Security level</i>	<i>Convicted</i>		<i>Unconvicted</i>		<i>Total</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Maximum	783	11.4%	889	40.9%	1 672	18.5%
Medium	1 247	18.1%	780	35.9%	2 027	22.4%
Minimum	4 698	68.3%	293	13.5%	4 991	55.1%
Unclassified	150	2.2%	211	9.7%	361	4.0%
	6 878	100%	2 161	100%	8 948	100%

**Source:** Corben, 2006a, p. 19.

**Note:** The totals differ slightly from those presented in Table 2.2 as some convicted inmates may have an 'unconvicted' inmate classification if they were facing further and more serious charges or had not been re-classified at the time of the census (Corben, 2006a, p. 24).

Notably, the international literature has suggested that remandees — as unconvicted inmates — have particular circumstances *and* legal needs (Brookman & Pierpoint, 2003; HM Inspectorate of Prisons for England and Wales, 2000) compared with convicted inmates. These are discussed later in this chapter.

### ***Sentenced inmates***

As the 'flow' data in Table 2.2 indicates, the numbers of people commencing a sentence in a given period is less than the number of people coming into prison on remand during that same time. However, when taken as a 'snapshot', three-quarters (77 %) of all full-time inmates in NSW prisons on June 30 2006 were serving a sentence. Of the sentenced inmates counted in the 2006 Inmate Census, 38 per cent were serving maximum terms of less than two years. Sixty-one per cent were serving maximum terms of less than five years. Only 5.5 per cent were serving maximum terms of 20 years or more (including life). Less than two per cent (1.6%) were forensic patients (Corben, 2006a, p. 23).

It should be noted that many prisoners are released (on parole) before serving their maximum term of imprisonment (see 'Release and recidivism', below).



DCS reported that, in 2004–05, two thirds of inmates in NSW served custodial sentence of less than six months (NSW DCS, 2005a, p. 8).

### **Security classification**

Prisoners are generally placed in prisons which match their security classification (a rating of the level of security in which they must be held). Higher security jails have more surveillance, more physical security and inmates spend more time in their cells.

Overall, the prison census indicated that 19 per cent of the prison population (remand and convicted combined) were housed in eight maximum security facilities, 22 per cent in medium security and 55 per cent in minimum security (see Table 2.3). Within the maximum security rating are higher levels of security for those inmates assessed to be of the highest risk to the community should they escape. In December 2005, there were 36 inmates in the most secure unit in the system, the High Risk Management Unit at Goulburn Jail (NSW DCS, 2005a, p. 18).

### **Protection and segregation**

Over and above their security classification, some inmates are held separately from the main population, either to protect them from other inmates ('protection' or 'protective custody') or to protect others from them ('segregation'). The number of hours spent outside of a cell can also be significantly less for those on protection or segregation. Inmates on protection may also be excluded from opportunities to work (NSW DCS, 2005a, p. 138) and pre-release programs (Legal Aid NSW, 2006a, p. 17).

Barnes (2001) reported that the proportion of inmates in protective custody had risen from 11.3 per cent in 1996 to 17.4 per cent in 2000 (p. 2), and that the rate of increase in the numbers of inmates in protection was 4.4 times that of inmates in full-time custody. As at 31 December 2004, 21 per cent of inmates in full-time custody were held in isolation from all other inmates (non-association), or some other inmates (limited association) or were on protection or in segregation (Serious Offenders Review Council, 2006, p. 10).

Inmates in specialist units, such as the Mum Shirl Unit<sup>9</sup>, the psychiatric facilities at Long Bay, and those in reception screening, are also housed separately to the main population.

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<sup>9</sup> The Mum Shirl Unit is a therapeutic unit within Mulawa Women's Correctional Centre, for women with psychiatric illnesses, personality disorders and/or who are at high risk of self harm and/or suicide.

### **Out of cell hours**

In NSW, the average total ‘daily time out of cells’ for open (minimum security) facilities was 11.9 hours. For ‘secure’ (medium and maximum security) facilities the average is 7.6 hours per day. The overall average is 9.2 hours per day out of cells. While out of cell time has marginally improved in NSW for those in open custody since 2000/01, it has declined for those in secure custody and overall. Further, NSW inmates in secure and open custody average fewer out of cell hours than inmates in all other Australian jurisdictions (SCRGSP, 2007 Tables 7A.18 and 7A.25). Of note, in 1978, the *Nagle Report* had recommended that prisoners not be locked in their cells overnight for more than ten hours (Nagle, 1978, pp. 499, 717).

### ***Release and recidivism***

With only five per cent of sentenced prisoners in Australia serving life or another indeterminate sentence (ABS, 2006, p. 8), most prisoners do return to the community at some point. In 2005-06, 6 942 inmates were discharged from full-time custody in NSW, more than two-thirds on parole (68.6%), and just under one third (31.4%) having served their full sentence (NSW DCS, 2006d, p. 18). There was a 12 per cent increase in the number of inmates released on parole with supervision between 2004-05 and 2005-06 (NSW DCS, 2006b, p. 39).

NSW has the highest recidivism (re-offending) rate of all Australian jurisdictions. Of all inmates who were discharged from full-time custody during 2004–05, 43.5 per cent returned to a NSW prison within two years (Audit Office of NSW, 2006b, p. 83). The NSW DCS (2006d) indicated that recidivism was higher for those who had an earlier period of imprisonment in an adult correctional centre in NSW than those who had no prior period of imprisonment (53% compared to 26%) (p. 31). In a study of ex-prisoners and homelessness, Baldry et al. (2006) argued that recidivism cannot be seen only in terms of an individual prisoner’s criminogenic lifestyle. It must also be understood in terms of the level of support, including legal support, available to prisoners post-release:

*Reduction in poor communities of publicly provided transport, affordable decent housing, employment, health services — especially drug and alcohol services, relevant education services, and legal aid leaves those, like ex-prisoners who cannot afford to participate in private market solutions, without capacity to address these exclusions. (NSW DCS, 2006d, p. 31)*

An overall profile and ‘capacity’ of prisoners and ex-prisoners is given below.

## Characteristics of NSW prisoners

The profile of the prisoner population differs appreciably from that of the broader NSW population, with certain groups over-represented in prison (e.g. young men, Aboriginal people). In this section, we outline the profile of the prisoner population in terms of age, gender, cultural background and family context. We then focus on statistics indicating the level of disadvantage among prisoners in NSW.

### *Age and gender*

In mid 2006, the vast majority (92.8%) of inmates in NSW prisons were male (Corben, 2006a, p. 19). However, while only 7.2 per cent of inmates in NSW were women, this represents the highest proportion of women prisoners in the country (ABS, 2006, p. 7).

According to ‘snapshot’ data taken on 30 June 2006 and displayed in Table 2.4, nearly 38 per cent of inmates were aged 25 to 34 years, while a further 25 per cent were aged 35–44. Younger people are clearly over-represented among the inmate population with approximately 21 per cent of inmates aged 18–24 years, compared with just over nine per cent in the NSW general population (ABS, 2007a). As explained earlier, these snapshot figures may mask high numbers of younger offenders in for short periods on remand or on short sentences.

**Table 2.4: Inmates in NSW Correctional Centres by age and gender, 30 June 2006**

<i>Age Group</i>	<i>Male</i>		<i>Female</i>		<i>Total</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Under 18	21	0.3	-	-	21	0.2
18–24	1 767	21.0	125	19.2	1 892	20.9
25–34	3 124	37.2	276	42.4	3 400	37.6
35–44	2 106	25.1	162	24.9	2 268	25.1
45 and over	1 382	16.3	88	13.5	1 470	16.2
	8 400	100	651	100	9 051	100

Source: Corben, 2006a, p. 19.

### *Indigenous status*

While in 2006 Indigenous Australians comprised 2.1 per cent of the NSW general population (ABS, 2007a), Aboriginal or Torres Strait Islander (ATSI) people made up 21 per cent of the NSW inmate population (Corben, 2006a, p. 20), increasing from 18 per cent in 2005 (Corben 2006b, p. 77). In a study of

the factors which may contribute to Indigenous over-representation in prison in NSW, Snowball and Weatherburn (2006) concluded that the higher rate at which Indigenous people are sent to prison stems from their higher rate of conviction for violent crime and their higher rate of re-offending, rather than any systemic bias in sentencing practice based on the Indigenous status of the offender (pp. 14-15). Earlier work by Aboriginal Justice Advisory Council (AJAC) (2002) has suggested that bail practices may also contribute to the overrepresentation of Aboriginal people in jail.

In NSW, the inmate census indicated that one in five male prisoners (21%) and nearly one-third of female prisoners (32%) were ATSI people (Corben, 2006a, p. 20).

### ***Cultural and linguistic background***

The 2006 inmate census indicated that nearly three-quarters of the NSW prisoner population were Australian born (74.1%) (Corben, 2006a, p. 19). This compares to 69 per cent of the NSW general population who were born in Australia (ABS, 2007a).

The 2006 inmate census indicated that 16.8 per cent of inmates were born in a non-English speaking country<sup>10</sup> (Corben, 2006a, p. 19). While it may be expected that a proportion of inmates born in a non-English speaking country may speak English proficiently, there may be a significant minority who do not speak, understand or write in English. Of particular note, 3.2 per cent of the prison population in 2006 were born in Vietnam (compared to 1% of the NSW population), 1.6 per cent in Lebanon (compared to less than one per cent of the NSW population) and 1.1 per cent in China (compared to 1.7% of the NSW population) (Corben, 2006a, p. 19; ABS, 2007a).

### ***Marital status and children***

According to the 2006 inmate census, 31.1 per cent of men and 35.9 per cent of women were currently married or in a de facto relationship at the time of their reception into prison. Relatively few, 6.9 per cent of men and 9.2 per cent of women, were separated or divorced at the time they came into prison (Corben, 2006a, p. 20), while 59.7 per cent of male and 52.1 per cent of female inmates received into prison had 'never married'. The proportion of all inmates 'never married' (59.2%) is considerably higher than in the general NSW population (32.7%) (ABS, 2007a).

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<sup>10</sup> The country of birth for 3.5 per cent of inmates was recorded as 'unknown'.

In 2001, nearly half (49%) of male inmates and 57 per cent of female inmates reported that they had children under the age of 16 years (Butler & Milner, 2003 p. 28). In an analysis based on these data, Quilty et al. (2004) reported that the average number of children per male inmate was 2.2, and 2.4 for female inmates. More Indigenous inmates were parents than non-Indigenous inmates (62% compared with 43% for male inmates and 79% compared with 52% of female inmates) (p. 341).

**Table 2.5: Inmate's number of children under sixteen**

<b>No. of Children</b>	<b>Men</b>		<b>Women</b>	
	<b>Freq.</b>	<b>%</b>	<b>Freq.</b>	<b>%</b>
0	347	50.7	63	42.9
1	139	20.3	32	21.8
2	97	14.2	24	16.3
3	49	7.2	13	8.8
4	27	3.9	7	4.8
5	11	1.6	4	2.7
6	6	0.9	2	1.4
> 6	8	1.2	2	1.4
<b>Total</b>	<b>684</b>	<b>100.0</b>	<b>147</b>	<b>100.0</b>

Source: Butler & Milner, 2003, p. 29.

While the proportion of inmates entering prison who are married/de facto is considerably less than in the NSW population (31.4% compared with 50.1%), scope remains for family law issues to arise for inmates who may formally separate or divorce during their incarceration, or those who have children, irrespective of their marital status.

Prisoners, particularly women prisoners, have commonly been involved in violent relationships, with 55 per cent of women respondents to the 2001 Justice Health Inmate Health Survey (IHS) indicating that they had been subject to at least one form of abuse in a relationship in the previous 12 months. Overall, 69 per cent of women said they had been involved in a violent relationship, while 35 per cent indicated they had been involved in two or more such relationships (Butler & Milner, 2003, p. 137).

## **NSW prison inmates and disadvantage**

As will be described below, there is considerable evidence to suggest that prisoners tend to come from, and return to, disadvantaged backgrounds (Corben, 2006a; Butler & Milner, 2003; Borzycki, 2005, p. 33–35; Baldry et al., 2003). In particular, Borzycki (2005) notes prisoners as having histories of social isolation, welfare reliance, unemployment or poor employment,

criminal involvement by the family, physical, sexual and emotional abuse, health issues (substance misuse, mental illness, high mortality rates including violent death and suicide, poor physical health, co-morbidity of conditions) and poor life skills (education, literacy, numeracy, time management, financial management) and poor cognitive function (pp. 33–35). The literature suggests that the over-representation of multiple forms of disadvantage among prisoners and ex-prisoners, together with the fact of being or having been a prisoner, may directly affect the legal issues experienced by prisoners and their capacity to address these legal issues (Borzycki, 2005; Webster et al., 2001; Stringer, 1999). The following section describes the prevalence of certain characteristics that are indicative of disadvantage within the NSW prison population.

### ***Prisoner health***

Unless indicated otherwise, the following data were drawn from the IHS (Butler & Milner, 2003), a survey of 914 inmates conducted by Justice Health. The sample was stratified by Aboriginality and age (groups being under 25 years, 25–40 years, and over 40 years) (p. 11, Butler & Milner, 2003). Overall, 95 per cent of women inmates and 78 per cent of male inmates surveyed in the IHS had at least one chronic health condition (p. 8).

### **Addiction and addictive behaviour**

Available data indicates that prisoners commonly have histories involving harmful alcohol and other drug use. Substance misuse is of particular relevance to prisoners and legal need as it has been previously identified in meta-analyses as ‘a robust predictor of recidivism’ (See Kinner, 2006 p. 1). Butler and Milner (2003) identified that:

- ♦ over one third of women and approximately half the men in their sample drank alcohol in the ‘hazardous’ or ‘harmful’ range according to the Alcohol Use Disorders Identification Tool<sup>11</sup> (pp. 120–121). As a point of comparison, 9.3 per cent of the NSW population (aged 14 years and older) report drinking alcohol at ‘risky or high risk levels’ (AIHW, 2005a, p. 4)<sup>12</sup>
- ♦ seventy-four per cent of women and 67 per cent of men had used illicit drugs regularly in the twelve months before prison (pp. 119–120). In

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<sup>11</sup> The Alcohol Use Disorders Identification Test (AUDIT) is a 10-item questionnaire, developed as a screening tool to detect excessive alcohol consumption and dependence. Number of drinks is only one measure in this test.

<sup>12</sup> ‘Risky or high risk’ alcohol consumption is defined as 29 or more standard drinks a week for men and 15 or more standard drinks for women.

comparison, 14.6 per cent of the NSW population report having used an illicit drug at all in the previous 12 months (AIHW, 2005a, p. 7)

- ◆ eleven per cent of women and 20 per cent of men were identified as ‘probable pathological gamblers’ (p. 8). While not directly comparable, a recent survey of over 2 000 people found that 0.8 per cent of the NSW adult population fell in the ‘problem gambling group’. A further 1.6 per cent [AQ of men or people?] are considered moderate risk gamblers and 2.1 per cent low risk gamblers (Brockelsby & Kenrick, 2007, pp. 7–9).<sup>13</sup>

The Drug Use Monitoring in Australia (DUMA) project is a national study which seeks to measure drug use among people who have been recently apprehended by the police.<sup>14</sup> While DUMA data is only drawn from people in *police* custody, the data is useful here as this is where the vast majority of prisoners commence their incarceration. The DUMA data indicated that overall, 83 per cent of the sample of offenders charged with property offences and 65 per cent of those charged with violent offences *tested positive to a drug at the time they were detained by police* (Schulte, Mouzos & Makkai, 2005). Most commonly detected drugs included cannabis (60% of males, 52% of females); methylamphetamine (29% of males, 41% of females); benzodiazepines (20% of males, 36% of females) and heroin (13% of males, 19% of females). The study also found considerable overlap between heavy use of alcohol (defined as more than five drinks in one day for men and three drinks for women) and illicit drug use (Schulte et al., 2005, pp. 1–2).

The resumption of alcohol and other drug use may also be an issue for inmates after release from prison. In a small scale study in Queensland of drug use following release from jail, Kinner (2006) identified that within an average of 34 days post-release, 64 per cent of men and 37 per cent of women reported illicit drug use, particularly cannabis and amphetamines (p. 1).

### **Mental health**

Ogloff et al. (2007) report that the rates of major mental illnesses such as schizophrenia and depression are three to five times higher among Australian prisoners than those in the general population (p. 1). Overall, 54 per cent of female and 39 per cent of male inmates interviewed for the IHS had been

<sup>13</sup> Figures were derived using the Canadian Problem Gambling Index (CPGI).

<sup>14</sup> The DUMA program is a quarterly collection of information from police detainees regarding their alcohol and other drug use, in seven police stations or watchhouses across Australia. Two of the sites are in Sydney.

diagnosed at some time in the past with a psychiatric problem. Depression was the most common diagnosis in both sexes. Three per cent of women and five per cent of men had been diagnosed with schizophrenia (Butler & Milner, 2003, p. 96).

A report focusing on the mental health of prison inmates in NSW identified that 74 per cent of their prisoner sample were identified as having had 'any mental disorder' (psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder or neurasthenia) in the previous 12 months. This is substantially higher than the proportion of general community members with such disorders (22%) (Butler & Allnut, 2003, p. 2). The authors report that, *at the point of their reception into prison*, nearly half of all reception inmates were experiencing at least one mental disorder (psychosis, anxiety or affective disorder) and 12% had psychosis (p. 17). Further, Butler and Allnut estimated that on an average day, around four people suffering schizophrenia will enter 'the system' (Butler & Allnut, 2003, p. 21).

### **Anxiety and stress**

Literature on the response of inmates to incarceration has suggested that prisoners experience high levels of anxiety and stress when they first come into prison, but that anxiety levels lessen over the time spent in custody (Dollard et al., 2003, p. 93; Paulus & Dzindolet, 1993; MacKenzie & Goodstein, 1985). Dollard et al. (2003) cited a number of studies, which indicated that prisoners' trait anxiety (their general vulnerability to anxiety) is higher than in other populations, and that their anxiety levels are raised further by the experience of going into custody. It would also appear from this research that as inmates' anxiety levels increase, their capacity to cope with the imprisonment decreases (p. 93).

### **Intellectual disability**

According to the IHS, 18 per cent of women and 27 per cent of men scored below the pass rate on the intellectual disability screener used (see Butler & Milner, 2003, for details). Of those screened, who were further assessed using the *Weschler Adult Intelligence Scale Revised* (WAIS-R) test, 59 per cent of women and 39 per cent of men had either an intellectual disability or were functioning in the borderline range (Butler & Milner, 2003, pp. 8–9). While population estimates vary depending upon the definition, the prevalence of intellectual disability in the Australian population aged under 65 years was estimated by the AIHW in 2003 to be 2.5 per cent (or 3.0% for the whole population) (AIHW, 2005b, p. 213).



### **Traumatic Brain Injury (TBI)**

In the IHS nearly one in four (39%) women inmates and 45 per cent of male inmates reported having had sustained a head injury at some time in the past which resulted in an episode of unconsciousness or 'blacking out' (Butler & Milner, 2003). Forty-one per cent of women and 23 per cent of men who had sustained a head injury reported unresolved side effects. Being struck by an object or person was the most common cause of head injuries in both male and female inmates (60% and 69%) (Butler & Milner, 2003, pp. 66–67).

In a recent study of 200 men received into police or corrective services custody in NSW, 82 per cent had experienced at least one traumatic brain injury (TBI) (Scholfield et al., 2006, p.501). Sixty-five per cent reported at least one TBI *with* loss of consciousness. Of those who had lost consciousness, 59 per cent reported they had been unconscious for less than 30 minutes. Of note were the very high rates of *multiple* TBI (43% of the sample had sustained four or more TBIs), and high rates of *recent* TBI and ongoing symptoms. Symptoms reported included headaches, personality change, anxiety/depression, memory loss, uncontrollable anger and relationship breakdown. As a point of comparison, Scholfield et al. (2006) reported that an Australian community survey found that the lifetime prevalence of TBI with at least 15 minutes of loss of consciousness ranged between 5.6 and 6.0 per cent (p. 502).

### ***Histories of violence and abuse***

Consistent with the figures on inmate head injuries reported above, prisoners often reported personal histories involving violence and abuse. In terms of sexual abuse, figures in the IHS showed that 60 per cent of women prisoners and 37 per cent of men reported having been sexually abused before the age of 16 years, while 30 per cent of women and ten per cent of men reported having been sexually abused before the age of ten (Butler & Milner, 2003, pp. 8-9). In the IHS, nearly eight out of every ten women reported being the victim of violence as adults and 44 per cent reported being the subject of sexual assault as adults (Butler & Milner, 2003, p. 5). Further, in a survey of 50 Aboriginal women in custody in NSW, Lawrie (2002) also found that 70 per cent of the women surveyed reported sexual assault as children, and approximately 80 per cent reported having been victims of domestic violence. Figures on violence in relationships are described above under 'Marital status and children'.

### ***Histories of state care***

Approximately one-third of women and one-fifth of men in NSW prisons have been identified as having spent time in the state care system during childhood

(Butler & Milner, 2003, p. 8). Further, sixteen per cent of both women and men had at least one parent who had been imprisoned during their childhood (p. 29).

### ***Literacy levels and education***

Rawnsley (2003) analysed Australian prison census data from 1993-2001, to discern factors leading to repeat imprisonment. Rawnsley observed 'that prisoners with more prison spells are likely to have lower levels of education' than other prisoners (p. 20). In 2001, DCS reported that 60 per cent of inmates at that time were not functionally literate or numerate (NSW Legislative Council, 2001, p. 20).

However, these figures should be considered in context of literacy levels in the broader population. A recent ABS survey of adult literacy and life skills describes a minimum standard of literacy 'required for individuals to meet the complex demands of everyday life and work in the emerging knowledge-based economy' (ABS, 2007b, p. 5). The study found that 46 per cent of Australians aged 15–74 scored *below* this minimum standard for prose literacy, 47 per cent for document literacy and 53 per cent per cent for numeracy. Seventy per cent of Australians aged 15–74 scored below the minimum standard for problem solving (ABS, 2007b, p. 5). Consequently, while prisoner literacy rates appear to be low, population figures suggest that limited literacy may be a broader issue within the Australian population.

The ABS study also found a strong association between educational attainment and achieved literacy levels (p. 9). In the IHS, 46 per cent of female inmates and 53 per cent of male inmates reported having left school with no qualifications (e.g. not achieved the year 10 certificate or High School Certificate). Approximately one in four inmates sampled had attended more than 5 schools, and 29 per cent of women and 39 per cent of men had been expelled from at least one school. Eight per cent of the women and 11 per cent of the men had attended a special school (Butler & Milner, 2003, p. 22). As a point of comparison, the 'apparent retention rate'<sup>15</sup> from year 7 to year 12 for all full-time school students in NSW in 2006 is 70.5 per cent (ABS, 2007c, p. 28). The apparent retention rate to year 12 Australia-wide is 75.9 per cent for non-Indigenous students and 40.1 per cent for Indigenous students (ABS, 2007c, p. 31).

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<sup>15</sup> To calculate the apparent retention rate of full-time students, the total number of full-time students in Year 12 in 2006 is divided by the number of full-time students in the base year, which is Year 7 in NSW (ABS, 2007c, p. 37).

### ***Employment histories and welfare dependence***

The IHS reported that 36 per cent of the women interviewed and 55 per cent of men had worked in the six months prior to imprisonment. Women were most commonly employed in sales and personal service work (27%) whereas most men were employed as labourers and related workers (40%) (Butler & Milner, 2003, p. 22). The remaining 64 per cent of women and 45 per cent of men were unemployed in the six months prior to imprisonment. The period of unemployment for these inmates ranged from less than one year (women 8%; men 13%) to over ten years (women 23%; men 7%). Nine per cent of women and 12 per cent of men had never worked. Most of the inmates interviewed had received a benefit or pension in the six months before coming into prison (women 85%; men 64%) and the median length of time on a benefit or a pension was four years for women and 18 months for men (Butler & Milner, 2003, pp. 22–23). By comparison, the unemployment rate in the NSW general population at the time of the IHS was 5.9 per cent for men, with a 71.1 per cent participation rate in the labour force. For women it was 5.6 per cent, with a 54.1 per cent participation rate in the labour force (ABS, 2001, p. 1).

Borzycki (2005) reports that recent unemployment among prisoners (as well as injecting drug users and police detainees) ‘appeared markedly higher than seen in the Australian population over 15 years of age, with the proportion even higher among those who had previously been imprisoned’ (p. 47). Reflecting on the issue of prisoners’ employment histories, she noted:

*Prisoners tend to have patchy and erratic histories of employment within the legal economy, which can in part be linked to average poor education levels, poor life skills, low self-esteem, unstable lifestyles, and drug abuse. Upon release, these factors may be exacerbated by a lack of stable accommodation, a criminal history that now contains a custodial term, a prolonged absence from the job market and associated job skill loss. (Borzycki, 2005, p. 38; also Webster et al., 2001, pp. 8–9)*

### ***Homelessness***

In research conducted between 2001 and 2003 with 194 participants in NSW and 145 participants in Victoria, Baldry et al. (2003) explored the relationship between homelessness and incarceration. The study found that the incidence of homelessness increased from 20 per cent prior to incarceration to 38 per cent six months after release. The authors identified significant associations between returning to prison and being homeless; not having any, or adequate

accommodation support; and worsening alcohol and other drug problems (p. i). Access to socially supported housing was associated with staying out of prison and increased social integration. Not having such housing was commonly associated with slipping back into a transitory lifestyle, problematic drug use and being re-arrested and re-incarcerated (p. ii). The Foundation's own study into the legal needs of homeless people also identified that people recently released from jail seemed to be disproportionately represented among the homeless (Forell et al., 2005, p. 269). In 2001, the rate of homelessness within the general NSW population was estimated to be 42.2 per 100 000 people (Chamberlain & MacKenzie, 2003, p. 5).

## **Summary**

While the NSW prison population is largely young and male, an increasing number of women are also spending time in jail. Aboriginal people, people with intellectual disability, alcohol and other drug dependence, mental health issues, histories of violence and abuse, histories of state care and/or parental imprisonment, interrupted or limited education and high unemployment are over-represented among prison inmates, when compared to the NSW general population. It could be expected that having any one of these characteristics may add to the complexity of accessing legal services and/or addressing legal need. However, the data reported above suggest that many prisoners may in fact face multiple and interrelated forms of disadvantage, adding to the complexity of addressing their needs. Further, these statistics have indicated that both the overall size of the prison population and the numbers of prisoners with complex or special needs is increasing and therefore issues regarding access to justice are only likely to increase in the future.

## **Access to justice for prisoners and ex-prisoners: the existing literature**

The profile of the prisoner population as described in the previous section has considerable implications for the delivery of legal services to prisoners. It suggests that inmates may not only face barriers arising from their environment (i.e. being in prison), but as individuals, they may have difficulties in accessing and using legal help and engaging with legal processes.

We now turn to the existing literature on prisoners' legal needs and their capacity to access justice. To date little research has been undertaken specifically on these issues. However, certain formal inquiries, evaluations,

reports and academic literature have explored aspects of this topic, such as the particular needs of subgroups within this population. The following discussion is divided into four sections: legal issues, access to legal information, access to legal advice and representation, and the ability of inmates to participate in legal processes.

## **Legal issues**

To date, two Australian studies have examined the legal needs of prison inmates, both focussing on the needs of female inmates. The larger of the two studies was a survey of 121 women and girls in custody in Queensland (representing 36% of the female prison population). The study examined participants' 'unmet legal needs' and the capacity of Legal Aid Queensland (LAQ) to address them. The authors reported that: 'jail treatment, discrimination and children were the biggest area of problem for participants' (de Simone & d'Aquino, 2004, p. 5).

The second, smaller study focussed in particular on the welfare needs of 50 Aboriginal women in custody in NSW (nearly half of all Aboriginal women in prison at the time). Issues raised that had legal implications for these women included lack of access to Centrelink benefits, housing issues, family problems, care and protection issues and victims of crime experiences (Lawrie, 2002).

In terms of overseas research, the Department of Justice in Canada commissioned a study into the legal service needs of prisoners in Federal penitentiaries. It covered legal aid services, information and other support accessed by prisoners, and the difficulties they experienced accessing these services (Lajeunesse, 2002, p. 1). The study involved interviews with 100 inmates in 12 jails, nearly 50 correctional staff and five 'prison law' lawyers (p. 1). Issues identified by the prisoner interviewees as critical areas requiring legal assistance included: serious disciplinary offences (75% of respondents); family law matters (70%); appeals (69%); involuntary transfers or requests for administrative segregation (65%); and, conditional release (60%) (Lajeunesse, 2002, p. 2).

Finally, there is an increasing body of literature both in Australia and overseas focusing on the problems facing inmates upon their release from prison and the provision of support services to help ex-prisoners reintegrate into the community, reducing their chances of re-offending. The literature identifies inmates as often having multiple legal and other needs when they leave prison, including housing issues, problems with debt, discrimination, police harassment and finding and maintaining employment. (Audit Office of

NSW, 2006a; Scottish Executive, 2006a & 2006b; Borzycki, 2005; Re-entry Policy Council, 2005; Winkworth, 2005; Baldry et al., 2003). The literature concerning particular legal problems faced by prisoners is discussed and integrated into Chapter 4 in the context of the findings from the current study regarding legal need.

### **Access to legal information**

In the currently available Australian literature and commentary, a number of barriers have been identified to inmates accessing the resources necessary to prepare for court appearances, or to respond to other legal matters that may be pending. These include:

- ◆ lack of access to computers (Lester, 2006)
- ◆ lack of access to telephones, limitations to the length of calls and the cost of telephone calls (de Simone & D'Aquino, 2004)
- ◆ difficulties in reaching and getting information from Legal Aid (Queensland) (de Simone & D'Aquino, 2004).

The advocacy group Justice Action (2003) has also raised concerns about these barriers, as well as difficulties accessing the library and photocopiers.

In a survey of 711 prisoners (65% of whom were on remand) about the treatment and conditions for un-sentenced prisoners in England and Wales, the Inspectorate of Prisons examined remandees' access to legal information and assistance to help them get bail. They identified that while there were formal systems in place to provide legal information to prisoners (e.g. induction and pamphlets), inmates did not necessarily receive the information they needed. Specifically, they concluded that while most prisoners received some form of induction, material on bail and how to access legal aid was the type of information they were least likely to be given (HM Inspectorate of Prisons, 2000, pp.16 and 34; see also Brookman & Pierpoint, 2003; Brookman, Noaks & Wincup, 2001). Further, 57 per cent of men and 71 per cent of women interviewed indicated that, aside from the induction, they had not been given any other information about bail, legal aid or how to access legal reference books in the first week or two of custody. A third of the men and over half of the women were not told when telephone calls to solicitors or families could be made, or how to make a request or complaint (HM Inspectorate of Prisons, 2000, p. 34).

### ***Prison libraries***

In 1990, a set of minimum standard guidelines were prepared for prison libraries by the Australian Library and Information Association (ALIA). The *Australian prison libraries: minimum standard guidelines* (1990) identify legal reference materials as ‘materials to cater for special needs’ that should be held by prison libraries, in addition to the materials usually found in public libraries (ALIA, 1990, para. 7.8). The guidelines also suggest that:

*Assistance in legal reference work shall be available, by contract if necessary, from a law library. It is not to be expected that any library can provide this kind of service beyond a level which would apply for the general public; however it is recommended, in the interests of justice, that special consideration be given for the needs of prisoners in this regard.* (ALIA, 1990, para. 8.7)

These guidelines are acknowledged in the DCS Operations Procedures Manual section on Correctional Centre Libraries (NSW DCS, 2006c, s 5.6).

In 2005 DCS Library Services undertook a small-scale survey of inmates about their use of the library and their view of the services offered. Responses were received from 165 inmates in 12 Correctional Centres. Respondents indicated that they used the library for various purposes, including recreational reading, education and legal information. Some inmates also used the computer and photocopier in the library. Two-thirds of respondents (67%) agreed with the statement that ‘[The library] helps me with my legal information needs’ (NSW DCS, 2005b).

Recent changes to the quantity and quality of legal information available through prison libraries are described in the body of this report.

## **Access to legal advice and representation**

### ***Review of the NSW Prisoners’ Legal Service (PLS)***

A key provider of legal services to prisoners in NSW is Legal Aid’s Prisoners Legal Service. The bulk of the PLS’s practice involves representation work, largely before the Parole Authority, as well as for Visiting Justice Proceedings and Review of Segregation Directions. The PLS also provide a visiting advice service to most jails, conducting over 300 interviews a month (Legal Aid NSW, 2006a, p. 19). In regional areas, the legal advice service is provided by the Legal Aid regional office or a private solicitor on an hourly rate (p. 19).

In 2005 Legal Aid NSW undertook a review of the PLS. The review involved consultations with commission staff and other stakeholders.<sup>16</sup> The review noted that the PLS is currently working ‘at full capacity’ to provide representation and advice services to prisoners in NSW (p. 15). However, the report anticipated that, in the face of an increasing prison population, and in particular, increases in the number of prisoners with complex or special needs (e.g. mental illness, intellectual disability, Aboriginality), additional resources would be needed to maintain these services. The review also highlighted the need for closer links with other specialist services (pp. 4, 11, 13).

While nearly all jails are covered by the PLS, concern was also expressed in the review that the timing of the visiting advice service could be unpredictable (e.g. when a solicitor was not available to attend) and that the range of advice that solicitors were able to provide varied greatly. For instance, some solicitors were able to provide family and civil advice while others only had expertise in criminal law (p. 20). Mirroring the types of concerns raised in other jurisdictions and overseas (see studies discussed later in this section), solicitors reported problems such as frequent lockdowns preventing visits, lengthy processing and waiting times, even when the solicitor visits the jail regularly, the time taken to bring the prisoner to the visits area, unsuitable interview rooms (lack of regard to the solicitor’s security) and no access to a telephone to ring the Telephone Interpreter Service (Legal Aid NSW, 2006a, p. 20). Among the recommendations of the PLS advice service review were:

- ◆ to expand the advice service to all jails and to assign more resources to this service
- ◆ to better inform prisoners of the location, times and areas of law covered by visiting advice service
- ◆ to use the Legal Aid NSW social workers to support inmates. (pp. 20–23)

Other key recommendations concerned maintaining a specialist PLS, to develop civil and family law outreach to jails, to develop a state-wide legal education program in prisons, and to forge closer links with other legal and non-legal agencies (pp. 20–43).

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<sup>16</sup> The review did not involve interviews with prisoners because they were aware of the LJF study and were concerned not to overlap (Legal Aid NSW, 2006a, p. 4).



### ***Legal Aid Queensland study***

The LAQ study on the access of women and girls in custody to legal assistance, described earlier in this section, found that only 26 per cent of participants had ever used LAQ. The authors noted that this usage appeared ‘very low’ given that solicitors held two advice sessions a week using video conferencing at the Women’s Correctional Centre. They suggested that this, together with comments by participants, ‘reveal that there is a lack of awareness of the legal advice services provided by LAQ’ (de Simone & d’Aquino, 2004, p. 20). Other factors raised as barriers to women using the service were:

- ◆ a lack of confidence in [the capacity of] the LAQ
- ◆ a fear about ‘accessing the organisation because it is a government body and perhaps linked to the ‘the system’’
- ◆ difficulties in accessing LAQ
- ◆ a lack of information about LAQ in prisons and the resulting reliance on ‘word of mouth’ to receive information on what entitlements a person may have. (de Simone & d’Aquino, 2004, p. 20–21)

De Simone and d’Aquino (2004) observed that while the general public can access LAQ during general working hours and can receive telephone calls back from lawyers, prison inmates face systemic barriers to contacting LAQ.

**Figure 1: A comparison of the access to Legal Aid Queensland, between the general public and women prisoners in Queensland**



Fig 14 comparison of access between General Public and a Prisoner.

Source: d’Simone & d’Aquino (2004) p. 24.

Figure 1 outlines the steps that would need to be taken for an inmate to access Legal Aid, and compares this to the pathway of those who are accessing Legal Aid from outside jail. Of particular note is the higher number of contingencies (such as access to telephone privileges, having money on the phone card) that must be in place before an inmate can reach legal assistance, compared to the more direct access to legal help when outside of prison. Also evident are the barriers to prisoners and their lawyers communicating with each other (e.g. time limited telephone calls and the inability of lawyers to return telephone calls).

The report indicated dissatisfaction among women inmates with LAQ's representation services, and highlighted the problems women faced in accessing their lawyers:

*The bulk of the qualitative comments showed dissatisfaction with the way that the service was delivered such as failure to keep appointments, limited contact with the solicitor and lack of communication between the solicitor and the client. Again they experienced difficulty in getting in touch with their solicitor and that this was an issue. (de Simone & d'Aquino, 2004, p. 5)*

In terms of improvements to the process, inmates suggested that solicitors use less jargon, make an effort to listen more carefully to their client and provide follow-up advice sessions. Inmates also expressed the need for LAQ to be more accessible by telephone so that inmate telephone calls could be answered. (de Simone & d'Aquino, 2004, p. 23).

### ***Overseas studies***

In their UK study of young suspects and remandees' access to legal assistance, Brookman and Pierpoint (2003) noted a 'strong message from the broader research that suspects and remand prisoners generally do not receive adequate access to legal advice' (p. 453). Their findings were based on both a review of research and their own earlier qualitative interviews with eighteen remand prisoners, as well as a small number of solicitors (Brookman et al., 2001). The difficulties that prisoners identified in accessing their legal advisors included: a lack of face-to-face contact with their legal advisers outside of the courtroom; a failure by some lawyers to make their scheduled visits to the prisons; the expense of telephone contact; and a reluctance by some inmates to 'waste' phone card numbers on their lawyers (Brookman & Pierpoint, 2003, p. 461). Constraints reported by solicitors included: length of time it took to get to their client through the prison system; inflexible visit times (which clashed with court times and domestic visits); the inflexibility of the prison routine

or rules, and the resulting lack of access to inmate clients (e.g. lockdowns and meal times); and limited time available for each client when they had multiple appointments at the prison — particularly if one visit went over time (Brookman & Pierpoint, 2003, pp. 461–462).

Time taken to access prisoner clients, limited and suitably private interviewing spaces, incorrect information about the location of prisoners who had been moved, and difficulties in getting to prisons in isolated areas, were also reported as issues in a survey of 10 Scottish law firms (Scottish Executive, 2000, para. 4.4). Capacity to contact lawyers and other key players such as social workers, was described both as one of the most pressing needs of people on remand *and* one of the areas most likely to be affected by incarceration (Scottish Executive, 2000, para. 4.1).

The Canadian study described earlier of legal need and access to justice in Federal penitentiaries (Lajeunesse 2002) identified a range of barriers to the provision of legal help which appeared to be based in prison culture – specifically the relationship between prisoners and staff, in particular the capacity of staff to act as a pathway to legal help. The author observed:

*Many inmates mentioned that adverse dynamics within their respective institutions can have a major negative impact on obtaining legal advice, such as negative repercussions by staff when a lawyer gets involved, attempts by staff to prevent or delay contact, and/or staff not knowing how to go about facilitating access to lawyers for individual prisoners. (Lajeunesse, 2002, p. 2)*

Lajeunesse (2002) also identified concerns about the level of knowledge or experience among lawyers working in prisons and about the length of time taken to process legal aid applications for disciplinary matters (p. 3). Further, inmates outlined what they considered to be the best option to provide quality legal services in prisons:

*The consensus among inmates was for there to be a regular presence by lawyers, with assigned lawyers for each institution, perhaps by using a staff lawyer approach. Others also mentioned that law schools could develop formal arrangements with some of the penitentiaries to provide students with an opportunity to become familiar with prison law while providing paralegal-type services. (Lajeunesse, 2002, p. 2)<sup>17</sup>*

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<sup>17</sup> This type of program has been conducted in Victoria, with law students providing a ‘court readiness program’ for prisoners (Naylor & Jacobson, 2007, p. 61).

Considered together, the above studies indicate that prisoners may have trouble accessing legal advisers and, conversely, solicitors can have trouble reaching their inmate clients. The very physical barriers placed between inmates and the outside world such as restricted visit times, limited and timed telephone calls, and that the inmate cannot directly receive telephone calls even from his or her lawyer, has inhibited the capacity of inmates to obtain legal advice.

Lajeunesse (2002) also identified barriers arising from some prisoners' reticence to use the channels available to them because of their difficult relationships with prison personnel and authorities. The LAQ study and the work from Scotland also allude to prisoners having similar problems with lawyers, such as an inmate not being able to comprehend the advice being given to him or her by a lawyer, particularly if the circumstances in which the advice is given are strained (e.g. by short timeframes). Finally, Lajeunesse (2002) suggested that the provision of legal assistance not only helps inmates with their particular legal problems but helps to restore their faith in the law as a tool that can work for them.

### **Participation in legal processes**

There is a body of Australian research that focuses on the capacity of vulnerable groups including young people, people with intellectual disabilities and Indigenous people, to participate effectively in the criminal justice system. However, there is limited research about peoples' participation in criminal matters once they are incarcerated, and virtually no information about the participation of prisoners in non-criminal legal processes, such as civil and family matters.

The most comprehensive review of the participation of people with intellectual disability in the criminal justice system — as defendants, victims and witnesses — was NSW LRC (1996) *People with an intellectual disability and the criminal justice system*. While NSW LRC (1996) discussed different custodial options for inmates with intellectual disabilities (pp. 391-413), little was said about their access to legal help or their ability to participate effectively in their criminal matters once they were in jail. The more recent *Framework Report* commissioned by the Intellectual Disability Rights Service (IDRS) specifically identified access to advocacy as a difficulty faced by prisoners with intellectual disabilities (Simpson, Martin & Green, 2001). It also raised the problem of there being no systemic way to identify people in legal processes who have an intellectual disability, and consequently being prepared to meet their particular needs (p. vi).

It is important to note that there is a specialist court support program for people with an intellectual disability currently operative in NSW called the NSW Criminal Justice Support Network (CJSN). The CJSN has also run a pilot project extending their support to intellectually disabled inmates on remand, including those appearing by AVL (CJSN, 2006, p. 3). This support is provided in recognition that:

*The capacity of people with intellectual disabilities to understand the justice process is frequently impaired, thus affecting their ability to (a) protect their rights in relation to that system, (b) interact in the system to fulfil personal and community responsibilities and (c) to experience justice being done.*  
(Westwood Spice, 2005, p. 63)

Some of the difficulties reportedly faced by intellectually disabled inmates who have court matters pending include: limited comprehension of legal advice, court process and court outcomes; anxiety and stress related to participation in court processes; and particular difficulties in participating in legal processes conducted through AVL from jail (CJSN, 2006, pp. 12–15).

### ***AVL for court and legal conferences***

In recent years there has been a move towards the use of AVL between prisons, legal advisers and courts, in place of face-to-face advice sessions and court appearances. Indeed the numbers of inmates appearing in NSW courts by video link has increased from 8 605 in 2002-03 to 17 214 in 2005-06 (NSW DCS, 2006b, p. 37). The use of AVL replaces the need to transport inmates to court or for parole hearings. This is reflected in a reduction in the number of inmate movements by truck to courts from 105 844 in 2001-02 to a low of 85 227 in 2004-05 and 90 945 in 2005-06 (NSW DCS, 2006b, p. 37). AVL is also increasingly used by the PLS in legal consultations with clients prior to their parole hearings.

AVL is also being used in Queensland. The LAQ study noted that 31 per cent of participants had received advice via video conferencing. Three-quarters of those respondents reported being dissatisfied or extremely dissatisfied with this method of receiving advice. Reasons given for this included a preference for face-to-face contact with lawyers, concerns about confidentiality due to the volume of the conference and the proficiency of lawyers using the system (de Simone & d'Aquino, 2004, p. 25).

In an evaluation of the CJSN, DCS raised a concern that the increasing use of video links from correctional centres to courts 'increased the challenges [for

intellectually disabled inmates] in terms of most communication, especially legal advice being conducted by telephone' (Westwood Spice, 2005, p. 49).

## Conclusion

While there is not a large body of literature concerning prisoners' legal and access to justice needs, available material provides a valuable foundation for the current study. Firstly, available data has reinforced the point that prisoners as a group suffer multiple and often interrelated forms of disadvantage. This disadvantage may, over and above their status as prisoners, affect their capacity to access legal assistance and participate in legal processes. Specifically, young, under educated males and people suffering from poor health, cognitive impairment including intellectual disability, mental illnesses and substance use disorders are all over-represented in the prisoner population. Also over-represented are Aboriginal Australians and people who have experienced prior episodes of state care, imprisonment and homelessness.

In terms of legal need, the literature has indicated that prisoners may not only face criminal legal issues, but also civil legal issues – particularly as they re-enter the community post-release. These issues include employment, housing and debt, and for women, family violence. On the basis of the literature reviewed, bail and parole issues, family law matters and prison disciplinary offences are also likely to be areas of legal need in NSW.

This leads to the issue of the provision of legal information, advice and assistance to prisoners. As indicated in this chapter, prisons do have processes in place to allow prisoners access to legal help, particularly for criminal law matters. However, the capacity of legal help to be delivered through these mechanisms *in practice* was less clear from the literature, (de Simone & d'Aquino, 2004; Brookman & Pierpoint, 2003; HM Inspectorate of Prisons, 2000; Scottish Executive, 2000). These studies all identified practical barriers to the effective delivery of legal assistance to inmates for criminal matters. Most of the barriers identified were 'systemic' barriers. However, the work by Lajeunesse (2002) also suggested that we should be aware of barriers that may arise from prison culture – from a reticence by prisoners to ask for help from officers to a reticence of officers to provide this assistance.

The literature generally had less to say about the provision of family and civil law services than criminal law services in jails. Again our study aims to fill

this gap in knowledge. Finally, there is very little literature about the barriers faced by prison inmates participating in legal processes. The work of the CJSN has indicated that inmates with intellectual disability have difficulties understanding courtroom processes and outcomes. Our study aims to provide further insight into whether there are others in the prisoner population also facing difficulties in participating in legal processes and if so, which inmates and in what circumstances. This study may also provide insights relevant to the new and increasing use of AVL within the NSW legal system.

Consequently, this study aims to build on the data and literature presented in this chapter to provide a more comprehensive picture of the various criminal, civil and family law needs of prisoners in NSW and their capacity to access the law and legal assistance.





# 3 Method

As may be seen by the preceding section, to date, there has been no comprehensive research regarding the legal needs of prisoners in NSW. The aims of the project, as stated in the introduction, are to examine the ability of prisoners in NSW to obtain legal information, advice and representation, and to participate effectively in the legal system. Qualitative interviews were used to explore the experiences of prisoners and people recently released from prison. The perspectives of DCS staff and other legal and non-legal service providers who support both prisoners and ex-prisoners were also sought through one-on-one interviews and a small number of focus groups. The following chapter describes the procedures utilised in the collection and analysis of the data which form the basis of this report.

## Data collection

Prior to the main data collection phase, four key informants were consulted in order to gauge the scope and direction of the project. The informants were a senior solicitor with the PLS, the Chief Executive Officer of a non-government organisation that supports prisoners and their families, a university academic who has conducted research with ex-prisoners, and a staff member at the head office of DCS. These people provided invaluable guidance as to appropriate selection characteristics for both stakeholders and inmate interviewees, the breadth of areas to cover in terms of legal problems, and the issues to consider in conducting research in a prison environment.

There were two main populations drawn upon for the empirical data component of our research: an inmate (including ex-inmates) population and a stakeholder population (DCS staff and non-DCS workers). As it was necessary to conduct

the interviews with prisoners and the majority of interviews with DCS staff on site at the prisons or probation and parole offices, an application was made to the Commissioner of the DCS (and, inclusive of this, to the DCS Ethics Committee) in August 2005 for permission to conduct the research. The project was approved on 18 November 2005 allowing access to 40 prison inmates, 10 parolees on parole and 10 DCS staff. These numbers were subsequently extended with approval to 46 inmates and 20 DCS staff.

The interviews were conducted by six experienced researchers (four permanent staff of the Foundation and two casual employees recruited specifically for the project). Given the unique circumstances of the target population, all interviewers attended a day training course that covered a refresher on qualitative interview techniques as well as specific issues relating to interviewing an inmate population. The training was conducted by a researcher with considerable experience in collecting data from people in custodial settings. This preparation was invaluable in terms of setting realistic expectations for recruitment, pre-empting problems in gaining access to prisoners, and increasing awareness of the potential risks to the safety and peace of mind for the researcher and inmate alike.

The following sections describe in detail the procedures used to collect data from each of the prisoner and stakeholder populations, followed by a description of the techniques employed to analyse the combined dataset.

## **Prisoners and ex-prisoners**

### ***Population and sampling***

The prisoner sample for this project consisted of people who were, at the time of data collection, in full-time custody, or had been released from full-time custody in the last two years. The latter group consisted of both parolees and people who had been released unconditionally in order to capture any differences in the legal need experienced by people in contact with a parole officer compared with those without such contact.

Current inmates were drawn from five NSW prisons. Prison selection was aimed at yielding a range of interviewees in terms of geographic location, degree of security (at a facility level) and gender of inmates. In consultation with DCS, the following correctional centres were selected:

- ♦ a maximum security urban facility for men, which is a major remand/reception prison

- ◆ a maximum security urban facility for women, which is a major reception and remand centre that also holds sentenced inmates
- ◆ a minimum-medium rural facility for men,<sup>18</sup> with remanded and sentenced inmates
- ◆ an urban transit facility for men that also includes inmates from non-urban areas attending court, male inmates, urban remand and sentenced male inmates
- ◆ an urban minimum security for men, with sentenced inmates, and a works release centre.

For the ex-prisoner sample, parolee interviewees were drawn from three probation and parole services. One was located in southern Sydney, one in south-western Sydney and the other in rural NSW.

Determining a recruitment pathway for ex-prisoners not on parole was less straightforward compared with the two subgroups described above given the lack of formal links between these ex-prisoners and any particular service, such as probation and parole. The approach taken was to request the assistance of a number of services used by ex-prisoners, mainly from the Foundation's existing agency networks. Four non-legal support agencies (housing and welfare support serving, amongst others, ex-prisoners) agreed to assist the Foundation project team in recruiting interviewees. Two of these agencies were located in an area close to a rural prison; the remaining two were located in the suburbs of Sydney.

### ***Description of the inmate sample***

In order to ensure coverage of a variety of experiences, interviewees from a range of backgrounds and custody status were sought. Appendix 2 details the sampling frame used to guide the selection of people for interview. Table 3.1 displays the demographic characteristics of the final sample. Forty-six prisoners and 21 ex-prisoners were interviewed for this study. The majority of interviewees were over the age of 25. Twenty-eight interviewees were aged between 25-34 and 36 interviewees were over the age of 35. Only 10 per cent interviewees were under the age of 25.<sup>19</sup>

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<sup>18</sup> This facility also holds a small number of women in transit.

<sup>19</sup> The age of two of the inmates was unknown.

Reflecting the representation of women in prison across the NSW prisoner population, only eight women were interviewed and the remainder of the sample were men. In terms of cultural background, the majority (55%) of interviewees were from an Anglo-Saxon background. Recognising both the over-representation of Aboriginal people in NSW prisons, together with the unique experiences and particular needs of Indigenous Australians, care was taken to ensure that Aboriginal people were appropriately represented. Twenty-seven per cent of the final sample identified themselves as Aboriginal people. Ten prisoners and two ex-prisoners were from a Non-English Speaking Background (NESB) (18% of sample) including Lebanese, South American, Pacific Islander, Burmese, Greek and German interviewees.

Consistent with the description of this population earlier in this report, the majority of inmates reported limited educational experience with 22 per cent not finishing year 10, and seven per cent not finishing primary school. Thirty-eight per cent left school between years 10–12 and none had completed university. Finally, over two-thirds (45) of those sampled had children.

**Table 3.1: Demographic characteristics of inmate sample**

	<i>Prisoners</i> n = 46	<i>Ex-Prisoners</i> n = 21	<i>Total</i> n = 67 % (n)
<b>Age</b>			
Under 25	5	2	10% (7)
25–34	21	7	41% (28)
Over 35	18	12	45% (30)
Unknown	2	0	3% (2)
<b>Gender</b>			
Female	6	2	12% (8)
Male	40	19	88% (59)
<b>Background</b>			
Anglo-Saxon	22	15	55% (37)
Aboriginal	14	4	27% (18)
NESB	10	2	18% (12)
<b>Education</b>			
Less than primary	4	1	7% (5)
Less than Year 10	8	7	22% (15)
Yr 10–Yr 12	18	8	39% (26)
Some tertiary (TAFE or university)	11	4	22% (15)
Completed TAFE	3	1	6% (4)
Unknown	2	0	3% (2)
<b>Children</b>			
Yes	31	14	67% (45)
No	15	7	33% (22)

**Note:** Some percentages do not add to 100 due to rounding. Percentages calculated as a proportion of the total sample (n = 67), including those for whom data was missing.

Table 3.2 displays the characteristics of the inmate sample across a number of characteristics associated with their imprisonment. Sixty-nine per cent (34) of the prisoners interviewed were incarcerated at the time in urban jails and the remaining 31 per cent (12) were located at a rural/regional prison. Among the ex-prisoner interviewees, twelve resided in the city and nine were from a regional/rural area.

**Table 3.2: Prison-associated characteristics of inmate sample**

	<b>Prisoners</b> n = 46	<b>Ex-Prisoners</b> n = 21	<b>Total</b> n = 67
<b>Area</b>			
City	34	12	69% (46)
Regional/rural	12	9	31% (21)
<b>Status</b>			
Remandee	19	n/a	28% (19)
Sentenced	27	n/a	40% (27)
Parolee	n/a	15	22% (15)
Non-parole release	n/a	6	9% (6)
<b>History</b>			
First time in prison	21	6	40% (27)
Been previously incarcerated	23	13	54% (36)
Unknown	2	2	6% (4)
<b>Classification<sup>1</sup></b>			
			n=46
Maximum	9	n/a	20% (9)
Medium	10	n/a	22% (10)
Minimum	18	n/a	40% (18)
Protection	6	n/a	13% (6)
Unknown	3	n/a	7% (3)
<b>Stage<sup>1</sup></b>			
New inmate (<3 months) <sup>2</sup>	7	n/a	15% (7)
Established inmate (> 3 months)	35	n/a	76% (35)
Pre-release (<6 months to go)	4	n/a	9% (4)
<b>Sentence<sup>2</sup></b>			
	n = 27	n = 23	n=50
<6 months	1	4	10%(5)
6 month-5 years	11	16	54% (27)
>5 years	15	3	36% (18)

**Notes:**

<sup>1</sup> The classification was calculated as a percentage of only those currently held in prison (n = 46).

<sup>2</sup> All new inmates were on remand.

<sup>3</sup> The sentence was calculated as a percentage of sentenced and released inmates only (remandees excluded) (n = 50).

In terms of imprisonment status, the sample included 27 sentenced inmates, 19 inmates on remand, 15 ex-prisoners on parole and six inmates released unconditionally. Among the current prisoners (n = 46), nearly 40 per cent (18) were held in minimum security, while 22 per cent (10) were in medium

security and 20 per cent (9) were held in maximum security.<sup>20</sup> A further six interviewees were in protective custody. No prisoners currently in segregation were interviewed.

Of all interviewees, 40 per cent reported that this had been their first time in prison (21 prisoners and six ex-prisoners) however over 50 per cent reported that they had been incarcerated before (23 prisoners and 13 ex-prisoners).

Seven inmates, all remandees, had been in prison for less than three months, and were unaware of how long they would be incarcerated for. More than three-quarters of the inmate interviewees (39) had been in prison for longer than 3 months. Four of these established inmates had six months of their sentence remaining to be served.

We have included information about the length of sentence for both those currently serving and those recently released. The length of sentence for those recently released was the sentence associated with their most recent incarceration. Fifty-four per cent (11) of interviewees who were serving, or had served a sentence, were serving (or had served) prison terms of between six months and five years. A further 36 per cent (18) had sentences of over five years. Only five of our interviewees were serving or had served sentences of less than six months. Therefore, short term inmates (jailed for less than six months) are considerably *under*-represented in our sample. In recognition, we have drawn upon the stakeholder interviews and other literature to consider the particular issues facing this group of inmates.

## ***Procedure***

### **Recruitment**

Recruitment of interviewees who were current inmates was facilitated through a liaison person located at each of the correctional centres. Once DCS had approved the research, the liaison person at each facility was identified after we wrote to the general managers and asked them to nominate a staff member to act in this capacity. In general, the liaison person was a welfare officer, education program manager, or security manager. The senior researchers on the project visited each centre in Sydney to ascertain appropriate interview spaces, and to familiarise themselves with prison entry and security procedures. Liaison persons were sent a suggested profile of the prisoners along the lines of the characteristics listed in Appendix 2, and other requirements were

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<sup>20</sup> The security classification for three inmates was unknown.

given where appropriate. The only exclusion stipulated was that potential interviewees should not pose a threat to the researchers, although inmates charged or convicted of a violent crime were not automatically excluded. There were no other restrictions in terms of competence to participate other than that the interviewee could participate in an interview conducted in English to a degree where they felt comfortable doing so. After discussion with DCS research staff, it was decided that interviewees currently in prison would not be offered an incentive to participate for a number of logistical and ethical reasons. The researchers attended the prisons at a pre-arranged date and time and interviewed inmates typically in legal or general 'visits rooms'. Although interviews were conducted within the sight of prison officers (either directly or via security camera), they were kept confidential by being conducted beyond the hearing of prison staff.

Recruitment of ex-prisoners on parole was facilitated through managers or unit leaders located at the three probation and parole services described above (see 'Population and sampling'). As with the sample of current inmates, liaison persons were sent a profile of the desired interviewee sample outlining the desired demographic characteristics (e.g. sex, ethnicity and length of time served) to guide interviewee selection. The liaison persons were also provided with information to pass onto potential interviewees. An incentive of \$30 was offered in order to encourage people to take part. The researchers attended the service at a pre-arranged time and interviewed the parolees in parole interview rooms.

For unconditionally released ex-inmates, after initial contact was made with the host organisation, as with the probation and parole offices, staff were provided with information to give to potential interviewees. As with the parolees, an incentive of a \$30 payment was offered. Researchers attended the service at a time and on a day convenient to the interviewee and the host organisation, and the interviews took place in the services' interview rooms or private offices.

It should be noted that among the ex-prisoner sample, seven interviewees who had originally been identified as having been released unconditionally by the host agency had subsequently been found to have originally been released on parole, though they were no longer on parole at the time of interview. However, given that six unconditionally released ex-prisoners had already been interviewed, the difficulties encountered in recruiting this group (perhaps because of their lack of formal requirements to report to services post-release) and the need for the project to progress to the analysis stage, further recruitment among this group was not pursued.

## **Interviews**

Interviews with inmates and ex-inmates commenced with a short description of the Foundation and the research project. To ensure informed consent, researchers also ascertained from the potential interviewee that they were clear about the purpose of the interview. They were also provided with the appropriate information sheet and a consent form that was read out aloud to them by the researcher (see Appendix 3). The form indicated that participation was anonymous and voluntary, that the interviewee could choose not to answer any questions and that they could stop the interview at any time. It also specified that, with their permission, the interview would be recorded and transcribed and that the transcribed material would be kept securely. They were further assured that the recording would be erased once transcribed.

The consent form included a description of the researchers' obligation with respect to the disclosure of criminal activity and that otherwise the interview was confidential. Interviewees were also reassured that DCS would not be privy to interview recordings or transcripts. Researchers further ensured that interviewees were informed as to how and in what context the information they volunteered may be used. Once this procedure was complete and the interviewee agreed to go ahead with the interview, they signed the consent form, which was countersigned by the researcher. The consent form was detached from the information sheet, and the latter left with the inmate.

The interview schedules (one for prisoners and one for ex-prisoners) were in the format of a series of semi-structured, open-ended questions seeking information about the interviewees' experience of different legal problems, what steps they had taken (if any) to remedy them and the current status of that problem (see Appendix 4). The schedules covered a range of issues, including general legal issues, housing, employment and income, credit and debt, family, crime, victim of crime issues, health, other legal matters and access to legal assistance issues.

If an interviewee indicated that they had a legal problem but had not sought to resolve it, they were asked why that was so. The questions were worded in such a way that the inmate did not have to identify an issue as necessarily a 'legal' problem such that latent issues would not be missed. Interviewees were also asked specific questions about legal service provision they had received in the past and problems they may have had in accessing a legal service. The only difference between the interview schedule for current and released



prisoners was that questions were phrased to reflect their current situation in terms of their incarceration.

## **Stakeholder interviews**

### ***Population and sampling***

Stakeholders interviewed for this study fell into two major groups: DCS staff and other service providers.

DCS staff interviewees included prison welfare staff (including a financial counsellor), parole officers, library staff, education officers, policy workers, 'Throughcare'<sup>21</sup> workers, and department managers working both within correctional centres and in head office. Interviewee selection was based on the analysis to date and recommendations from workers in the field.

Interviews were conducted with 23 legal and non-legal service providers who provide support to prisoners and people recently released from prison. Interviewee selection and recruitment of this group was based on the research team's knowledge of workers in the field, and further recommendations from the stakeholders interviewed. We interviewed staff from Legal Aid NSW and the ALS, specialist and generalist community legal centres, pro bono legal service providers, public defender staff, LawAccess staff, and some private barristers and solicitors; government agencies including Centrelink; advocacy and support groups, such as Community Restorative Centre (CRC) and Prisoners' Aid and Justice Action; other post-release support services (including Supported Accommodation Assistance Program (SAAP) and other homeless services); and, official visitors. A complete list of the agencies interviewed is contained in Appendix 5.

### ***Procedure***

Nineteen DCS staff were interviewed between February and August 2006 using semi-structured open ended interviews (see Appendix 4). Interviewees were provided with an information sheet and required to sign a consent form (see Appendix 3). Interviews were typically conducted on site in the staff member's office or another office space that provided a quiet and confidential environment. An interview schedule was developed specifically for DCS staff. One of the first steps required in the interview was a description of the role the

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<sup>21</sup> Throughcare officers are members of staff responsible for preparing inmates' accommodation, AOD treatment, etc. during the post-release period.

staff member had in the department and the degree of contact they had with prisoners. Those staff members who had direct contact with prisoners were also asked to detail the degree to which prisoners came to them with legal issues, what legal issues did the prisoners require assistance and what did the staff member do in response to those requests. Interviews with head office staff focussed on obtaining a description of the systems that affected the legal needs of prisoners for which he or she was responsible and their opinion as to the impact of those systems.

Interviews with non-DCS stakeholders took place between December 2005 and May 2006 and were conducted face-to-face, mostly individually or in small groups of two or three. A roundtable consultation of legal practitioners was also held. The interview schedules included a number of open-ended questions, a subset of which was covered in all interviews. Further questions were tailored to the particular expertise of the interviewee. For example, the financial counsellor was asked more in-depth questions about credit and debt problems prisoners and ex-prisoners might face. Areas typically explored concerned the types of legal issues prisoners and ex-prisoners faced and what were the ways in which they tried to resolve those issues. Stakeholders were also asked about the particular types of legal issues for which prisoners/ex-prisoners requested assistance, and how the stakeholder dealt with that role. An example of interview questions used for these service providers can be found in Appendix 4.

## **Confidentiality**

As outlined in the information and consent forms for the prisoner and DCS staff interviewees, all data collected was considered confidential and could only be directly accessed by members of the research team. Three external transcribers were contracted to transcribe the majority of the interviews across the inmate and stakeholder samples. Researchers transcribed a small number of interviews when an interviewee expressed a particular concern about confidentiality and the researcher had consequently committed to personally transcribing that interview. The external transcribers were experienced in handling confidential social research interview material. They were required to sign a confidentiality agreement and meet specified security arrangements with the data. All transcription files once commenced were pass-worded and kept in computer folders with restricted access. Identifying information contained within the interviews was deleted or modified to protect interviewees' and their family/friends' identities in the transcripts and to ensure that publications

arising from the project did not breach their privacy. All the names of inmate used in this report are pseudonyms.

## Data analysis

Once both the stakeholder and inmate interviews were transcribed, the transcripts were entered into a qualitative software analysis program called QSR NUD\*ST Vivo (Nvivo). This program assists in the organisation, storage and retrieval of qualitative data. It does not, however, impose any kind of pre-existent system of interpretation.

The analysis was conducted in two stages. In the first stage, the research team tagged segments of text with regard to its relevance to certain issues (e.g. DCS procedures, court procedures and government agency procedures) or whether the segments referred to the actions of the staff of such agencies, the inmates or their friends and family. To promote consistency of this process across the 109 interviews, a small number were coded by all researchers and then compared. From this procedure, a common coding system was developed and researchers further ensured consistency by frequently checking and rechecking coding decisions with the other researchers.

In the second stage, the data was then reviewed using the retrieval mechanisms of Nvivo, and it was then reanalysed for themes that recurred throughout the interviews around interviewees' decision-making processes. This was an iterative process whereby commonalities and systematic relationships were identified and then tested against the data. Preliminary observations made prior to the data being coded (e.g. issues identified while the interview data was still being collected) also informed this process. Departures from the major directions of these themes were also sought to ensure that the complexity of the responses of the interviewees was reflected in the analysis.

Although the findings described here have emerged from a systematic approach, it should be understood that because a quotation or practice has been included under one theme and interpreted in a certain way, this does not mean that we believe that that is the only way to interpret that event. Moreover, the aim of qualitative data analysis is to understand the meanings and processes associated with a particular phenomenon (Ezzy, 2001), in this instance, the access to legal information, advice, representation and participation in legal processes among prisoners. Consequently, the themes that are described here

are selected, not so much for their popularity (although some of the strength of a theme may be related to the extent to which it is mentioned) but more for their ability to elucidate the experiences reported by the interviewees. Accordingly, qualitative analysis, in this context and more generally, focuses on the 'how' and 'why', rather than the 'how often'. This analysis consequently represents how the current researchers conceptualised the responses of the interviewees in relation to the central issues of the project. In this way, the themes described here, and the quotes used to illustrate them, should be viewed as only one approach to making sense of the data collected.

# 4 Legal Issues Affecting Prisoners

Before we can examine the capacity of prisoners to access justice, it is necessary to appreciate the nature of their legal needs. As will be illustrated in this chapter, the legal needs of prisoners are neither singular nor static. While, by definition, all prison inmates have, or have had a criminal law issue, we have found that prisoners also experience a range of other civil and family law issues. Some issues are related to their financial disadvantage and personal histories such as pre-existing debts and fines; others stem from imprisonment (e.g. breaches of prison rules) and separation from the outside world. Even when inmates leave prison, they may experience particular legal issues arising from their incarceration (e.g. discrimination in employment, housing, or an inability to manage outstanding and increasing debt). Consequently, the nature of the legal problems faced by prisoners can change as their incarceration progresses. This chapter presents information about the legal needs of inmates, as reported by our interviewees. However, where appropriate, and to contextualise our findings, we have also drawn upon supplementary data, legislation and available literature.

## Criminal justice issues

While all prisoners face (or have faced) conviction for one or more criminal offences, they also may be subject to a number of other criminal justice processes during and after their period in custody. Specifically, as well as dealing with issues concerning the principal offence, prisoners may need to address bail, correctional centre disciplinary offences, warrants and parole. During post-release, prisoners will need to deal with varying degrees of police attention. Apprehended violence orders (such as an Apprehended

Violence Order (AVO) and an Apprehended Domestic Violence Order (ADVO) are included as a criminal justice issue as the breach of these orders is a criminal offence.

### **Principal offence**

People are held in NSW prisons for a wide variety of offences. As 30 June 2006, 12.4 per cent of all NSW inmates were in custody with a drug offence as their 'most serious offence'. The next most common 'most serious offence' was major assault (11.7% of inmates), followed by break, enter and steal (11.3%). Other 'most serious offences' included: robbery with major assault (7.6%), other forms of theft (7.3%), driving/traffic offences (6.6%), murder (6.5%), breach of parole (6.5%), serious sexual assault (5.9%), other (non-major) assault (5.6%) and offences against good order (5.1%) (Corben, 2006a, p. 22).

It is important to note that we did not ask our inmate and ex-inmate interviewees about the offences for which they went to prison. However, during the course of our discussions, some interviewees revealed they were incarcerated for offences including drug trafficking, assault, murder and attempted murder, sex offences, Department of Community Services (DOCS) related offences, traffic offences, breach of parole, property damage, burglary, breached AVO/ADVOs and other, drug related offences.<sup>22</sup> As indicated in the previous chapter, 19 (41.3%) of our prisoner sample were on remand for their offence and 27 (58.7%) had been convicted.<sup>23</sup>

Once convicted, an inmate's resolution of their criminal matter(s) may continue should they choose to appeal their sentence or conviction. Several inmates in the study reported that they had appealed or were in the process of appealing either their sentence or their conviction:

*When I was sentenced they gave me twelve months. I came back from court, went up to the wing officer, said I'm putting an appeal in ... Yep, took six months off.*

**— Raul, male sentenced inmate, minimum security,  
35+ years, NESB, urban prison**

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<sup>22</sup> We did not, as a matter of course, ask inmates what their offences were. The information was offered on a voluntary basis and consequently we were not aware of the offences of all the interviewed prisoners and ex-prisoners.

<sup>23</sup> A small number of prisoners had been convicted on one set of charges and were awaiting the outcome of others.

Appeals are relatively common among inmates, with 4.9 per cent of all NSW DCS inmates held as at 30 June 2006, awaiting appeal (NSW DCS, 2006d, p. 19).

## **Bail**

One of the first legal actions to be considered when someone is taken into custody is an application for bail. Bail is an agreement to attend court to answer a criminal charge. While not all inmates may be eligible for bail, bail can be granted at any stage during criminal proceedings. Certain conditions can be attached to a grant of bail if they are considered necessary for law enforcement purposes and the welfare of the community (Barry, 2004, p. 106). For example, conditions may include agreeing to reside in a bail hostel, or posting an agreed amount of money to be forfeited if the accused person fails to comply with his or her bail undertaking.<sup>24</sup> Inmates on remand have either been refused bail, are ineligible for bail or cannot meet bail conditions. For instance, stakeholders interviewed for this study spoke of prisoners remaining on remand because they could not raise funds to post bail:

*Usually if bail's an issue it's because they've got bail [but] can't raise the money. Then you're going to have, 'I need to talk to me mum.' 'I need to talk to me sister.' 'I need to talk to so and so' ... Trying to arrange bail.*

— **Custodial manager, rural prison**

Further, a person can be re-arrested if they have breached their bail conditions (Barry, 2004, pp. 102–107). A number of inmates, who had been granted bail prior to sentencing reported having difficulties complying with bail conditions and consequently were breached and incarcerated:

*I was on bail, I had to report ... and then a few things happened. I had the birth of my daughter at a particular time ... I wasn't able to report.*

— **Paul, male sentenced inmate, minimum security,  
25–34 years, non-Aboriginal, urban prison**

In a 2001 parliamentary inquiry into increases in the NSW prison population, concern was already being expressed about the increasing number of prisoners being refused bail and the number not able to meet bail conditions. One corollary of this trend noted in the inquiry was an increase in the remand population (NSW Legislative Council, 2001, ss. 5.30 and 5.47). In July 2002, the *Bail Amendment (Repeat Offenders) Act 2002* (NSW) amended the *Bail*

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<sup>24</sup> Section 36 of the *Bail Act*.

*Act* to the effect of removing the presumption in favour of bail for repeat offenders, which led to further increases in the bail refusal rate of 7 per cent (Fitzgerald & Weatherburn, 2004, p. 1). Correspondingly, in the 18 months after the legislation was amended, the remand population increased at an average of 6 per cent per month (Fitzgerald & Weatherburn, 2004, p. 6).

There is some literature to suggest that certain sectors of the population, such as people with intellectual disabilities, homeless people and Indigenous people are more likely to be refused bail and held on remand than others. For instance, the NSW LRC (1996) observed that ‘people with an intellectual disability may have to be kept in custody inappropriately because of lack of understanding of bail conditions or lack of support in the community’ (section 4.7; see also Simpson et al., 2001, pp. 48, 53, 61). Forell et al. (2005) also noted the particular difficulties homeless people have in getting bail as the result of not having a stable contact or address (p. 238).

As well as seeking to reduce the availability of bail for repeat offenders as mentioned above, the *Bail Amendment (Repeat Offenders) Act* sought to improve access to bail for groups of people with special needs, including Indigenous people (Fitzgerald & Weatherburn, 2004, p. 1). However, a review of the impact of this Act found that, between January 2001 and December 2003, the rate of bail refusal for Indigenous adults actually increased by 14.4 per cent compared with a 7 per cent increase in the bail refusal rate for non-Indigenous people (Fitzgerald & Weatherburn, 2004, p. 5). The authors suggest that this may be because Indigenous offenders are more likely than non-Indigenous offenders to appear in court with a prior criminal record (see Weatherburn, Lind & Hua, 2003), thereby including them in the group of repeat offenders that the changes were designed to target (see also AJAC, 2002). Overall, the types of issues raised by our interviewees concerning the difficulties of getting and staying out on bail are reflected in the broader literature.

### **Disciplinary offences**

Prisoners are subject to a set of regulations, which have disciplinary consequences. Under Part 2 Division 6 of the *Crimes (Administration of Sentences) Act*, the governor of a correctional centre can charge an inmate and conduct an inquiry if it is alleged that the inmate has committed a ‘correctional centre offence’. A correctional centre offence refers to any act or omission by an inmate that occurs whilst they are in prison and is declared to be an offence under section 51 of the *Crimes (Administration of Sentences) Regulation*



(regardless of whether the act is outside the prison context a criminal offence or not). This includes acts that are specific to prison management and the maintenance of good order, as well as assault or damage property. Examples of the types of disciplinary offences inmates face include:

- ◆ contravention of conditions of leave (reg. 124)
- ◆ concealment for escape (reg. 125) and concealment of certain items (reg. 126)
- ◆ possession of offensive weapon or instrument (reg. 126A)
- ◆ intimidation (reg. 127)
- ◆ indecency (reg. 128)
- ◆ riots (reg. 129)
- ◆ physical aggression (reg. 130)
- ◆ hindering or obstructing dogs (reg. 132)
- ◆ correctional centre property offences (reg. 134)
- ◆ tattooing (reg. 135)
- ◆ gambling (reg. 136)
- ◆ alcohol (reg. 137)
- ◆ possession of drugs (reg. 138) or drug implements (reg. 140)
- ◆ administration of drugs (reg. 139)
- ◆ failing prescribed urine tests (reg 142)
- ◆ bribery (reg 144).

In a Canadian study of legal needs, inmates identified legal assistance for disciplinary offences as the most critical area of legal need in federal prisons (Lajeunesse, 2002, p 2). In our study, however, while inmates described being subject to internal DCS disciplinary processes, these issues were not emphasised *over* their other legal needs. One inmate described being disciplined for having a ‘dirty urine’ reading, where recent drug use was detected through a urine test. Another inmate, who worked in the prison kitchen, reported having been disciplined for giving leftovers to other inmates without the permission of the supervising custodial officer:

*We had a heap of extra cakes from the lunches leftover one day ... and I gave them to the guys that deliver the meals ... and because I did it without the consent of an officer, it was considered trafficking.*

— **Ricky, male sentenced inmate, maximum security,  
25–34 years, non-Aboriginal, urban prison**

Of note is the fact that inmates do not have access to legal representation when charged with a correctional centre offence heard by the governor:

*Whether he gets a caution or three days in a cell, he is guilty at the end of the day, that is the important thing. Regardless of what punishment they get. And I've seen instances where of course the inmates, they may not be responsible for what happened, yet they still get reprimanded because the system is such that they don't have people explaining on their behalf or fighting for them and saying "hang on, this is wrong, what you're doing is wrong, it's the other person that provoked him" or something like that.*

— **Custodial officer, urban prison**

In NSW, the most common charges heard by correctional centre governors in 2005–06 were 'charges against good order' (3 216 charges), 'other [non alcohol] drug charges' (2 202), 'abusive behaviour' (1 094), 'fighting or assault' (1 022), 'property damage' (826), 'stealing' (775), 'failure to attend muster' (768) and 'refuse to provide a urine sample' (642). Overall, the governors in 2004/5 heard a total of 10 588 charges (NSW DCS, 2006d, p. 27).

Another legal administrative area unique to inmates concerns their classification status.

*I've got a fellow at the moment that we're chasing up ... his Classo papers. Because I think he was Classoed without the use of an interpreter. Can't speak a stitch of English. So he's sat through a whole process that he's meant to be a part of, and they've just done it without him being asked to speak English.*

— **DCS welfare officer, urban prison**

In NSW, security classifications (segregation and enforced protective custody directions) for 'serious offenders' (generally people in custody with a non-parole period of at least 12 years) are reviewable by an independent statutory authority, the Serious Offenders Review Council (SORC). In 2004, SORC received 63 applications seeking reviews of segregation or protective custody directions, 26 of which proceeded to hearing (SORC, 2006, p. 10). The Council recommended that 15 inmates (out of a total of 39 applications) have their escape-risk classification removed (SORC, 2006, p. 4) and the Commissioner approved eight of these recommendations (p. 9). Although no interviewees for this study had appealed a decision to the SORC, the inmates we spoke with described the gravity of being segregated or put in protective custody. Many inmates described protection as something to be avoided given the connotations that those on protection may be either informants or paedophiles,

both despised within the prisoner population.

*When I got to X [prison], they put me in protection side of the wing, but in my cell. I refused to go out, I refused to eat, I refused to shower, I did not want to go out into the protection yards because once you go into that protection yard, you never get out of protection. Once you're in there, that's it. ...*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

### **Apprehended violence orders**

AVO/ADVOs are orders that aim to protect people from acts of violence. They do not impose a criminal record but it is a criminal offence to breach an order (Barry, 2004, p. 502). A few inmates interviewed for this study said that they currently had AVO/ADVOs in place against them:

*... because of the bail conditions and the AVO I wasn't supposed to speak to directly to her.*

— **Ryan, male parolee, 35+ years, non-Aboriginal, rural area**

When inmates first come into prison, they are asked by the reception officer if there is an order currently active against them. The purpose of asking inmates whether they have an AVO/ADVO operative is that prison officials can prevent inmates from attempting to contact the applicant to the AVO/ADVO. However, one worker suggested that inmates did not always reveal whether they were the respondent to an AVO/ADVO. If the prison subsequently gives permission to the inmate to contact the applicant to the AVO/ADVO because they are unaware the order is in place, the inmate will have breached the AVO/ADVO:

*AVOs ... create a problem for us because [if] we don't get the AVO history on somebody, we're asking for it ... Because we don't want to be breaching any orders of the court by facilitating phone calls ...*

— **Non-custodial staff manager, urban prison**

Further, an inmate may not be aware that they may be deemed to have breached an AVO/ADVO if they attempt to contact the applicant by telephone from prison (as opposed to approaching them in person). Inmates may also try to contact their partners when they leave prison on parole thereby incurring a breach and having their parole revoked:

*I've heard this with AVOs, where they'll turn up at an ex-partner's place. But they're of the view that if they don't belt them, then what harm's caused? They've just called in to pick up their drill, you know, or see their son, or something like that. But it's against an order: The wife ... gets onto the coppers and they're arrested ... Within 48 hours of being let out, within 24 hours of me telling them that this order's in place, they're locked up again.*

— **Probation and parole unit leader, rural area**

Another problem noted by the same worker was that both applicants and respondents did not always understand the terms of the AVO/ADVO to which they were a party. For example, an applicant may not realise that they are putting the respondent at risk of breaching by visiting them in prison.

*And I don't think a lot of the families or the inmates understand those orders. So for example, families will present for a visit or they'll try and hide [the fact that] there is an order in place. And that becomes problematic when we do checks.*

— **Non-custodial staff manager, urban prison**

## **Warrants**

Warrants were also raised as an issue affecting prisoners by our interviewees. A warrant is a written authority that enables police officers to arrest a named person. One welfare officer explained that in prison, warrant files are kept by the staff who hold records of all legal orders and bail orders. Inmates can apply to their wing officer to have any additional (that is, additional to matters previously dealt with) warrants 'called in' (executed). However, according to our interviewees, it was alleged that there is no routine process for police or prison officials to check warrants. This means if inmates have not 'called in' their warrants while in custody, or if new warrants have been issued, they are vulnerable to being re-arrested as soon as they leave jail:

*... someone's been in jail for a period of time and there might have been a warrant out for a previous offence, and they don't know that the warrant's out. So they're released from jail and they're walking along the street ... they might look like they've been in jail and so the police will pull them over and do a check on them and then there's a warrant out, so then they're back in custody overnight.*

— **Probation and parole officer, urban area**

Interviews with both inmates and DCS workers suggest that inmates were sometimes being served with warrants as they exited jail. As a consequence, they would then serve jail time in addition to their original sentence, when the new sentence could have been served concurrently had the warrant been executed earlier. There was a perception among some interviewees that police were doing this deliberately, so they could re-arrest certain inmates upon release:

*There will be more charges, but they don't bring them up to court. They wait until you finish your time, they come and charge you and you're back in.*

— **Wahib, male remandee, minimum security,  
25–34 years, NESB, urban prison**

### ***Warrants and the collection of DNA***

A further issue associated with warrants raised in interviews, was the collection of DNA. In 2000 the NSW government introduced the *Crimes (Forensic Procedures) Act 2000* authorising the collection of DNA samples from 'serious indictable offenders' currently imprisoned in NSW. These samples are stored on a national DNA database enabling inmates' (and others') DNA profiles to be cross-matched with DNA samples from crime scenes (Gans & Urbas, 2002, p. 3). In the eighteen-month review period adopted by the NSW Ombudsman, 10 000 inmates in correctional facilities were subject to DNA sampling (NSW Ombudsman, 2004).

Concern has been expressed by prisoner advocates about the collection of DNA from inmates, its implications for privacy (see Justice Action, 2008) and the threat it poses for public health protection in prisons as inmates fear providing pathology samples for fear of forensic evidence being taken (Levy, 2002, p. 252). Inmates serving custodial sentences for certain offences may be required to allow a DNA sample to be taken which may subsequently be used issuing new warrants for arrest. For the reasons given above, some inmates interviewed for this study feared that fresh charges may be laid as they come to the end of their sentence because of DNA evidence they had previously supplied:

*The main concern most inmates have is the DNA coming back at them. The way it's getting left to right near the end of their sentence. That way the police are assured of getting more time on them, you know what I mean?*

— **Simon, male sentenced inmate, medium security,  
35+ years, non-Aboriginal, urban prison**

*So what happened was they took me DNA and about six to eight weeks later the DNA come back and they grabbed me for a job in X [street name] avenue, and it was from DNA, a strand of me hair. So I just pleaded guilty and let it run concurrent with me sentence. 'Cause what you do is, if you go to jail, you [call] any outstanding warrants and any outstanding charges, so while you're doing the sentence you're doing it can run concurrent or they can start it from a certain date. So if you've got a bigger sentence on top it runs concurrent.*

— Gary, male parolee, 25–34 years, Aboriginal, rural area

## **Parole**

Release on parole involves an offender being allowed to live in the community prior to the completion of their full sentence period, on the proviso that they adhere to certain conditions of that parole (Jones et al., 2006, p. 1). When a prisoner is sentenced, a non-parole period is determined and inmates cannot be released until this period has expired. Prisoners serving three years and less are automatically released at the end of their non-parole period. However, prisoners serving more than three years can only be released on parole by the State Parole Authority of NSW (SPA) (Barry, 2004, p. 910). In determining whether an inmate is to be released on parole, in addition to the public interest, the SPA takes into consideration whether there is 'sufficient reason' to believe that the prisoner will be able to adapt to community life (Barry, 2004, p. 190). If the SPA expresses an intention to refuse parole, the governors or their delegates must ensure that the inmate is notified of this intention so that they can apply to the SPA to have the matter reconsidered at a hearing.

### ***Eligibility for parole***

A number of our prisoner interviewees were ineligible for parole and were either currently serving out their sentences or had been released from prison unconditionally, at the completion of a full sentence. DCS workers said that many inmates were unable to get parole because suitable accommodation could not be found for them. This emerged as a particular issue for people leaving rural and regional jails:

*And the difficulty now is that probation and parole need to confirm the accommodation. The nature of crisis accommodation, basically crisis accommodation is exactly that ... they're not going to [hold them] there for a week, but probation and parole need to know a couple of weeks before they're released so they can get it checked out. So it's like a, it's a catch 22*

*situation for the guys ... it's very hard for me to get them accommodation two weeks out, and it's virtually impossible in that type of accommodation, but probation and parole need it.*

— **Throughcare officer, rural prison**

There was also the suggestion that inmates with cognitive impairment or intellectual disability were not granted parole as readily as other inmates because of a lack of support post-release (see also Chapter 6):

*And there's no support for them to come out to, so they don't get considered for parole ... I couldn't tell you the last time a person with an intellectual disability came up for parole. It just doesn't happen. They always serve their full sentences.*

— **Worker, CJSN**

A number of interviewees raised concerns about inmates not being able to participate in education or behaviour related courses in jail that in turn affected their chances of securing parole. Interviewees spoke of courses being full or not offered in particular centres, and inmates losing their places in courses when transferred from centre to centre (see Chapter 7).

### ***Breaching parole***

As of 30 June 2006, there were 3 990 people being supervised on parole in NSW (NSW DCS, 2006d, p. 11, Table 6), comprising just over two-thirds of all released offenders. A key issue for parolees is to avoid breaching parole conditions and returning to jail for the remainder of their sentence. Research has suggested that 'many people who fail on probation or parole do so because they have breached the technical conditions of their parole orders and not because they have committed a criminal offence' (Jones et al., 2006, p. 2).

Our interviews indicated that some ex-inmates who had been successful in getting parole, breached it because they had had difficulty meeting their parole conditions post-release. For instance, people were reported to have breached parole for associating with 'known criminals' when they returned to live with family or in their community, because family or community members had also been convicted of crimes.

*They're not allowed to mix with known criminals either. So it makes it difficult because mum, dad, your brothers and sisters, and aunties and uncles, you know, could all have sentences. What the hell do you do?*

— **Official Visitor, urban prison**

Other breaches arose when ex-prisoners moved to a new address without informing their parole officer or had not complied with a mental health order to take certain medication.

*And in the meantime they'll just decide, bugger it; I'm going to be un-medicated. So then they'll re-offend, or in some way their behaviour will be inappropriate and they'll get revoked; they're back in custody.*

— **Probation and parole unit leader, rural area**

Interviewees also indicated that the sheer volume of obligations facing ex-prisoners (e.g., to report for parole, to fulfil Newstart (social security) requirements and to maintain drug treatment regimes) can make it very difficult for ex-prisoners to meet all the terms of their release:

*So, the increasing obligation for people on Newstart Allowance to look for work, reporting requirements and participation in programs that might be part of their legal supervision and parole. And there are sometimes conflicting demands for attending or they'll have to go [to an] appointment for this whilst they're supposed to be attending their training— that sort of thing.*

— **DCS policy officer, head office**

Adding to their difficulties are very practical problems such as limited and unreliable public transport, which can in turn impact on parolees' ability to turn up on time (or at all) to their various appointments:

*Most inmates don't have any transport. Don't have a car ... So transport is a big problem in just getting down here to be on time.*

— **Parole officer, rural area**

Interviewees also noted that some groups of parolees such as those with intellectual disabilities or Aboriginal parolees had particular difficulties with their parole. For example, the comment was made that people with intellectual disabilities may struggle to understand and keep to the terms of their parole:

*A typical trait of a person with an intellectual disability is that they will go and visit their friend even though they're not supposed to see the friend.*

— **Lawyer (roundtable)**

One parole officer felt that Aboriginal parolees were more likely to be classified as having a higher risk of re-offending because of their community ties and their more 'transient lifestyles'. This can result in Aboriginal parolees having more stringent parole obligations placed on them, with more appointments



with family services, mental health professionals and their parole officer. Consequently, the chances of breaching are also increased:

*Because they've got no settled roots in any particular area, they tend to come as a higher risk of re-offending in all of our assessment tools ... Their numbers are higher because of no long-term employment [and a] 'transient lifestyle' ... So he's now medium to medium-high risk, so we have to see them more often. We have to get involved in their life more often ... so when they go away for their fortnight, if they were white and a low risk, we'd give them a month to get in contact with us. If they're medium-high, the political situation says, 'You get on to these people. Where are they? If you can't find them, breach them.'*

— **Probation and parole unit leader, rural area**

As demonstrated above, inmates can agree to parole conditions prior to release that turn out to be unsustainable once they are living back in the community. To address this, some workers highlighted the need for released prisoners to be able to access the PLS *after* their release, to help amend parole conditions that are not practicable.

### **Police attention**

Several ex-prisoners and other stakeholders interviewed reported that ex-prisoners were often stopped and questioned by police in public places. This appeared to be particularly so for ex-prisoners living in small, regional towns:

*The police have harassed me a bit ... they see your tattoos and they know you've been in jail and they always think you're up to something.*

— **Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

*But they tend to come under police notice a lot once they're out ... they're constantly getting pulled up and questioned about things.*

— **Probation and parole unit leader, rural area**

These observations are consistent with the findings of earlier research about the experience of people recently released from jail. Participants interviewed in Baldry et al. (2003) also commented about the negative attention they had received from police following their release from jail (p. 22). While safe and secure housing was associated with being less visible on the streets and less targeted by police, even released prisoners in stable accommodation reported being stopped and questioned by police when there appeared to be no immediate reason for this to occur (p. 23).

## **Summary**

Prisoners face a range of criminal justice issues. As well as the offences for which they were incarcerated and any outstanding matters, prisoners may be eligible to apply for bail or appeal their conviction or sentence. They are also subject to a new range of offences relating to their behaviour in prison and may have to adhere to conditions upon their release. For each of these different types of issues an inmate may require legal assistance. Indeed, inmates may require help with criminal law problems at any point in their incarceration, even though the most salient issues (bail and their principal offence(s)) occur during their period on remand.

## **Civil issues**

Given inmates' acute need for criminal legal assistance, it can be easy to overlook the outstanding civil and family law issues that they may also have. Our investigations suggest that inmates often have civil law issues, arising in a number of ways: firstly, inmates may come to prison with outstanding civil legal issues arising from pre-existing lifestyles, or heavy financial burdens and other disadvantages. Second, they are likely to experience legal issues arising from the interruption that incarceration has on their lives, impacting on their employment and business affairs, housing and personal property and social security. Finally, the experience of being incarcerated can lead to other issues such as civil law claims for injury in prison, media related legal issues such as defamation and immigration issues. The effect of incarceration can also lead to problems once prisoners leave prison, such as discrimination in employment.

## **Business and employment**

The interruption to a person's life that results from their incarceration can be extremely abrupt and relatively absolute. This presents very significant challenges to inmates who had been operating businesses or had responsibilities to an employer. Particularly if someone is remanded in custody, there can be little or no opportunity to close the business, 'tie up loose ends' or complete projects.

Fifteen of the current or past inmates interviewed for this project reported that they had paid work before they were arrested, including a small number who had their own business. Apart from any condition imposed by a court

and a general prohibition on inmates profiting from their crimes, there is no statutory exclusion barring prison inmates from conducting business from prison. Equally there is no statutory right allowing inmates to conduct business from prison (personal communication: DCS Policy Officer, 13/02/07).<sup>25</sup> However, whatever the rules on this issue, the ability to conduct business is also obviously severely hampered by inmates' physical location in the prison and their limited capacity to communicate with the outside world (e.g. through telephone or internet or email access). The inmates that we spoke to who had businesses, reported relying on less experienced business partners or family members to continue trading. Others reported that their businesses had simply collapsed:

*I haven't been able to organise anything ... I haven't even been able to speak to my work because of where I am at the moment ... I was running an \$150 000 a year company and I've probably lost that now, due to the fact that this has happened.*

— **Justin, male remandee, minimum security,  
25–34 years, non-Aboriginal, urban prison**

Most of the inmates, who were employed prior to incarceration, said that they lost their jobs when they came into prison. In some circumstances, family members had been able to inform the prisoners' employers about what had happened, however, a few inmates reported that their employers had not been told that they were in prison.

Aside from the obvious impact jail has on a person's ability to participate in the workforce, interviews suggested that being in prison also has an impact on the ability of an ex-prisoner to secure employment once they leave. More specifically, prisoners may be subjected to both lawful and unlawful discrimination when they leave prison on the grounds of their criminal record. Discrimination on the basis of a criminal record is unlawful under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) as the *Human Rights and Equal Opportunity Commission Regulations 1989* (Cth) extended the definition of discrimination in the Act to include criminal record (reg. 4(a)(iii)). However, there is an exception allowing discrimination in employment on the

<sup>25</sup> See also 'Adler risks privileges over 'homework' lesson', June 23, 2005, [www.smh.com.au](http://www.smh.com.au) (accessed 22 May 2007), in which the Minister for Justice John Hatzistergos states, in response to charges being laid against Rodney Adler for sending letters to friends and associates from prison containing instructions and requests for information about business activities, 'We have never tolerated it in the past and we can't do it on this occasion.'

basis of a criminal record where it is an inherent requirement that an employee does not have a criminal record (HREOC, 2005, p. 13). For example, there are some occupations that people with certain criminal records are specifically prohibited from doing, such as lawyers, doctors and people working with children (HREOC, 2004, p. 7).

Several ex-prisoners reported being discriminated against in employment (either lawfully or unlawfully) after declaring they had been in prison.<sup>26</sup> This is a particular problem for ex-prisoners living in small towns where they are well known locally:

*Which made it hard for me to do things like get a job and all that, because you know, once they find out who I am they think, 'No, hang on, aren't you the fellow that was busted for that cocaine?' And I go, 'Yeah, I was'.*

— **Gareth, male ex-prisoner, 25–34 years, non-Aboriginal, rural prison**

Discrimination on the basis of inmates' prior criminal record and incarceration is also discussed in relevant literature. Metcalf, Anderson and Rolfe (2001) identify employer discrimination as one of the major causes of unemployment among ex-prisoners in the UK (p. 3) (see also Webster et al., 2001, pp. 8–9). In Australia HREOC (2005) has reported that 'in recent years there has been a significant number of complaints to the commission from people alleging discrimination in employment on the basis of criminal record' (p. 7). Following these complaints, HREOC released guidelines for the prevention of discrimination in employment on the basis of criminal record (HREOC, 2005).

## **Housing**

*Getting housing for them, finding out about their house ... they might have had a Housing Commission house and they want to find out will they still have it and what happens [with] that [while] they're in jail, and all those [sorts] of things. So I think that's probably the thing that I get asked the most, is about housing.*

— **Custodial officer, urban prison**

Previous research has suggested that the major housing-related legal issues affecting prisoners include the loss of DOH properties while they are in prison; being cut off from public housing waiting lists while in prison; or

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<sup>26</sup> Two inmates also reported that they had faced discrimination in obtaining insurance and renting a property.

being unable to apply for public housing while they are in prison because of the uncertainty of their release date (Ogilvie, 2001). Similarly, interviewees in this study indicated that housing was a major problem for inmates, both when they were imprisoned and when they were released. For many, the problems reported related to *public* housing, which is not surprising given that 20 of the 67 inmates and ex-prisoners interviewed for this study reported having lived in public housing before they were arrested.

### ***Public housing***

According to DOH policy, if a DOH tenant is incarcerated, they can retain their leasehold for up to three months by paying \$5 per week (NSW DOH, 2007a). After this period they are obliged to relinquish the property. Under the DOH's 'Absence from dwelling policy' (EST0039A), tenants need approval from the department if they are going to be absent from their dwelling for more than six weeks, but they are not allowed to sublet the premises in their absence (NSW DOH, 2007b). Whilst they are required to report their absence from the dwelling, in some cases, inmates may not be unaware of their obligation to do so:

*Last time, I think it was, that he went into prison, he lost his DOH property because they didn't know he was in there and he didn't know to tell them he was in there. So when he came out he's lost it.*

— **Homelessness worker, urban area**

In other cases, according to both inmate and stakeholder interviewees, inmates did not inform DOH that they were in jail for fear of losing public housing they had waited a very long time to attain. Indeed, rather than informing DOH of their circumstances, a number of inmates reportedly allowed relatives or friends to live in the property in order to maintain possession. As well as putting them in breach of their lease agreements, difficulties arose when the interim occupants damaged the property or failed to pay rent, leaving the tenant in prison liable for the resulting expenses.

*There's guys that have outstanding monies owed to DOH... they may have come to jail and their house was trashed but then they're responsible.*

— **Throughcare officer, rural prison**

Our interviews also suggested that some inmates had themselves accrued damage-related debt and rent arrears with the DOH prior to being imprisoned. Irrespective of whether the damage is incurred by the inmate or someone they have arranged to stay in their house, the resulting acquisition of a debt to

the DOH can make it difficult for the inmate to regain public housing once they leave prison. Consequently, some released prisoners found themselves essentially ‘blacklisted’ from DOH housing:

*They might have been barred from the DOH because they wrecked a house before they went in, and they owe them money for the damage.*

— **Probation and parole unit leader, rural area**

The impact of not being able to secure housing has a double impact, as without suitable accommodation, inmates may then find it difficult to obtain parole.

### ***Privately rented housing***

Problems were also reported by interviewees who had been in private rental accommodation prior to going to jail. Firstly their incarceration may have been unexpected, leaving them little scope to notify their landlord prior to going into custody. Further, without assistance, it can be difficult to make arrangements to vacate premises once in prison. As one interviewee stated:

*I lost everything. Because I had no family there was nobody I could actually get to go and retrieve my goods or, or sort out my problems with the real estate [agent].*

— **Aaron, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, urban prison**

One factor that complicates the issue of *when* to notify a private landlord is that the inmate may not know how long they will be in prison. In this study, there were examples of inmates not telling their landlord they were in prison because they did not believe that they would get a custodial sentence, or that they would only get a short sentence:

*When the inmates come into custody ... their belief is they're not going to be sentenced, [or get] a long sentence, so they often think if I just keep quiet, don't tell my landlord I'm in jail, I'll get to keep it ... their wish doesn't always happen: they get a sentence and they have to relinquish their property or their property has been left or ... our clients don't always live in great areas so they often get squatters in or somebody's gone in 'cause they know they're in jail, took all their property, damaged it.*

— **DCS welfare officer, urban prison**

In jail, private tenants may accrue debts for unpaid rent (or other damages), resulting in their placement on tenancy default databases or ‘blacklists’.

Again, inmates' future ability to regain private rental accommodation upon release may be compromised:

*Initially the rent just climbed while I was trying to attain bail in the early part of my matter. And [then] they just went in there and sent everything off to auction, which paid a portion of the back rent, and sent me a bill for the rest of it ... They sent me a bill for it saying that if I don't pay it that I will be reported to ... some default tenancy service.*

— **Aaron, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, urban prison**

One inmate described the disadvantage inmates may face when seeking redress from a landlord for an issue which occurred prior to jail. He was seeking compensation for water damage to his personal property from a faulty fire sprinkler in a rented premise. However, he felt that he did not receive the compensation due to him because the landlord discovered and used the fact that he, the claimant, was in prison.

*In the beginning he was going to pay me a couple of thousand dollars for me bed that got damaged in the water, and seven speakers and stuff like that. After about 20 phone calls he worked out that I was in jail and he says, 'Look, take me to court' ... My brothers told me and I was a bit pissed off but I was going through other things so I said, 'Who cares about \$5 000? \$5 000.' So I just let it go.*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

## **Personal property**

### ***Property remaining outside of jail***

Another area of legal need that seemed to arise in the early stages of people's incarceration was around personal property, which is left outside of jail. As noted above, incarceration is not always expected. Consequently, prisoners may not have made arrangements regarding their personal property and valuables:

*They lose all their property because they don't get in touch with the real estate agent. It all goes into storage for the period of time; they can't get it out, there's no access to money to get it out, they lose everything. So they actually come out of jail, no kids, no house, no furniture, no nothing because they didn't believe they'd be incarcerated anyway.*

— **SAAP worker, urban area**

Assistance with retrieving and storing belongings can be obtained through family and friends, prison chaplains and Prisoners' Aid Association (PAA),<sup>27</sup> although the latter can recover and store only small amounts of personal belongings from DOH property. If an inmate leaves personal belongings in their DOH property, DOH will place any valuable belongings into storage for 30 days. After this period, DOH can sell these goods at public auction. Any proceeds from the sale of the goods will be used to pay for the cost of removing and storing these goods. Any remaining money will be credited to the tenant's rental account (NSW DOH, 2006).

The placement and care of pets is another issue faced by some people going into custody. This escalated into a legal issue for one inmate, when an animal welfare organisation took possession of his pet. Because the organisation could not dispose of the animal without his consent, they had to house it. The inmate was then liable for the cost of care for the animal.

*We had one guy who wouldn't give the animal up and that's had massive legal implications for [him]. The owner was actually getting a bill to have the animal housed there ... If he was going to get out and get the animal back, he would have had to pay that bill first before he could get the animal back.*

— DCS welfare officer, urban prison

### ***Personal documentation***

Inmates need identification and other documentation upon release to access housing and Medicare, to secure social security benefits and other entitlements, to open bank accounts and to generally re-establish life after custody (Borzycki, 2005, p. 35).

However, consistent with earlier research (Galtos & Golledge, 2006, p. 21; Baldry et al., 2003; Borzycki & Baldry, 2003; and Ogilvie, 2001, p. 3; NSW Legislative Council, 2000) a number of inmates interviewed for this study or known to stakeholders (e.g. parole officers) had lost documents or had no knowledge of their whereabouts:

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<sup>27</sup> PAA is an independent organisation funded by DCS that assists with the retrieval and storage of personal property of people who are in prison. They also assist inmates conduct financial transactions whilst inside.



*I just lost everything, I have nothing at all ... all my personal items, all my photos, all my paperwork, everything. All my ID, I have nothing at all. I have the clothes that I was arrested in and that's all I have.*

— **Aaron, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, urban prison**

As will be discussed in Chapter 6, the often transitory and chaotic lifestyles of people who come to prison mean that such problems are not uncommon.

### ***Property taken into custody***

An issue also arose concerning what happens to property that inmates have with them when they are arrested or when they are put in a cell. There were some examples in the interviews of such property going missing in police custody.

*Another area that I get involved in is police matters, involving property mainly. Money that's missing. Property that's being held by the police like clothing and stuff like that. The court case is finished so it can't be used as an argument that it's needed for evidence. I'm currently in discussions with 'S' police station for \$1 400 that's gone missing.*

— **Official Visitor, urban prison**

Some interviewees reported personal property that they had with them in prison going missing, particularly when they were being transported from one correctional centre to another or when they were released from custody directly from court. The type of property at issue may include a television or walkman, CDs or tapes, an electric jug or sandwich maker, books, toiletries, legal papers and documents and the like, which inmates may keep in their cells:

*I think their biggest issue for them [is] about going to court, leaving all their possessions behind at the jail, and they'll often lose their property.*

— **Non-custodial staff manager, rural prison**

PAA informed us that if the property has been formally recorded, inmates could make a claim for compensation for the property lost. However, in some cases it can be difficult to trace and retrieve property that has gone missing (particularly when property has not been recorded):

*... 'Me cellmate packed up me gear' and you contact the reception room at the jail and they say 'Oh no. We haven't got any of his property.' ... So it all ends up being a bit in limbo.*

— **Prisoners' Aid Association**

## Social security

### *On entry into prison*

In 2003 Homersham and Grasevski reported that over 50 per cent of customers incurred a Centrelink<sup>28</sup> debt on entry into custody (2003, p. 1). However the introduction of a Centrelink/DCS Program Protocol Agreement in November 2003 has resulted in reductions of debt incurred by prisoners (NSW DCS, 2006e). Under this agreement, DCS reception officers notify Centrelink when an inmate is received into prison custody, so that any social security payments being received by that inmate can be suspended. Indeed, the majority of inmates and ex-prisoners interviewed for this study reported having no social security debt because of this process. However, one homelessness worker interviewed for this study was of the opinion that inmates could slip through this notification system:

*Now there are supposed to be systems in place to make sure that happens so they don't come out with a whopping great Centrelink bill that they have to repay because they've been collecting benefits while they have been in prison. But frequently it just somehow doesn't manage to happen either.*

— **Homelessness worker, urban area**

Forty-one inmates and ex-prisoners interviewed for this study reported that they had been receiving Centrelink payments either before they entered prison or since they had left. Centrelink recipients are supposed to inform Centrelink if there is a change in circumstances, including when they are incarcerated (Welfare Rights Centre, 2007, ch. 6, s. 2). However, a small number of inmates interviewed for this study said that when they came into prison, they had been overpaid benefits because they had not informed Centrelink.

Some inmates admitted they had deliberately omitted informing Centrelink of their incarceration so that they had money to buy items such as televisions or other personal items for their stay in prison:

*They asked me. I actually lied and said I wasn't on the pension. So I actually got away with a couple of payments. They sent me two cheques, so I had another grand. That's how I bought my TV and all that ... I'm meant to pay it back when I get out.*

— **Hugh, male sentenced prisoner on protection,  
25–34 years, non-Aboriginal, rural prison**

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<sup>28</sup> Centrelink is the agency that administers social security payments in Australia.

Needless to say, inmates accruing Centrelink debt have to pay it back once they leave prison. One legal service provider suggested that people on the Disability Support Pension (DSP) seemed to be particularly vulnerable to overpayment when they go into prison because they do not have as many obligations associated with their pension that they could breach when they go to jail. This is significant because payments are usually stopped when a person breaches their conditions, reducing the level of debt that may accumulate. For example, a person on a Newstart payment may be required to enter into an 'Activity Agreement' with Centrelink and look for work or undertake other activities (Welfare Rights, 2007, ch. 17, s. 5). Because imprisonment will mean they cannot meet such an obligation, there is a greater likelihood that Centrelink will quickly discover the person is in prison. As stakeholders commented:

*Depending on what type of payment people are on ... If people are on a disability pension, it might go on for months before it's noticed. It might be that it's detected through a data match; it might be that a payment's cancelled because the person didn't respond to a letter that was sent to them. That could go on potentially for a year; a long time.*

— Caseworkers, Welfare Rights Centre

### ***On release from prison***

In their 2003 study Homersham and Grasevski also identified prisoners being released out of Centrelink business hours and their lack of identification as barriers to their obtaining and staying on social security benefits (p. 1). However, under the Program Protocol agreement mentioned above, Centrelink now provides an outreach service, in a number of (mainly urban) jails, to prisoners about to exit prison (NSW DCS, 2006e). This service, the Centrelink Prison Servicing Unit, organises their first payment when they leave, determines what types of benefits are appropriate once they are out, and assists prisoners to manage and repay any debts to Centrelink, (Barry, 2004, p. 913). Arrangements are also made for inmates to receive their first payment at the jail on release, so they do not need to go to the Centrelink office that day. Prisoners who are eligible for other Centrelink benefits, who have been incarcerated for more than 14 days and who are in severe financial hardship are also eligible to apply for a one-off crisis payment from Centrelink (NSW DCS, 2006c, s. 7.14). Centrelink outreach workers also arrange for inmates to receive this on release.

In our study a stakeholder suggested that recent national changes in social security eligibility could have consequences for people moving through the corrections system. For example, those people who had been receiving the DSP or a parenting payment prior to incarceration may be required to move upon release to Newstart, which involves more onerous obligations. In addition, in reapplying for a DSP, a person must re-establish their eligibility, which might be difficult if they have been in prison and do not have the medical evidence to prove that they have a disability.

*A fellow who was on a Disability Pension for years ... he went to jail for six months and then came out on parole, and Centrelink basically said, 'Because you've been in custody, we've now got to go through the process of finding you eligible for Disability Pension again. In the meantime we'll put you on Newstart'. So it was a lower amount of money, he had to do a lot more to get it. The work diaries ... he didn't have the cognitive skills to do it.*

— **Probation and parole unit leader, rural area**

Centrelink does provide ex-prisoners a two-week grace period in which they can prove their eligibility for these payments and not have to adhere to the Newstart work requirements (Manager, Centrelink). However concern was raised that even ex-prisoners eligible for Newstart would have problems adhering to the obligations when they were first released:

*And a lot of people just out aren't ready to go and do job contacts and fill out 'preparing for work' agreements ... So I think most recently released people would probably need a little bit more quiet time.*

— **Caseworkers, Welfare Rights Centre**

## **Debt**

Virtually all prisoners interviewed for this study indicated that they were in debt. Some debts pre-dated their incarceration while other debts were accumulated (and were still accumulating) during their jail time. As well as debts owed to the DOH and Centrelink, prisoners reported owing debts to wide a variety of other creditors:

*Well there might be the illicit side of things, so their gambling and drug habit and that sort of thing ... And then there's just debt to credit agencies: you know bought a motorbike, can't pay it off ... sometimes it can be personal, you know, family ... Roads and Traffic Authority (RTA), heaps of debt for traffic infringements and that sort of thing ... debt to housing*

— **DCS policy officer, head office**

*I owe a lot of money to different places ... A lot of telephone debts ... house phone, electric bill; I had an accident and I had to [buy] a car off another person.*

— **Karla, female remandee, minimum security, 25–34 years, NESB, urban prison**

There were also inmates who reported owing money to the Child Support Agency (CSA) as a result of unpaid child support.

*They said that I owe \$500 or something you know, so that must have been some period of time when I was in jail, you know. I don't know where it came from, but anyway I got letters from the child custody agency or something. It said that I owe \$528 or some and to repay it.*

— **Rex, male ex-prisoner, 35+ years, non-Aboriginal, urban area**

On a more informal level, many inmates also owed money to family, friends and drug dealers:

*Oh yeah, I still got debt today ... Yep, up to my eyeballs ... Just drug debt ... I was selling a lot of gear for them and I started using more than what I was selling, getting meself into a hole and yeah, it's a bugger. I wish I never touched bloody drugs ever mate.*

— **Frank, male parolee, 25–34 years, non-Aboriginal, rural area**

These observations are consistent with earlier literature, which identified the high level of debt amongst prisoners. In 1999 the Queensland PLS undertook research on the extent of indebtedness in the prison population and its effects on the families of prisoners and the wider community (Stringer, 1999). Prisoners sampled for the study had a range of debts relating to cars, furniture, houses, as well as for legal fees, debts to government (e.g. housing and Centrelink) and drug related debts (Stringer, 1999, p. 1). The authors reported that 49 per cent of the respondents to the prisoner questionnaire indicated that they had committed an offence to repay a debt (p. 10). Baldry et al. (2003) found that 51 per cent of the ex-prisoners she interviewed had a debt of some sort. Debt, among other factors was associated with being more likely to return to prison (Baldry et al., 2003, p. 14).

As well as these more general debts there are two other common sources of debt for prisoners and those recently released from jail. These are the requirement for some prisoners to pay victims compensation restitution, and fines (including court costs).

***Victims compensation***

Under the *Victims Support and Rehabilitation Act 1996* (NSW), victims of violent offences can be awarded compensation of between \$7 500 and \$50 000. While the award is paid out of the Victims Compensation Fund, funded by the NSW Treasury, an inmate convicted of the offence which caused the injury, is liable to repay the Fund for all or some of the compensation paid to their victim (Victims Services NSW, 2007a). In a review of post-release services for Australian prisoners, Borzycki (2005) noted that ‘prisoners can exit custody with already accumulated debt, and because they are unable to access emergency support or secure a source of income, may be unable to pay any justice system mandated restitution’ (i.e. victims compensation restitution) (p. 35). In our study this was identified as another significant source of debt for some inmates:

*Oh, actually I owe other money, that’s right, for a compensation claim. That fellow, the two blokes I stabbed, well one of them got a claim for \$13 210.*

— **Hugh, male sentenced prisoner on protection,  
25–34 years, non-Aboriginal, rural prison**

Inmates may not receive their notice to pay this money or even be aware that this debt exists, until they are released from jail:

*Or people that have done armed robberies. They’ll do their jail and they come out and then the victims tribunal gets a hold of them and then they’re hit for, you know, five, ten, fifteen, twenty, twenty-five thousand dollars.*

— **Probation and parole officer, urban area**

This debt can be a considerable additional burden to prisoners who are trying to re-establish life after custody.

Victims compensation restitution is over and above the State *Victims Compensation Levy*, which all offenders who are convicted of an offence that is punishable by imprisonment are liable to pay (Victims Services, 2007b). The DCS Operations Procedures Manual indicates that the levy is \$30 for a minor offence and \$70 for a major offence (NSW DCS, 2006c). Many of our interviewees reported that the levy was taken out of their jail wages on a weekly basis, although they were not aware prior to going to jail that they would have to pay this levy:

*But they’ve been taking victim’s compensation from me for six years now... from my jail account. OK. HOW DO YOU KNOW THAT’S BEING TAKEN*

*... Because I got [a] print out of account balances. BUT YOU SAID THERE WERE NO VICTIMS THAT YOU'RE BEING ... Everyone has to pay victims compensation levy whatever it's called. Everyone does.*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

### ***Fines***

*No home, no justice?*, a study by the Foundation on the legal needs of homeless people, identified fine-related debt as a significant issue for people who are homeless. Given the documented associations between recently released prisoners and homelessness (Baldry et al., 2003; Forell et al., 2005, pp. 105–108), it might be expected that that fine-related debt is also an issue for this population. The findings from this study suggest that this is indeed the case. The vast majority of inmates and ex-prisoners in the current sample had received fines. Sources of these fines included traffic and transport fines, as well as court-imposed fines from current and past offences.

*Train ticket fines, fines from court when I'd been arrested for stealing and stuff like that ... Court costs, from going to court ... a lot of them were travelling on a train without a ticket, travelling on a train without my card with me.*

— **Kylie, female ex-prisoner, 25–34 years, non-Aboriginal, urban area**

While one inmate estimated his fine debt was in the order of \$49 000 [Matthew, male parolee, 25–34 years, non-Aboriginal, rural area], other inmates commonly reported SDRO debts of between \$175 and \$15 000. Inmates and stakeholders for this study reported that many of their debts remained unpaid whilst they were in prison and that as a result, prisoners continue to face this debt when they left prison. These fine debts can be considerable, in light of modest incomes:

*A single person gets \$397 a fortnight. They get a fine on the train that's \$200, so it's a week's pay ... even when they go to court, and they've got fined \$800 for disruptive behaviour ... Well how are you going to pay a fine of \$800 if you get \$200 a week? And a lot of them don't do much about that when they're in jail ... so they come back out with the debt.*

— **SAAP worker, urban area**

When the *Fines Act 1996 (NSW)* came into operation, prisoners were no longer able to 'cut-out' their fines while serving time for other offences. 'Cutting out' fines involved reducing the fine liability by say, \$100, for each day in custody.

Without this option, prisoners often leave jail still owing considerable amounts of money for unpaid fines.

Further, failure to pay fines may lead to cancellation of a person's driver's license. Briefly, when outstanding fines remain unpaid, the SDRO instructs the RTA to suspend or cancel a person's driver's license until they pay the outstanding debt. This can add to the challenge of gaining employment and generally re-establishing life after custody (Galtos & Golledge, 2006, p. 21). Many inmates in this study reported that their licenses had been cancelled as a result of outstanding fines, for example:

*I was over the speed limit 15kms, and it cost me \$175 and I never paid it ... I just couldn't. At the time I wasn't working ... so I let it go. Then they cancelled me licence.*

— **Dan, male sentenced prisoner, 35+ years,  
Aboriginal, rural prison**

It was also suggested in our interviews that some inmates were not aware that their licence had been cancelled whilst they were in prison. This consequently places inmates at risk of re-offending and/or breaching their parole if they drive a vehicle unlicensed after they are released from prison.

*This is why I've been coming to jail for losing my licence. I was given a jail sentence and a fine, and then that was for not even a driving offence. I was given jail and a fine, and then when I, while I was in jail, because I didn't pay that fine, they cancelled my licence. But I never knew that my licence was cancelled.*

— **Jack, male remandee, medium security,  
age unknown, non-Aboriginal, urban prison**

Many inmates were also not aware that they could have their license reinstated if they entered into a repayment plan with the SDRO.

## **Injury and illness in prison**

Once an inmate has been received into prison, they come under the custodianship of DCS. As such, DCS owes a duty of care to prevent injury to inmates and staff arising, amongst other things, from self-harm, injury and industrial accidents (NSW DCS, 2006c, s. 8.26). Several DCS workers interviewed for this study acknowledged their duty of care obligations to inmates and gave examples such as placing inmates who were at risk of suicide under observation; placing into segregation inmates who had been at risk of harming other inmates; and,



placing on protection inmates who had been under threat from other inmates. In the words of one welfare officer:

*I have a massive duty of care when they come to me. If they're coming to me about a problem with other inmates ... Because if I put him back out in the yard and something happens to him ... and let's go worse case scenario he gets killed, a coroner is going to turn around to me and say, 'He told you what the problem was. You put him back out there.' You know? So, and they don't like it. They don't like having to go in the observation cells until we can move them out but I don't have an option.*

— **DCS welfare officer, urban prison**

However, a small number of examples were given where interviewees felt that DCS's duty of care obligations had been neglected. The issues related mainly to employment, health and assault from other inmates. For example, in relation to the provision of health care services in prison, many commented on the long delays in accessing a doctor, dentist or optometrist or having medical procedures whilst they were in prison:<sup>29</sup>

*I've got a lump on my leg, which my doctor thought was a melanoma, and it was supposed to be biopsied before I came in here. I've been waiting two months to have that done and they said that it could take a very long time for that to happen ... the doctors have been great when you finally get to the [hospital]. But getting appointments has been very hard.*

— **Jane, female remandee, minimum security, 35+ years, non-Aboriginal, urban prison**

One solicitor interviewed for this study provided an example of an inmate who had suffered from significant hearing loss as the result of a delay in seeing a specialist. This particular inmate did not see a specialist until after she had complained of ear infections on numerous occasions:

*Justice Health records show she presents multiple times with ear infections and ...when she's referred to an Ear, Nose and Throat Doctor she's got significant permanent hearing loss.*

— **Legal Aid solicitor**

A Legal Aid solicitor cited an example of an inmate who had incurred an injury whilst carrying out duties as part of their prison employment. The

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<sup>29</sup> Health care services in prison are provided by Justice Health. Prisoners do not have access to Medicare when incarcerated.

inmate had reportedly suffered from significant ongoing pain and, as a result, had sought legal advice from the solicitor about bringing action against DCS. The solicitor's assessment was that the case had merit.

### ***Injury arising from assault***

According to our interviewees assaults amongst inmates are commonplace (see also Chapter 9). Interviewees indicated that prison officers would respond to these assaults by taking inmates to receive medical treatment and by offering them the opportunity to have their attackers charged. However, a few inmates suggested that the incidence of assaults often arose because custodial officers had failed to adequately protect inmates from being assaulted or attacked by other inmates. One inmate specifically referred to an incident where he had been attacked in a prison yard, but claimed the surveillance camera that normally kept watch over this area was not facing the yard at the time of the incident (Dean, male sentenced prisoner on protection, 35+ years, Aboriginal, rural prison).

Different sources of information about assault, injury and violence in prisons provide vastly different pictures of this issue. The Productivity Commission provides annual statistics on the incidence of reported assaults in Australian prisons. The *reported* rate of prisoner on prisoner assaults in NSW prisons in 2005–06 was 15 per cent of prisoners with a further 0.4 per cent for 'serious assault' (SCRGSP, 2007, Table 7A.14). However, while these statistics are provided each year, and are used as an official measure of prison safety, the reliability of these figures is uncertain, due to the likely underreporting of assault in prison (see Chapter 9 and Butler & Allnut, 2003).

Another indicator of the level of assault in prison is the IHS. This survey reported that twenty-eight (19%) women and 123 (18%) men had sustained at least one injury in the *three* months prior to the survey. The most common cause of injury for both sexes was being struck by an object or person (32% (women) and 42% (men) of all causes). Twenty-eight (90%) injuries reported by women and 125 (80%) reported by men had occurred in prison. Hospitalisation was required by three (10%) women and seven (4%) men (Butler & Milner, 2003, p. 68). Assaults are the second most common form of injury treated in NSW prison clinics (Schofield et al., 2006, p. 499).

A more recent survey of prisoner drug use and associated violence indicated that 21.4 per cent of inmates reported being assaulted by an inmate and nine per cent by a prison officer during their current prison term (down from 35.6%

and 11.5% respectively in 1998). Most inmates reported having witnessed a fight (84.2%) during their current prison term and 36.8 per cent had witnessed more than five fights (Kevin, 2005, pp. 20–21).

In terms of sexual assault, 23 per cent of females and 15 per cent of males interviewed in the IHS reported that they were ‘aware of sexual assaults in prison in the past twelve months’. However, as the question was deliberately asked so as not to relate to their own personal experiences, it is possible that a number of inmates’ responses may be describing the same incidents (Butler & Milner, 2003, p. 134) and therefore these statistics may be subject to (at least) double counting. The Framework Report, which examined the needs of intellectually disabled offenders (Simpson et al., 2001) described threatened and actual physical and sexual violence as one of the main issues of concern to prisoners with intellectual disabilities. In an earlier survey of NSW prisoners aged 18–25, Heilpern (1998) identified a high incidence of sexual (and other) forms of abuse, especially amongst male respondents in NSW prisons.

## Media

Three inmates in this study reported being concerned about the way in which their offence had been depicted by the media. One solicitor interviewed for this study provided an example of an inmate who had committed a highly publicised crime. She said that negative news articles had been published in the media about this inmate, who was concerned about the impact of the publication on her family outside prison:

*One girl ... was notorious at the time of her offence and was all over the papers. Now, ten years later, heading towards her release [she] is concerned that the same information ... will be reproduced in the papers on her release ... she wanted advice on whether or not you could get those suppressed.*

— **Legal Aid solicitor**

One of the issues raised by this solicitor’s client was that the publication of details relating to her case impacted negatively on her interactions with other inmates. The law of defamation regulates the publication of material that can potentially damage a person’s reputation. However, in NSW defamatory material can be published if it is true, particularly if this has been proved in court (Barry, 2004, p. 866). Accordingly, it appears that inmates with such issues would have difficulties pursuing this issue under defamation laws or preventing the publication of such stories in the media. As this solicitor stated:

*Because in the end I said, 'Look you know, you pleaded guilty. A lot of that information you gave in your own sentencing defence and these are the victims of the crime for which you are lawfully committed. If they want to give their story there's nothing you can do about that.'*

— **Legal Aid solicitor**

Two other inmates from this study who had been arrested at the airport, expressed concern that their arrest had been televised on a reality television show:

*I asked him to intervene to stop a television program that showed my face in the airport ... My lawyer ... did nothing to stop the program ... They even mentioned my full name ... I live in Australia, I got kids here ... I got a history here.*

— **Carlos, male sentenced prisoner on protection,  
35+ years, NESB, rural prison**

'Open justice' is the notion that the public be informed of legal issues arising in the criminal and civil courts, which allows the media to observe the majority of court proceedings (Barry, 2004). However if a publication in the media is found to interfere with the course of justice, it is held to be 'contempt of court', which is a punishable offence. Hence it is possible that the issue facing these two inmates is covered by *sub judice* rules in NSW, rules which prohibit the publication of material that could prejudice the outcome of a matter before the courts. This includes material that reveals photographs or drawings of the accused, evidence not shown before the court, confessions, or prior convictions or charges (Barry, 2004, p. 871).

Material that can be published includes the 'bare facts' of the case as well as a 'fair, accurate and contemporaneous' report of the court proceedings (Barry, 2004, p. 872). A case is affected by these rules once a person is arrested until their appeal rights are exhausted (Barry 2004, p. 871). However, the bare facts, the name of the person charged and what they have been charged with are not prohibited (Barry, 2004, p. 872). An analysis of whether these rules affected the above two interviewee's cases, should take into account whether the show went beyond the facts and whether a physical depiction (photographs, pictures or video footage) occurred before the offender's appeal rights were exhausted.

## Immigration

Non-Australian citizens (including permanent residents) imprisoned in NSW may face the prospect of being deported upon release. Indeed, the Immigration Advice and Rights Centre (IARC, 2006) identified prisoners in five situations who are most commonly affected by the risk of deportation. These are:

- ◆ people arrested on entering Australia (e.g. charged at the airport with a criminal offence)
- ◆ people arrested while they hold a temporary visa in Australia (e.g. a tourist or overseas student arrested for a criminal offence)
- ◆ people who overstay their visa (who are then unlawfully within Australia) and are then arrested
- ◆ permanent residents of Australia who are convicted and sentenced to imprisonment (people who may have been in Australia for a long period and who may have family in Australia but who have not become an Australian citizen)
- ◆ prisoners who are foreign nationals who have finished their sentence but do not have a travel document (e.g. their passport has expired/has been lost).

IARC (2006) advises that ‘as a general rule, if the prisoner has committed an offence within ten years of being in Australia as a permanent resident, and is sentenced to a period of imprisonment of at least twelve months, the prisoner may be deported’ (p. 3).

Several inmates that we interviewed, who were not Australian citizens, had been served a deportation notice by DIAC. Others had not received such formal notification but had concerns they would suffer a similar fate. Those inmates who had been living in Australia for many years or who had children and family here were particularly anxious about the prospect of being deported:

*They sent me a letter saying that due to your criminal conduct ... I'm only a permanent resident. They were talking about cancellation of my visa. Now, I've got a wife and five kids as well and been in the country twenty two/twenty three years and they're still talking about deporting me.*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

Stakeholders also provided examples where inmates had been deported once their sentence had finished, despite having lived here for the majority of their life and having children or other family here.

*One Pacific Islander I had, he'd been here for over 20 years. He came here as a child. He'd married twice. He had something like ten kids. His mum and dad were here. They were legal but he never got around to it and they deported him back.*

— **Official Visitor, urban prison**

It has been suggested that a recent decision regarding the cancellation of an offender's permanent visa in *Sales v Minister for Immigration and Multicultural Affairs* [2006] FCA 1807 (20 December 2006), may impact on future decisions made by the DIAC regarding such visa cancellations. This case involved a permanent visa holder imprisoned in Australia having his visa cancelled despite having lived in Australia since he was three years old. In the decision, Allsop J held that the visa holder had been denied procedural fairness in relation to the cancellation of the visa because of his inability to get legal advice about the cancellation of the visa from prison. This decision has led the Department to revoke the cancellation of a number of permanent visas held by offenders (Irish, 2007, p. 5).

There were also cases in this study where the inmate actually wanted to be returned to their country of origin. Once sentenced, arrangements can also be made for sentenced inmates, who are nationals of countries with whom Australia has a prisoner transfer agreement, to be transferred to their country of origin to serve the remainder of their sentence (Cth AGD, 2006). One inmate who was currently on remand at the time of the interview discussed her wish to be transferred back to her country of origin after she had been sentenced:

*I want to try to ... transfer, to have the rest [of my] time in [home country], in jail.*

— **Karla, female remandee, minimum security,  
25–34 years, NESB, urban prison**

## **Summary**

As described above, prison inmates commonly face a range of civil law issues. Not only may inmates go to prison with outstanding debts, housing and social security issues, but their often sudden and relatively comprehensive removal from society, itself raises a raft of potential legal problems. Inmates have difficulties settling and/or meeting existing obligations, such as business or employment arrangements, debts and tenancies. In addition to the very practical barriers to settling their affairs, they may not know for how long they will be in prison, making pre-emptive action difficult, lest they be released.

Finally, the experience of being incarcerated can lead to further civil law issues, claims for injury in prison, media-related legal issues such as defamation, the requirement to pay victims compensation restitution and immigration issues. The effect of incarceration can also lead to problems once prisoners leave prison such as discrimination in employment.

## Family issues

As indicated in Chapter 2, while 59.2 per cent of inmates have never married (Corben, 2006a, p. 20), 47 per cent of male inmates and 57 per cent of female inmates completing the IHS reported having one or more children under the age of 16 (Butler & Milner, 2003, p. 28). DCS has recently begun registering the numbers of child visitors to correctional centres and their relationship to the prisoner they are visiting. Since January 2004, over 25 000 children were registered as visitors to NSW correctional centres, with 47 per cent of these child visitors aged under ten years and 65 per cent visiting a parent in custody (NSW DCS, 2005a, p. 24). These data highlight the number of children affected by having parents and other close relatives in custody. The sheer number of inmates who have partners and or children would suggest that there is potential for inmates (in the same or greater proportions to families outside the correctional system) to experience, while they are in custody, family law or care and protection issues relating to children. Similarly, the level of domestic violence experienced by prisoners, particularly women prisoners (see Chapter 2) would suggest this as another area of legal need.

### **Family law**

Several inmates interviewed for our study reported having family law problems. Two inmates in our sample who were currently in prison reported going through divorces. However, overwhelmingly, family law problems related to access and residency of children. These appeared to occur whilst inmates were currently incarcerated as well as occurring after being released from prison. Approximately two-thirds of inmates and ex-prisoners interviewed for this study reported having children, although many did not have those children in their care at the time of arrest. Most male inmates with children (where those children were housed with family) said that the children were with the mother, while female inmates tended to have their children staying with extended family, often parents. In cases where children were placed with family, most inmates said they were satisfied with those arrangements in the circumstances:

*I was quite happy because [it's] better than my kids [going] to foster care.*

— **Pedro, male sentenced inmate, minimum security,  
35+ years, NESB, urban prison**

Arrangements for the care of children may predate imprisonment or may have been, as noted earlier, entered into once one parent had been taken into custody. A few stakeholders reported instances of inmates having existing family law matters when they were arrested which they continued to negotiate once they were remanded in prison:

*Often there are people [who] come into custody and they're in the midst of Family Court proceedings and there's a final hearing on the 11th of November and here they are in custody.*

— **Legal Aid solicitor**

A number of interviewees also stated that inmates sometimes had difficulties accessing their children (by letter, telephone or by the children visiting the jail), as well as difficulties with access once they were released (see 'Accommodation post-release'):

*What I see quite often are things such as custody issues with children ... Because they're quite powerless while they're inside. And if the partner doesn't want the kids to go to the jail to see dad ...*

— **Probation and parole unit leader, rural area**

*A lot of them didn't have access to their child or had access to their children on the outside but were using [drugs], so they didn't actually maintain their access. They go to jail, they dry out, they clean up and they really want to start that relationship again. But they can't because the person outside says, 'Well, you never saw them when you were out. You had your opportunity. You didn't stick to your access orders. That's the end of it.'*

— **CEO, Shine For Kids**

Other examples were provided of partners outside moving house with the children and the incarcerated parent leaving prison, not knowing where their children were:

*Some guys have gone in and the partner has moved. It gave them the opportunity to move with the kids, so the guy doesn't know where they are.*

— **Manager, Centrelink**



There were also instances of where an inmate had previously had custody of their children, but had lost custody when they were arrested and imprisoned. For example:

*I had custody of four of my children when I was on the outside ... she then got custody of the children since then.*

— **Aaron, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, urban prison**

In a Canadian legal needs study, family law matters were identified by 70 per cent of prisoner interviewees as a critical area of legal need (Lajeunesse, 2002, p. 2). There is also an increasing amount of Australian research on the issues facing inmates and their families (see Flat Out & VACRO, 2006; Woodward, 2003; Lawrie, 2002; Brookes, 2000).

### ***Substitute care for children***

Care for children through DOCS was another legal issue encountered by inmates interviewed for this study, particularly when people, often women, are first incarcerated:

*Some of them might have just come in and their kids are taken, adopted, because there was no one. And so then they're freaking out because they don't know who the carer is, who's looking after them, what's happening with them. So that we contact DOCS to find out where the children are.*

— **Non-custodial staff member, Offender Services and Programs**

Of inmate interviewees who had children, a small number reported that DOCS was involved in trying to place children with family members or into DOCS care itself when they came into prison:

*We were both arrested on serious charges, in custody with two kids out there ... I was dealing with DOCS and going to court for the children to get them placed where I wanted them to be placed — with family, instead of going to foster care.*

— **Ricky, male sentenced inmate, maximum security, 25–34 years, non-Aboriginal, urban prison**

Once sentenced, inmates with families may continue to experience problems related to children in the care of DOCS. For example, inmates, DCS workers and other service providers reported that parents in prison who have children in DOCS care may have difficulties both negotiating access arrangements and

in actually gaining access to the children:

*We contact DOCS in relation to see if they can have access visits while they're in custody ... Sometimes DOCS will allow it and sometimes they'll say it's not allowed because it's not the best environment for children to come to.*

— **DCS client services officer, head office**

Examples were given in our interviews of prisoners wishing to report matters to DOCS in situations, where he or she had concerns over the welfare of children in the care of partners or family members on the outside:

*Sometimes guys have concerns about the welfare of their children, if their partners are using on the outside and they don't know how the kids are or they haven't heard from them.*

— **Throughcare officer, rural prison**

In circumstances when DOCS is removing a prisoners' children from an ex-partner who has custodial rights, DOCS must inform the inmate of the situation. There was a suggestion, however, that under these circumstances, the incarcerated parent has little involvement in the process:

*The men, in particular, they're not really seen as part of the process. Because the kids could be living with mum, so it could be mum that they are removing the kids from and dad's in custody. If DOCS knows where dad is ... they have to notify [him] what's going on and send him all the paperwork.*

— **DCS welfare officer, urban prison**

Research undertaken concerning the children of imprisoned parents by the Children of Prisoners Support Group (now Shine for Kids), touched in part on the capacity of parents who have children in substitute care to participate in legal processes related to care proceedings (Brookes, 2000). The survey of 200 imprisoned parents reported that 16 respondents had children in substitute care (i.e. foster care, children's homes, etc.). In half of these cases, the children were moved into care after the parent went to prison (Brookes, 2000, p. 17). Most of these children were made Wards of State or were committed to the care of a 'private person' (p. 18).

It is noteworthy, that the parents whose children had been taken into care *since* going into custody, appeared to have more involvement in the legal proceedings concerning their children's care than the parents whose children had been in care *before* they went into custody. The survey found that the

former group were more likely to know that their children had been before the court (for care proceedings), had been present at the court hearing and had a lawyer at the court hearing (Brookes, 2000, p. 18).

### **Custody issues and housing**

From our interviews, it also appeared that inmates had difficulties regaining custody of or contact with their children once they had been released. Our interviewees indicated that contributing to these difficulties were issues such as inmates not being able to find suitable accommodation and the children having been removed from their parents for long periods:

*Without stable accommodation you're never going to get your kids, and getting stable accommodation in itself, is a really tough process. So its one of those chicken or the egg things in that no one's going to give you accommodation to cater for your three kids if your three kids aren't in your care. That's one of the issues this one woman is facing at the moment ... I've also been told by a legal representative that she's not going to get the kids back now because they haven't been in her care for like two or three years and in fact giving her kids back will be too destabilising for them.*

#### **— Project workers, ex-prisoner mentoring program**

Baldry et al. (2003) examined whether the availability of post release housing made any difference to recidivism levels and the chance of inmates returning to prison. They identified sole parents (usually women) as being particularly disadvantaged in securing housing for themselves and their children (p. 25). Ogilvie (2001) also described released women's vulnerability to returning to violent partners in order to house themselves and their children (p. 4). One social worker interviewed for this study reported that housing debts could also prevent ex-prisoners from being rehoused and regaining custody of their children:

*Now what we're seeing with that is, they want to get settled and housed before they get their children back. That's really difficult because most of them have debts with DOH, are on the TICA list.<sup>30</sup>*

#### **— SAAP worker, urban area**

<sup>30</sup> TICA refers to the TICA Default Tenancy Control System, an Australian default tenancy database that provides information to property owners about potential tenants. See [www.tica.com.au/about.htm](http://www.tica.com.au/about.htm).

### ***Summary***

Accordingly, whilst some data indicates that more than half of the inmates in jail have never been married, many inmates do have children. As well as pre-existing legal issues arising between partners and concerning the care of children, our data suggests that the incarceration of a parent or partner may itself precipitate family law and child custody issues. As well as the acute child custody issues that may arise upon a prisoner's arrest, inmates may need assistance with family related issues throughout their custody and upon release. Post-release child custody issues may also be affected by housing difficulties.

### **Conclusion**

Interviewees in our study suggested that although inmates come into prison with pre-existing civil law issues (e.g. debt, fines and housing), family matters and, of course, their criminal legal needs, there is also a range of legal issues experienced by inmates and ex-prisoners that arise from imprisonment. The interruption to a person's life brought about by sudden incarceration affects inmates' housing, child care arrangements, personal effects, employment, financial obligations and social security payments.

Certain legal issues may also arise as a direct outcome of imprisonment such as prison disciplinary action, deportation or discrimination. Once released, ex-prisoners report problems with parole, policing, warrants and discrimination, as well as those problems that remain from before or during their incarceration. It appears that the confluence of legal problems on release from jail may affect inmates' capacity to successfully reintegrate into the community.

These findings suggest that inmates not only need access to criminal law assistance while in prison, but also to assistance with a broad range of civil and family law matters. Indeed the provision of legal assistance in jail may have benefits well beyond an inmate's term in prison. So what are the opportunities and mechanisms available to inmates whilst in prison? Given the very literal barriers and restrictions imprisonment imposes on inmates, how do inmates address existing legal problems and prevent other significant problems from occurring? Chapter 5 will describe the opportunities for inmates to get legal assistance and to participate in relevant legal processes — criminal, civil and family. It will also summarise some of the immediate barriers encountered by our interviewees in using these mechanisms.

# 5 Opportunities and Barriers to Access Justice

The previous chapter has demonstrated that inmates have a considerable number of legal problems that require attention whilst in prison including but by no means restricted to, a serious criminal problem. Many of these legal issues require immediate attention lest they compound or generate new legal issues. Accordingly, access to legal assistance is an important concern for prisoners and critical to limiting the volume and severity of the legal issues inmates may face. Throughout our interviews with both stakeholders and inmates (current and past), it emerged that there were opportunities for inmates to access legal information, advice and representation and to participate in legal processes despite the challenge of the prison environment. This chapter will provide an overview of the common means by which prisoners can access legal information, advice and legal processes and the steps they need to take to achieve this access.

As already discussed in the introduction to this report, the ability to access justice among prisoners as it is being examined by this report not only includes ‘end product’ events such as an advice session, a court appearance, or obtaining a piece of legal information, but also the steps in the process leading to those ‘end products’, such as being able to obtain the requisite form, making an appointment, getting access to a library, or just getting some assistance to know what will be the next step in a process. Indeed, it appears many of the difficulties inmates have in servicing their legal needs occur within these intermediary steps.

The purpose of this chapter is to summarise the barriers encountered by prisoners in the context of the steps they need to take from prison in order to access legal information, advice, and representation and to participate in

legal processes.. This will then form the background to the subsequent four chapters, which describe in detail the circumstances that generate, maintain or ameliorate the problems inmates have with addressing their legal needs, supported by quotes from our interviewees.

## Legal information

In this report, ‘legal information’<sup>31</sup> refers to the information found in legal text books, case law and legislation. It also covers plain language legal information<sup>32</sup> including material produced by DCS where it contains some legal information (e.g. the Inmate Handbook contains contact details for Legal Aid NSW and the ALS) and brochures/ cards/posters produced by legal services for distribution. Information may be about specific laws, legal problems or legal processes, or about where to get legal advice or representation for criminal, civil and family law matters. Accordingly, legal information in this context refers to specially produced legal information materials not given verbally. Information given by non-legally trained people are considered intermediary steps to legal advice and information and as such are discussed as they arise, but is not considered in this context as legal information.

### **Legal information in prison**

Among the inmates and ex-inmates interviewed for this study, legal information was sought for a range of reasons: in order to progress a legal matter such as a bail application or an appeal; or, to participate in the running of their criminal matter by drawing on materials such as specific legislation and case law. Inmates also sought legal information to gauge what to expect at a sentencing, to judge the fairness of their sentence, or to gauge the perceived competence of their lawyer. Further, although the topics mentioned by interviewees revolved predominantly around criminal matters, inmates also sought legal information on family matters (child custody and divorce), immigration and financial issues. It would appear from our interviews that the legal information sought not only helped inmates to understand their legal position but also afforded an

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<sup>31</sup> It should be noted that at the conclusion of data collection, DCS were in the process of implementing the placement of LawAccess as one of the numbers on inmates’ phone cards. This was not fully implemented at the time of our interviews, but now inmates can ring LawAccess from any prison in NSW for the cost of a local call.

<sup>32</sup> Plain language legal information is generic material written in non-legal language about legal issues that people might face. It is usually made available in the form of pamphlets, comics, multi-media (e.g. videos, DVDs and audio), by telephone (person-to-person or via recorded information) or on the internet.

autonomous perspective on the legal processes of which they were the subject. In this way, legal information provided an opportunity for inmates to more fully participate in legal processes as well as a means by which (in their view) they could assess the fairness of those processes.

Despite their real and sometimes urgent legal needs, people in prison are much more limited in how and where they can obtain legal information because they cannot actively seek it in the same way someone not in prison can (see Figure 1, p.32). Specifically, their range of choice of sources of information is narrower (for example, inmates cannot go to a public library or access the internet) and the opportunities to consult those sources they can access may be subject to strictures generated by other prison functions.

According to the inmates interviewed for this study, the major sources of written legal information for prisoners were the prison library, their legal advisers and DCS staff (for DCS-produced materials and written materials produced by legal service agencies such as brochures and posters). According to our interviewees, the success with which those sources yielded the required information varied. Issues associated with obtaining information from legal *advisers* are covered under 'Legal advice and representation' in the current chapter and from DCS staff under 'Professional intermediaries' in Chapter 8. However, it should be noted that the issues raised in those sections could also be applied to obtaining legal information.

All NSW correctional centres have at least one library (which can vary in size from a cupboard of books to a fully functional library), which may contain some legal information as well as recreational and other reading material. However the main law library is located at the Metropolitan Remand and Reception Centre (MRRC). Inmates not at MRRC may order articles from the law library via the loans service. They must complete a written request form detailing the information needed and then submit the form by fax to the MRRC law library. The librarian gathers the relevant material and sends it to the prisoner. In terms of holdings, all libraries are required to at least have copies of the DCS Operations Procedures Manual, an up-to-date copy of the *Crimes (Administration of Sentences) Act* and the *Crimes (Administration of Sentences) Regulation*; up-to-date copies of 'any other relevant legislation';<sup>33</sup> and approved journals and reference books (NSW DCS, 2006c, s. 5.6). It should be noted that since our interviews DCS has funded plain language

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<sup>33</sup> 'Other relevant legislation' was not further defined in the DCS Operations Procedures Manual.

legal resources from the State Library's Legal Information Access Centre (LIAC) have been placed in all NSW jails. These are described in more detail in Chapter 7.

All inmates, including those on segregation, protection limited association, protection non-association and on special management area placement are supposed to be informed about the library services, and have the library or library services made available to them (NSW DCS, 2006c, s. 5.6). There is no access to the internet in any DCS correctional centre.

### ***Problems/barriers to obtaining legal information in prison***

Although a number of interviewees in this study were satisfied with the use they had made of the prison library services, other interviewees noted a number of difficulties in obtaining legal information from this source. These were:

- ◆ information about the library's existence and/or opening hours was absent or unreliable
- ◆ limited access was only available due to closure, lockdown or restricted hours of opening
- ◆ limited access was only available due to the inmate's classification
- ◆ outdated or incomplete legal information materials were only available
- ◆ insufficient coverage of legal issues in the available legal books
- ◆ inappropriate, slow or no response to legal information requests from the MRRC law library
- ◆ library personnel (often inmate clerks) being unable to fill requests because the request form completed by the inmate was unclear or had insufficient detail
- ◆ library personnel were inadequately trained to assist in finding the right legal materials
- ◆ inconsistency was experienced in the quality of library service between prisons.

It would appear, consequently, that inmates would like, and can (albeit it with some difficulty), utilise the library facilities that are on site at the prisons as well as the borrowing service provided at the central law library at MRRC. However, there was a suggestion that the material available through these locations may be of limited utility because it may be incomplete or outdated.



These comments were supported by a survey about library services conducted by DCS in 2005 to which 97 inmates from nine NSW prisons responded. The concerns in all of these prisons reflected those from the current sample, namely, as already mentioned: out-of-date resources, little information about how to best find materials, no or slow response to requests for information; and, too restricted opening hours (NSW DCS, 2005b).

## Legal advice and representation

In this report, legal advice refers to a lawyer acting in their official capacity<sup>34</sup> offering or providing a solution to an individual's legal problem. Legal advice can be given face to face, by telephone, AVL or in some cases, by mail. An example of legal advice is when a solicitor tells a client what his or her options are, after he or she has received a letter of demand to pay a debt.

Legal representation covers services provided by legal professionals that go beyond providing legal advice. These services may include drafting documents (e.g. wills and contracts) and representing a person in a legal matter (e.g. negotiating child residency and contact agreements). Legal representation also includes preparing documents for court appearances (e.g. statements of claim and affidavits), and representing people in court and tribunal processes.

As with any person facing court on a criminal charge, prisoners often seek to engage the services of a lawyer. A lawyer may be funded either publicly, for instance partly or fully by Legal Aid or the ALS, or privately, where the cost is borne solely by the individual, their friends or family. The majority of the prisoners and ex-prisoners interviewed for this study had, at some point, used a publicly funded solicitor.

Securing advice and/or representation from a lawyer is clearly not unique to people defending a charge who are also in prison. However, imprisonment means that it is likely that the process of accessing a lawyer and/or interacting with an advocate would differ from that which would occur out of prison. The following paragraphs describe the major means for obtaining legal advice and representation whilst a person is in prison. The information flows from our interviews and is confirmed by the relevant service providers.

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<sup>34</sup> A distinction is made in this report between legally trained people acting in their official capacity and those who are trained but who are acting unofficially. The reason for such a distinction arises from a few cases where inmates have received 'advice' from other inmates who were formerly lawyers, and friends or family who are lawyers but who are not acting in an official capacity.

## **Prisoners Legal Service (PLS)**

As briefly mentioned earlier in the literature review, the PLS provides, in the main, representation to inmates at Parole Authority hearings, life sentence determinations, segregation appeals and visiting justice hearings. The PLS also coordinates a visiting legal advice clinic to prisons. In urban areas, the service is mainly staffed by PLS solicitors, while in rural areas the clinic uses lawyers from the regional offices of Legal Aid or private solicitors acting for the PLS. PLS solicitors do not represent inmates in court for matters relating to their criminal charge. While run by Legal Aid, the PLS functions as a separate service to the Legal Aid Duty Lawyer Scheme (which operates in most local courts), and to other Legal Aid services.

The PLS represent prisoners at parole board hearings who are either seeking parole or who have had their parole, home detention order or periodic detention order revoked. Prisoners can indicate on a form sent to them by the Parole Board whether they would like PLS, the ALS or a private lawyer to represent them at the hearing.

The PLS also coordinate an advice service to almost all of the prisons in NSW. The frequency with which the PLS is scheduled to hold the legal advice clinics varies from prison to prison, from weekly visits at the major remand centres to monthly visits at most country jails. Inmates book for an advice session with a PLS lawyer by asking their wing officer to put their name in a 'Legal Aid book' at the prison. On the day the legal advice clinic is run the inmate could be paged to the visits area to meet the attending lawyer. Appointments do not take place if the prison is in lockdown. Appointments usually run for approximately ten minutes and are in the form of 'minor assistance' (less than one hour's work). The advice usually concerns inmates' current criminal proceedings, but can also be about other legal problems. If the inmate requests assistance with something beyond the service's scope, the PLS will try and refer them on to another section of Legal Aid or a community legal centre (CLC).

Every inmate at a prison faces or has faced a criminal law issue. Not surprisingly, many of our inmate interviewees sought the assistance of the PLS visiting legal advice service and many of the concerns they and other interviewees raised pertained to this service. The issues raised by interviewees specifically in relation to the PLS visiting legal advice service included:

- ♦ lack of information about how to access the PLS visiting legal advice service, and the frequency and timing of their visits

- ◆ PLS not attending when scheduled and long periods between legal advice clinics
- ◆ uncertainty as to whether the custodial officer placed inmate's name in the Legal Aid book
- ◆ inmate not being called to a PLS visit despite a booking being made
- ◆ inmates not turning up for a booked legal advice session
- ◆ inmate not being able to attend a legal advice visit because of their security classification
- ◆ PLS sessions being cancelled by the prison due to a lockdown
- ◆ timeliness in seeing an adviser before a court date
- ◆ advice sessions being too short
- ◆ advice sessions being not confidential
- ◆ advice not being understood
- ◆ limited range of legal issues covered by advice service.

It is important to note that many inmates did not themselves often make a distinction between the legal advice service provided by PLS, the lawyer they may engage specifically for their case, or the duty lawyer at the court. Perhaps one indicator of this conflation is the fact that the book where the names of inmates seeking advice are noted is commonly called 'the Legal Aid book'. Consequently, it is not clear whether many of the above noted concerns inmates expressed about 'their lawyer' not turning up at prison, or having a different lawyer at court from the one they consulted in prison, or always getting a 'different' lawyer each time they appear, is either a consequence of this confusion or an indication of a genuine disruption to one or more of these services.

### **Legal representatives: Legal Aid, ALS and private solicitors**

After arrest, police may allow inmates a telephone call to contact a lawyer. However, the process for obtaining representation from Legal Aid typically occurs when a person is arrested and they appear in court for their bail hearing. Unless they have secured a private solicitor, a defendant may see the Court Duty Solicitor<sup>35</sup> (a service provided by Legal Aid) to represent them at their

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<sup>35</sup> The Duty Solicitor at a court may be a Legal Aid lawyer or a private lawyer rostered to the court by Legal Aid (this occurs more commonly for rural and regional areas).

bail hearing at court. This may involve a short visit by the lawyer to the inmate as he or she is held in the cells at the court. They may also apply, through the Duty Solicitor, for a Legal Aid solicitor to represent them in their criminal matter. Alternatively, an inmate may make this application in the correctional centre through the PLS visiting legal advice service, or by calling Legal Aid themselves (see below ‘Contacting legal representatives from prison’). After making an application for Legal Aid, if successful, an inmate will be appointed a Legal Aid solicitor who will contact the inmate by post. Alternatively, an inmate may find his or her own legal representative who may apply for a grant of Legal Aid. It is also possible for an unrepresented inmate to attend court for the hearing for their criminal matter and use the services of the Duty Solicitor at court for that day.

If an Aboriginal or Torres Strait Islander person comes into custody, police must, by law, contact the ALS on their behalf (Manager, Aboriginal Legal Service). The ALS has a dedicated 24-hour telephone custody notification service and once contacted, the ALS lawyer will give legal advice and will ask some basic questions about safety and family contacts (personal communication (email), Policy officer, ALS). At court, there may be an ALS lawyer who, on list days, can provide representation to Aboriginal people. The presence of an ALS solicitor will depend upon the business of the court (e.g., how busy the court is, the number of Aboriginal defendants appearing before that court) and resources. Aboriginal defendants can also approach the Legal Aid duty lawyers for assistance if no ALS lawyer is available. ALS lawyers and field staff<sup>36</sup> regularly visit prisons and assist Aboriginal inmates whether they are ALS clients or not.

Inmates may also fund their own solicitor. It appeared that most inmates in our sample who chose to have private representation selected their solicitor through either previous contact with that lawyer, the recommendation from another solicitor they had contact with but who may not have had the expertise they require, recommendations from other inmates or by asking family or friends to find a lawyer. DCS staff may also give inmates access to a telephone book for this purpose, but according to our interviews with DCS staff, they do not give referrals other than to Legal Aid.

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<sup>36</sup> Field staff are ALS employees who are not lawyers but who assist ALS lawyers to gather information from inmates with respect to their legal matters.

## **Problems/barriers to obtaining adequate legal advice and representation**

Interviews for this study raised a number of general issues in relation to obtaining advice and/or representation from lawyers whilst in prison (problems concerning contacting lawyers are covered in the section immediately following):

- ◆ inmate not knowing how to secure legal representation from prison
- ◆ advice sessions in court cells not being long enough
- ◆ advice sessions not being confidential (e.g. over the telephone, in-person at prison and at court)
- ◆ inmates not understanding the advice being given
- ◆ inmates having a different lawyer every time they go to court
- ◆ inmate not knowing whether the lawyer will be in court on the hearing day
- ◆ inmate's perception that the lawyer does not view him or her as a 'whole person' only as a 'crim'
- ◆ privileged mail from private lawyers to inmates being opened by officers (e.g. when it is not clear that the mail is from a lawyer).<sup>37</sup>

### ***Contacting legal representatives from prison***

The Legal Aid number (amongst others) is automatically programmed into the phone cards inmates use to make all their telephone calls and are free for all inmates.<sup>38</sup> There is also the option for inmates to have up to three other lawyers' telephone numbers programmed into their telephone system account. Calls to these other numbers are charged to DCS if the inmate is unconvicted, however convicted inmates must pay for their legal calls. In order to have a lawyer's number entered onto their card, an inmate must submit the contact details for the lawyer to DCS and a DCS officer then calls the lawyer's office to validate the number as genuine and to confirm the lawyer is representing the inmate applying to have the number put on his or her card.

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<sup>37</sup> The DCS Operations Procedures Manual stipulates that a letter or parcel addressed to an inmate from a lawyer must not be opened, inspected or read by anyone except the inmate or some person authorised by the inmate. Mail from inmates to their lawyers is similarly privileged (NSW DCS, 2006c, s. 3.1.1.5).

<sup>38</sup> Other numbers automatically programmed into inmate's phone cards include the Ombudsman, the Independent Commission Against Corruption (ICAC), DCS Support Line. Since the interviews for this study were undertaken, LawAccess has been added to the free numbers automatically available at many prisons.

A separate form must be completed to place money onto the telephone account. This process may take a few days or even a couple of weeks and must be repeated should the inmate move to another correctional centre. Women receive 15 minutes for legal calls whereas men have ten minutes. Welfare can also facilitate telephone calls from their office (NSW DCS, 2006c, s. 3.2.11) an option often used by inmates in the interim period before their numbers are programmed into their card.

An inmate is entitled to a visit by their legal practitioner in addition to their personal (family/friends) visits. Most prisons have a separate area with designated 'legal visits rooms' for legal visits and have set hours (generally seven days a week) during which legal visits may occur. The legal practitioner must hold a current practicing certificate and hold a current valid identification card, issued by the governing body of their profession, which must be shown on entry to a prison. Legal practitioners are given priority over non-legal visitors during the week when being processed for visits (NSW DCS, 2006c, s. 15.11). After a lawyer has been processed at the prison gate, the inmate is paged over the intercom or escorted to the legal visits area by an officer. An in-person legal visit may also take place in the holding cells under the court before or after an inmate appears in court.

Lawyers who have access to AVL may also make a request 48 hours ahead to see their client via AVL. Generally, it is Legal Aid lawyers who have access to this facility.

Inmates may also correspond by post with their lawyers. Letters from lawyers are required to be stamped 'legal mail' to maintain legal privilege. All other letters and parcels are opened and inspected when considered necessary. Inmates have to meet the cost of sending their post, including legal mail, although inmates without money may send two letters a week at departmental cost (NSW DCS, 2006c, s. 3.1).

### ***Problems/barriers experienced contacting a lawyer from prison***

Difficulties with contacting a legal representative whilst in prison was a common theme in our interviews with stakeholders and inmate interviewees. Many interviewees felt that making contact with legal representatives was problematic, irrespective of the method used. The problems cited by our interviewees in relation to contact with legal representatives were:

- ♦ legal-related telephone calls not being long enough

- ◆ telephone calls being expensive when calling a metropolitan-based lawyer from rural area
- ◆ length of time to get legal telephone numbers onto phone cards, and time it can take to make a legal call through Welfare
- ◆ lawyer not being available when inmate calls
- ◆ no response to messages left for lawyers
- ◆ inability of lawyers to return telephone calls from prisoners
- ◆ lawyer's failure to attend prison when an appointment is made or at all
- ◆ lawyer's failure to see inmate prior to the court date
- ◆ inmate's failure to attend AVL appointment.

## Participating in legal processes

In this report, participation in legal processes extends from the time an inmate first engages with the official process of a court, tribunal or government agency, to the point of legal resolution (if there is one). Activities covered may include: going to court for a criminal matter; commencing a legal action to recover a debt (or being subject to an action); participating in conciliation for a family law property dispute; appealing a Centrelink decision to the Social Security Appeals Tribunal (SSAT); or appealing a fine in writing to the SDRO. A person may actively participate (e.g. when they are an appellant in a criminal appeal or the applicant to a divorce) or they may be the subject of a legal action against them (e.g. being a defendant in a criminal matter).

The legal process originates at different points depending on the nature of the matter. For example, the legal process begins at the time of arrest for a criminal matter; when a person lodges an application for a family law matter; or when a person sends off a written appeal to the SDRO concerning an unpaid fine. The legal process then extends to the point of resolution (e.g. when a person is sentenced in a criminal matter, when a judge hands down his or her decision in a civil or family matter or when an inmate receives a letter back from the SDRO informing them of its decision). A legal process does not include informal inquiries made to authorities about a legal process or the activities leading up to the lodgement of a form, however, these actions may form the preparatory steps that make participating in a legal process possible and are consequently part of this analysis.

The following discussion on opportunities and barriers for prisoners to participate in legal processes is divided into three parts: the initiation of legal processes; preparation for legal processes; and, participation in a hearing or legal transaction. Note that among our inmate sample, by definition all were involved in participating in a hearing as defendants in their criminal matters. However, in many cases, civil and family matters had only reached the initiation and preparation stages.

### **Initiation of legal processes**

In order for a prisoner to participate effectively in a legal process he or she needs to be aware the process exists, know what he or she must do to become part of that process and/or signal that intention to the relevant authority. Barriers to inmates' effective participation in this initial phase of the legal process raised in our interviews include:

- ◆ the inmate not being aware he or she has a legal problem
- ◆ the inmate knowing he or she has a legal problem but not being aware there is a legal remedy
- ◆ the inmate being aware of a legal process but not having information/assistance about how to initiate/participate in a legal process when in prison
- ◆ the inmate having to seek assistance for the same legal problem from several different staff members in order to be able to resolve the issues
- ◆ the inmate relying on another person to initiate a legal process, which does not occur
- ◆ The inmate believing that participation in the legal process has negative consequences
- ◆ the inmate not starting a legal process because they did not have faith it will yield a satisfactory/fair outcome
- ◆ the inmate not being aware of the time limits in which to commence proceedings, and the time limits having expired before the inmate recognises the issue or commences the action.

### **Preparation for legal processes**

It also became clear from the interviews that in the situation where a process was initiated, preparation for the resolution of a legal problem may also be



undermined or at least constrained by being in prison. Preparatory activities include reading briefs of evidence for criminal matters, making inquiries about the status of a matter/application, or completing courses to establish eligibility for parole. Problems reported by interviewees with respect to preparing for legal processes were:

- ◆ insufficient time to prepare for a legal process because prison slows communication and procedures
- ◆ difficulties in keeping sensitive briefs of evidence confidential in their cells
- ◆ limited access to facilities to read briefs of evidence (e.g. CD-ROM or tape players)
- ◆ briefs of evidence arriving with insufficient time for the inmate to prepare for a court appearance
- ◆ inmate not understanding the legal documentation
- ◆ inmate not getting enough notice about how their case is to be run to be able to respond or prepare for this
- ◆ inmate not having any information about how a legal process proceeds
- ◆ incarceration affecting the inmate's capacity to participate in a legal process (e.g. an inmate not being able to call the appropriate government department directly and calls not accepted from third parties on behalf of inmates, and inmate's inability to sign documents whilst a prisoner).

### **Participating in a hearing/legal transaction**

The final stage in participating in a legal process (apart from experiencing the outcome of a decision) is the hearing or conduct of the legal transaction. This may be where the case for a complaint or restitution is argued and a resolution is negotiated/handed down. Examples include court attendance, signing contracts and parole hearings.

For inmates in this study, a major part of participating in legal processes involved attending court. According to our interview with a custodial officer at an urban prison, when an inmate is required to go to court, the court issues a warrant for them to appear on a particular day. Court warrant files are kept in the general office at the prison on the DCS Offender Integrated Management System (OIMS). Each day a court list is generated for the following day.

The warrant should stipulate whether the inmate is to appear via AVL or in person. A prisoner must physically appear before the court for certain relevant criminal proceedings, such as a committal proceeding, fitness to stand trial proceeding, any trial or hearing of charges, any sentencing hearing (including a redetermination of sentence), any hearing of an appeal arising out of a trial or hearing or a person's first appearance before a court in relation to an offence (section 5BB of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW)).

The process for transporting inmates to court was uniformly described by inmates and staff from all prisons. On the day of court, officers wake inmates at approximately 5.30 am and escort them to the prison's reception area where they are given their civilian clothes. Travel to court requires being transported on a truck to the court with other inmates from their own jail and, more than likely, a number of other prisons. Inmates are then held in court cells located within the court complex and are then returned to their prison mid to late evening the same day.

Increasingly, AVL is being used in place of an inmate attending certain hearings in person. In most parole hearings an inmate appears via AVL, however, the prisoner can make an application to appear in person. AVL is routinely used for preliminary criminal proceedings including bail applications, proceedings relating to the prisoners' remand, interlocutory proceedings and any arraignment on a day other than the day appointed for the trial. If AVL facilities are not available at the prison in which the inmate is usually housed, they may be transported to the nearest correctional facility that has AVL available. In the courtroom, there are a number of cameras, one on the judge, one on the lawyer and one on the public gallery (for family). In the AVL booth at the prison, the inmate sits before a number of television screens showing the different views of the courtroom. There is a telephone in the booth that the inmate can use to speak directly to their lawyer during the matter. During these calls, the AVL sound is automatically muted in the courtroom so that the lawyer and the inmate may communicate confidentially. There are also additional studios in the court building so that lawyers can speak to their client before or even after the hearing.

Inmates may also participate in 'legal transactions'. A legal transaction is an exchange or agreement undertaken according to law, such as the signing of a lease or contract. While a transaction may not be strictly a legal process, as defined above, it is a transaction that is legally binding and has legal

implications. Inmates may wish to conduct legal transactions in order to be eligible for parole, or make financial arrangements for bail or business transactions.

Problems identified by interviewees with this final phase of participation in a legal process were:

- ◆ inmates being unable to make legal transaction whilst classified as an inmate
- ◆ inmates choosing not to attend court or hearings if that attendance results in them having to leave their current prison and lose their 'place' and privileges there
- ◆ inmates pleading guilty to avoid court/parole hearing attendance, because it entails travelling on trucks which is highly unpleasant, and the loss of privilege/place described above
- ◆ inmates not understanding what has transpired in a hearing or the outcome or obligations of legal process, because of comprehension difficulties and/or the lack of opportunity to confer privately and/or for sufficient time with legal representative in court cells.

Particular access issues identified as arising from AVL included:

- ◆ inmates having to wear prison uniform during AVL hearings
- ◆ inmates not being able to see all of the courtroom
- ◆ inmates feeling he or she cannot easily/freely speak with lawyer
- ◆ inmates being or feeling depersonalised and dehumanised by AVL
- ◆ inmates may be more prone to misunderstanding the proceedings on video if the procedure is not clearly managed and explained
- ◆ inmates with a comprehension impairment (irrespective of the source of the impairment) may experience increased difficulty in following AVL proceedings.

## Conclusion

Although the opportunities for obtaining legal information and representation and to participate in legal processes are technically available to prisoners, there is evidence from our interviewees that some of the consequences of

imprisonment can lead to these opportunities being missed or compromised. For example, although there are prison libraries not all prisoners can access them; although lawyers visit prisons to provide advice inmates do not have long enough to receive satisfactory assistance; and, although hearings may be attended, inmates may not understand what has transpired.

What underlies barriers to inmates' access to justice? The previous section described mechanisms that aid inmates to address their legal needs and the barriers that inmates encountered in using them. However, it is not sufficient to simply say that certain opportunities for addressing such legal needs had failed to occur, or had occurred in an unsatisfactory way. Rather, we need to investigate where the points of weakness occur in prisoners' pursuit of justice *as prisoners*, and further explore how they come to be weakened. From such an analysis it will then be possible to propose how the pathways through which prisoners address their legal needs may be strengthened. The following four chapters will analyse in depth the factors that appear to underlie the barriers to inmates addressing their legal needs and accessing justice identified in the current chapter. Briefly, the discussion will analyse the role of:

- ◆ the characteristics of an inmate and inmates in general in their ability to address their legal needs whilst in prison (Chapter 6, 'Prisoner Capacity')
- ◆ the systemic environment in which inmates experience, and seek to alleviate, their legal problems and the manner in which the various components of the justice and administrative system (prison, courts, advocates, authorities, etc.) operate and interact (Chapter 7, 'Systemic Environment')
- ◆ the features of the pathways and intermediaries inmates utilise to address a legal need (Chapter 8, 'Pathways and Intermediaries')
- ◆ prison culture in shaping inmates' legal needs and responses to those needs, beyond the structural capacities discussed in the other chapters (Chapter 9, 'Prison Culture').

The final chapter (Chapter 10, 'Discussion') will describe the broader effects of the action and interaction of these factors upon inmates' legal needs such that a framework for developing strategies to address weaknesses and capitalise on strengths may be outlined.

# 6 Prisoner Capacity

## Introduction

A prisoner's capacity to identify and deal with legal issues they are facing and to actively participate in legal processes to resolve those issues whilst incarcerated is affected by a complex interplay of factors. Some factors relate to systems (legal, bureaucratic and custodial), some to individuals within these systems (inmates, lawyers and prison staff) and some to the prison culture. This chapter focuses on those factors that are related specifically to the prisoner. In particular, it examines how the capacity of inmates to address their legal needs is affected by their own:

- ◆ histories: lives before prison
- ◆ financial capacity
- ◆ previous experience in legal processes
- ◆ comprehension capacity
- ◆ life skills.

Importantly, these factors should not be considered in isolation from their systemic context. Some of the characteristics identified as relating to the inmate are influenced or exacerbated by their environment. For instance, a lack of motivation to address outstanding debts must be considered in the context of limited financial resources and the difficulties they face in dealing with them from prison (Stringer, 1999). It is important to shed light on those aspects of a prisoner's life and skills that may affect their ability to access justice.

## Histories: lives before prison

*... we have inmates who may be eighteen, we have inmates who are [in their] fifties. We have inmates who are illiterate and innumerate, and we have inmates who've been through university. We've ... got ex-legals in here. You've got guys ... who are twenty-six and never done a day's work in their life. Never, never managed to get work. Yeah you just have every style.*

— **DCS welfare officer**

Among the more than 9 000 inmates in NSW jails are men and women with diverse backgrounds, histories, abilities, experiences and traits. Yet there are certain histories and characteristics that are commonly reported among the prisoner population, which can have a direct bearing on the capacity of inmates to address their legal needs. Chapter 2 provides a picture of the overall characteristics of the NSW prisoner population in terms of gender, age, ethnic or Indigenous background, education level and health status. The following analysis examines the personal characteristics of prisoners and their lives which were identified in this analysis as having an impact upon their ability to access justice. While some of the features we describe are not unique to prisoners (e.g. poor literacy), they are discussed here because of their prevalence within the prison population and their particular impact on access to justice issues in the prison environment.

It appears from our interviews that it is not uncommon that life prior to coming into custody is chaotic and, for some, spiralling out of control. According to our interviews, for many prisoners this pre-custody period is characterised by unstable living arrangements, poverty, alcohol and other drug misuse, mental illness, damaged or unhealthy relationships with family and friends, and poor histories with government agencies and other services providers. It became clear from our interviews that the impact of these somewhat chaotic lifestyles *before* prison both contributed to the range of legal issues with which people arrived in prison and continued to affect their capacity to address their legal issues while incarcerated. These legal issues may continue unresolved well into their post-release period.

### **Chaotic lives**

Alcohol and other drug use, mental health issues, transient lifestyles and criminal activity were all commonly reported by our interviewees as precursors to prison. A sample of descriptions given by our interviewees characterise this period:

*... all the time for three years I was drunk every day except for about ten days in that three years. And I did, didn't give a shit about anything, I suppose, you could say.*

— **Mike, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, rural prison**

*Basically, before I went to jail my life was based on violence, alcohol and drugs you know, very shitty.*

— **Malcolm, male parolee, 35+ years, non-Aboriginal, urban area**

A lawyer who regularly attends prisons observed:

*... And it really is a challenge for the women, because I think that by the time that they get to the prison, they are so damaged ... and then I see that it's a legacy of their life and the prison is just another part of that chain. And you can tell from their MIN<sup>39</sup> number, you know, how long that chain is.*

— **Legal Aid solicitor**

These comments are supported by the statistics presented in Chapter 2, which indicate a high prevalence of mental disorders (psychosis, affective disorders and anxiety disorders) and substance use disorders among inmates on reception into prison and in the 12 months prior to their incarceration.

As outlined in Chapter 4, inmates interviewed for this study commonly came to prison with a range of civil and family law problems in addition to their criminal law issues. These included accumulated debts and fines, evictions and/or blacklisting from housing, as well as child support and custody residence issues. Indeed, our research has suggested that incarceration is not just a marker of criminal law issues, but is often an indicator of crisis more generally.

One impact of inmates having pre-existing legal problems when they enter prison is that, when they are removed from the community, their legal issues often remain. Family on the outside may be directly affected by these issues whilst the inmate is in prison (Woodward, 2003). However, it is often not until release that inmates themselves feel the full effect of these unresolved issues, which may have by then compounded and generated further problems:

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<sup>39</sup> MIN refers to the Master Index Number, which is an identity number given to an inmate when they are first incarcerated. Prisoners retain this number for all subsequent incarcerations.

*... pretty much all of the offenders that come here would have lost their licence at some point or other. And often it's not through driving whilst disqualified, it's just because they've accumulated fees and they can't pay them so they lose their licence. So then that stops them from looking for work, or for people [who] have got a trade or whatever, and they're a painter and they need to be out, you know, going around, they can't drive. And they can't get a job because ... the first thing they've got to say is that they haven't got a licence. So they don't get employed. And it's just this kind of domino effect.*

— **Probation and parole officer, urban area**

If the legal issues accumulated through their chaotic lifestyles prior to prison are not resolved during imprisonment, as the quote above suggests, people are likely to return to the community with debts, fines, housing and other non-criminal legal issues dating back to pre-prison life. These unresolved issues add to the difficulty of people re-establishing themselves in the community after a period of custody.

### ***Damaged and damaging relationships***

Adding further to the challenge of dealing with outstanding legal problems from the period before custody, prisoners may also have severed and/or damaged relationships with family and friends, government agencies (e.g. DOH or Centrelink) and other support services that could assist them with these problems in their post-release life.

### **Personal relationships**

*A lot of them have very limited family support from the outside. That makes it again really hard for them. A lot of them, they are frequent flyers, they go out, come in, go out, the family don't want to know.*

— **Custodial officer, urban prison**

It would appear from our data that the chaotic and often desperate lives inmates lead prior to incarceration could have detrimental effects on their personal relationships, and the resulting level of support they could draw on to address legal issues. For example, one inmate, Frank, commented on his difficulty in obtaining work because of the reputation he has with family and friends:

*... But it is hard, you know, like I haven't been able to get a job since I've been out because like ... me name is blackened. Like I said, I burnt that many bridges with people and because me family is here, me brother used to own a wrecking yard here and I know pretty much everyone through him because*



*I worked with him before. I burnt him, I borrowed money and not paying it back and ripping off his friends.*

— **Frank, male parolee, 25–34 years, non-Aboriginal, rural area**

A DCS officer noted that, while families can and often do play a vital role in supporting prisoners to avoid and address legal problems, their willingness and capacity to provide ongoing support may be compromised by the inmates' behaviour:

*Or a very common thing, a young fellow is expecting his parents to bail him, gets on the phone to mum and dad, and mum and dad say rack off [laughs], you know, bailed you for the last time.*

— **Non-custodial staff manager, urban prison**

Inmates' expectations of the support they may receive — and of their legal options — may also be quite unrealistic, given the toll that their pre-prison lifestyle has taken. The following example relates to the difficulties involved in regaining access to, or custody of, children:

*So, whilst they're out [of prison] they may think, 'Oh, I really want to see my kids' but because of their drug or alcohol addiction, it sort of it never quite works. ... 'How often did you see your son before you came back to prison?' 'Oh, yeah I saw him last year, you know but now I want to see him every week.' And you sort of, I say, '... I appreciate that whilst you're in here you're ..., predominantly drug free, and therefore you've got time to think about it and, you know, your world's not running out of control and ... now you've got the opportunity to think about, and it's good that you think that that's an important thing to keep the connection, but now we have to look at what are [the] courts going to say about your track record ...*

— **Legal Aid solicitor**

For other prisoners, families and close friends have been integral to the chaotic lifestyle they were living. In these cases, inmates and workers spoke about the need for people to *break* ties with particular family members and situations in order to move away from illegal behaviour.

*My family keeps pulling me back to the same old community ... and you end up doing the same old things about six months down the track.*

— **Toby, male remandee, 35+ years, maximum security, Aboriginal, urban prison**

However avoiding this situation can be difficult when other sources of support are limited.

*... like a lot of them have got somewhere to live, but it might be an awful place. Or some move back with family but the family's got all sorts of stuff happening. Or, or they're not using drugs but they'll move back with family and the siblings or parents are still using drugs.*

— **Probation and parole officer, urban area**

### **Relationships with agencies**

Poor histories with government and other support agencies can also make it difficult for inmates both to resolve their civil and family law issues and to re-establish life post-release. As described in Chapter 4, service providers reported the difficulties they faced trying to re-house ex-prisoners when they had been banned by the DOH, placed on tenancy default databases (blacklists) or excluded from support services due to their previous histories:

*It also depends on the inmate's track record ... Like, if you're meeting them, you think it sounds incredibly unjust and then you talk to a DOH person who says, 'Yes, but look at the history from our point of view. She made promises that it will never happen and we'll never get paid.' or 'We don't want him in the house because in fact he's banned on our other lists'.*

— **Legal Aid solicitor**

However, the breakdown between inmate and agency may be a two-way street: with prisoners also distrustful of or reticent to re-engage with government and other agencies:

*A past negative experience can contribute to it ... they might have been a ward of the state themselves, like 20 years ago and all they can see is the DOCS of 20 years ago. And they don't understand how it operates today and how it's different today ... But, there's the fear ... yeah, a previous bad experience, a historical negative view of a department.*

— **DCS welfare officer, urban prison**

This is consistent with previous research which has indicated that some ex-prisoners did not attempt to resolve DOH debts because they believed, based on past experience, that doing so would be 'wasting their time' (Baldry et al., 2003, p. 14; see also Stringer, 1999). Having a poor history with agencies also appeared to increase the isolation of inmates from the conventional world and drew them back to seeking more marginal sources of support:

*Well because they don't feel any kind of sense of belonging to the conventional financial world, there's a sort of an element of believing the only way they'll ever survive is by scamming. They sort of sense that these other people [loan sharks] are operating slightly under the radar or they think they're genuinely a service for people down the bottom of the pile. So they're just drawn to that group of people.*

— **Financial counsellor**

Accordingly, through often erratic and dysfunctional lifestyles inmates may have 'burnt their bridges' with those who could potentially support them during the post-release period. However, not only are family members and mainstream support services sometimes wary of inmates, but prisoners themselves can be reticent to draw on these groups for support. Having compromised their options for assistance and support, inmates may instead be drawn back towards the networks associated with their offending behaviour, thereby undermining their attempts to re-establish their lives after being released from prison.

### ***Awareness of the damage done***

An unstable lifestyle prior to custody, particularly when alcohol and other drug misuse or mental illness have been factors, may also mean that inmates are not fully aware of the extent of the legal problems that have accumulated during the period before they went into custody. Frequent changes in address prior to their imprisonment may also mean that notices and letters are not received or become lost in residential moves. In other cases, through their disordered life before prison, the person may have simply forgotten specific events or issues that have developed into legal issues. As one support worker observed:

*... And they will quite frequently, particularly if they were perhaps intoxicated at the time and it was something so minor, such as having feet on the seat or telling a Transit Officer to rack off and picking up a \$400 a piece for that, they quite easily forget it. Until they get picked up on \$1 200 worth of fines that are outstanding. All of a sudden they are in court ... So, they don't deal with them, they don't remember having them and then they lose the paperwork which is another thing. As often as IDs get lost, other related paperwork gets lost so we have people call us saying, 'I have to be in court and I have no idea when, what date, who...' and sometimes even, 'What for'.*

— **Homelessness worker, urban area**

Ricky, a long-term inmate noted:

*I wouldn't even know what outstanding debts might be out there from five years ago, you know. There might have been \$300 on the electricity bill or \$400 on the phone account, this here and that there and, all of a sudden it's turned into \$2 000 because of interest and you know, what am I supposed to do with it? I couldn't really deal with it, I was in jail.*

— **Ricky, male sentenced inmate, maximum security, 25–34 years, non-Aboriginal, urban prison**

Not only may inmates have accumulated legal issues through their chaotic lives prior to custody, they may not be aware of the full extent of these issues when they are in prison. Events may also be forgotten with the length of time people spend in jail, separated from their former lives. Consequently, legal problems may accumulate but not become apparent to the inmate until they leave prison and start to re-engage with their former lives.

### **Informality in personal affairs**

A further feature of prisoners' lives before custody that was relevant to an examination of prisoners' legal needs was a tendency for inmates to manage their financial affairs and family arrangements without recourse to formal legal transactions or processes. Examples raised in our study included informal money lending between family, friends and acquaintances, unofficial custody arrangements for children and the unauthorised sub-letting of housing. Inmates interviewed commonly reported having made relatively informal arrangements with their housing, allowing friends to occupy their accommodation while they were in custody or when they had moved elsewhere:

*... it's funny you say that, because years ago when I was in DOH, I had a little bedsitter over in X [suburb] and I moved out there and moved in with me girl and stupid me I told the DOH I was moving out. And as far as they knew, I was in there cleaning the carpets and that, but I didn't; I let a couple of me mates that were squatting and had nowhere to live, I let them move in there.*

— **Frank, male parolee, 25–34 years, non-Aboriginal, rural area**

This may be because, as perhaps is the case for people who are not inmates, informal arrangements may seem simpler, develop slowly over time, or are emergency measures that become permanent. There was also the suggestion that informal arrangements were preferred because inmates had negative perceptions of the legal system. For example, it was evident during the

interviews that prisoners and ex-prisoners were often quite suspicious of the law and legal process and its capacity to deliver positive outcomes for them. This appeared to contribute to the tendency towards informal arrangements:

*... the legal system's just up there, it's against us, and there's nothing you can do about it, you just gotta try and avoid it.*

— **Charlie, male sentenced prisoner, medium security,  
35+ years, non-Aboriginal, rural prison**

One father indicated he would deliberately *avoid* using legal processes to gain access to his children because of the perceived impact of the system on them:

*I'd ring up and ask [my ex-wife] and if you get knocked back, you get knocked back. But I won't go through legal because it's a waste of money and the children suffer in the long run I reckon.*

— **Toby, male remandee, 35+ years, maximum security,  
Aboriginal, urban prison**

Toby also indicated that he would not go to the police when he had been a victim of crime, even though this affected his capacity to be compensated for his injuries:

*... I never went to the police. I don't like police [getting] involved because they upgrade it ... At times I feel I can go to the police, I could have got compo and everything out of it, but I didn't want to. I didn't want to involve the person to - you know. I could deal with it, I still can.*

— **Toby, male remandee, 35+ years, maximum security,  
Aboriginal, urban prison**

Accordingly, some inmates spoke of the legal process as potentially damaging to what were already fragile relationships and sought to avoid these processes, even if they recognised that these processes may yield benefits to them. Inmates may also be isolated from conventional processes by a history of exclusion from the mainstream community:

*... a lot of inmates have done the get rich quick thing. Sold drugs, whatever. Many of them believe there isn't another way for them to ever aspire to, other than crime because of their poor education or their limitations, or some cultural groups that are chronically illiterate. They come to jail outside the education loop. They don't have the social connections. They see this as the only way they're going to ever do things.*

— **Financial counsellor**

In some cases, these informal arrangements may be entirely consistent with customary practices (e.g. among Aboriginal people) and is also apparent among people who have not been in jail. However, incarceration brings to these arrangements particular difficulties and consequences. One impact is that informal arrangements may result in additional legal problems because the inmate cannot protect their interests whilst in prison.

*First of all the inmate has to say that they have a Department of Housing property ... some of them don't. They just have people sitting in there and we don't know until the Department of Housing has rang and said that, 'There's been a house that's been trashed, and we heard that the person was in jail' and they've been in like for five months. So they've left untrustworthy people there.*

— **Welfare officer, urban prison**

This theme is further discussed in Chapter 8 concerning prisoners' dependence on intermediaries.

Another impact of inmates having informal personal arrangements that are made outside the law is that, if the informal agreement fails, it is more difficult to use the law to assert an inmate's rights and preferences, particularly from prison. In part, this is because inmates have little or no documentary evidence of the arrangements they have made. For instance, Sharon described the care arrangements for her two older children, who had been living with her Aunt while she was been in prison:

*There are no court papers or that saying yes they're in her custody, that she gets to keep them and that. There's nothing like that. It's just that she's had them for so long.*

— **Sharon, female parolee, 25–34 years, Aboriginal, urban area**

Without any formal agreement, Sharon's contact with her children now she has been released from prison is contingent upon her Aunt agreeing to allow access:<sup>40</sup>

*They come every now and then like when she gives them to me. I really have to argue with her to get them.*

— **Sharon, female parolee, 25–34 years, Aboriginal, urban area**

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<sup>40</sup> It should be noted that Sharon's placement of her children with an aunty, while not formalised in mainstream law, reflects a common construction of family in Aboriginal societies whereby 'the family unit in Aboriginal societies is extended with many relatives, and often whole communities, sharing child-rearing responsibilities with the biological parents.' (LRCWA, 2006, p. 276).

Finally, in our interviews we also found that this preference for informal processes was also manifest in examples of violent retribution, some of which led to the inmates being incarcerated for their actions. The use of violence by inmates to resolve issues whilst in prison is discussed in detail in Chapter 9.

Consequently, our research indicates that prior to coming to prison, prisoners tend to have arranged their affairs without recourse to formal legal transactions or processes. This can manifest as informal money lending, sub-leasing of housing, unofficial care arrangements for children and the use of violence to settle matters. The tendency towards having informal rather than formal arrangements appears to be, at least, partly the result of a suspicion of the legal processes and a general isolation from conventional opportunities and processes. The impact of this separation from formal processes is that, in the absence of defined arrangements (including contractual documents), it may be difficult to negotiate resolutions when disputes do arise while one party is in prison. In this way, prisoners' ability to use the law to address problems may be somewhat compromised. Without — as they see it — being able to call upon the law, inmates may be drawn towards less conventional resolutions to their problems.

## Financial capacity/resources

*I've always been told justice is a commodity — just like anything else. If you've got money, you can get it. If you haven't got money, you don't get it. It's not being cynical, it's a fact.*

— **Charlie, male sentenced prisoner, medium security,  
35+ years, non-Aboriginal, rural prison**

Prisoners' financial capacity and resources emerged from our analysis as a second broad characteristic to affecting how inmates meet their legal needs. According to previous research, most prisoners come from economically disadvantaged backgrounds (Butler & Milner, 2003, p. 23–24; Stringer, 1999). Incarceration further interrupts the income flow as people lose their jobs and, in some cases, their businesses when they go to jail (see Chapter 4). Once in jail, inmates' earning capacity is very limited, ranging from \$12.60 a week for 'unemployment benefits' to \$63.30 per 30-hour week (including a 'performance component') for highly skilled jobs in the 'business units' (prison industries). More commonly, inmates earn between

\$20–\$30 per 30-hour week in business units and \$14–\$32<sup>41</sup> per week in service industries (NSW DCS, 2006c, ss. 4.6–4.8). In addition, for some inmates, financial resources on the outside are frozen after their arrest and are subject to confiscation:

*... And so people are in jail knowing that their assets have been frozen and their families can't function in their lifestyles, and there's nothing they can do about it.*

— **Financial counsellor**

Lack of financial resources interacts with access to justice in a number of ways. Firstly, as noted in Chapter 4 a person can be kept in jail simply by virtue of an inmate or his family not being able to raise bail:

*For instance, bail might be \$200–250, and he can't raise it. For \$250 you're going to spend six months in jail 'til your next call. I've seen them ringing around; sister, father, brother. Get somebody to put the \$250 down.*

— **Custodial manager, rural prison**

Inmates incarcerated multiple times may also find their family less able to assist:

*... their families and the people who might toss in some money to help them, haven't got the money the second time round.*

— **Official Visitor, urban prison**

Secondly, legal representation and expenses drain inmates' and their families' financial resources. While many inmates are represented at a heavily subsidised rate or at no cost by Legal Aid or the ALS, there is a sizeable group of people who are not wealthy, but have enough income or assets to render them ineligible for legal aid for their criminal matter (Legal Aid NSW, 2006b):

*... I don't think Legal Aid is that available ... people have to have zero money in the bank and like no job and be really in dire straits. Where there are a lot of people that might have, you know, a few thousand dollars or a job, and they can't afford to pay for a solicitor, but they're not eligible for Legal Aid either. So a lot of those people go to court unrepresented. They represent themselves and they don't know what to expect. I think it's really tough for the people going to court.*

— **Probation and parole officer, urban area**

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<sup>41</sup> The figures given are as at 31 March 2006. The higher figure of \$32.40 a week includes a 35c per hour loading for 'essential positions' such as head cook, motor mechanic, plumber, carpenter, etc.



With their freedom at stake, some inmates were reported to choose private representation in preference to Legal Aid or the ALS, even though it financially depleted them or their family:

*... getting any legal representation. A lot of them just can't afford to, or their parents might mortgage their homes or, you know, that sort of thing to get money.*

— **Probation and parole officer, urban area**

*And even if you don't have the money, you just want to sell everything you got just to make sure that this guy gets me out of this mess that I'm in, you know. There's no capping ...*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

Thirdly, the depletion of financial resources through the criminal legal process also affects the type of legal support an inmate can obtain if they have any further legal problems after their initial incarceration:

*Now, if you've been in prison for 17 odd years, you've got no funds. OK? I can't go and hire a lawyer.*

— **Geoff, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, rural prison**

*... I haven't got any statistics to back this up, but my feeling would be that a person who gets arrested for the first time, gets a lawyer. Not necessarily a Legal Aid lawyer, because whether they can afford it or not, they get a [private] lawyer and everyone rallies around and somehow or other that works that they get legal [representation]. But second and the third time, no. They haven't got any money. They just don't. It just doesn't happen.*

— **Official Visitor, urban prison**

Consequently, consistent with earlier research (e.g. Stringer, 1999), it was clear from our study that most inmates left jail in a weaker financial position than when they went in. This in turn affected their capacity to re-establish themselves during the post-release period:

*'Cause I got out of jail last time, and I had no support from family or friends. I got no one out there, so. And then I'm stuck in friggin' [homelessness service] for, like, ten months ... 'til I had enough money to get the bond on this shitty, little, cockroach-infested hole.*

— **Hugh, male sentenced prisoner on protection, 25–34 years, non-Aboriginal, rural prison**

Upon release, prisoners may also face additional debts arising from court costs and any victims compensation restitution for which they are liable (see Chapter 4, ‘Legal Issues affecting Prisoners’). Indeed, debt is one of a number of factors (including homelessness, unemployment, addiction issues, as well as being female and being indigenous), which has been associated with returning to prison (Baldry et al., 2006, pp. 28–9). Baldry et al. (2003) found that ex-prisoners who had debt were statistically more likely to return to prison (50%) than those without debt (30%) (p. 14).

It would seem that inmates tend not to enter jail in a strong financial position. While some will be eligible for subsidised assistance from Legal Aid or the ALS, others will have to (or may choose to) engage private representation. As the additional costs of legal representation come at a time when a source of income has been lost because the inmate is incarcerated, prisoners and their families may become further impoverished through the legal process. As inmates cycle through the system for the second or third time, their financial resources, the goodwill of family and friends, and the range of options available to them for legal representation are only further exhausted. Meeting legal needs during successive terms in prison becomes more difficult to sustain and consequently any legal problems not demanding to be resolved tend to go unattended.

## Prior experience of legal processes

The third area that affects inmates’ capacity to access justice is their prior experience with legal processes. In our interviews, lawyers, DCS staff and inmates alike maintained that inmates were able to draw on their previous experiences with the law to better negotiate legal and custodial systems. However, it will be argued here that the level of knowledge among inmates of the laws and legal processes is not consistently high, accurate or broad enough to cover the range of criminal and civil matters they may face.

### **Criminal law processes**

Lawyers, custodial staff and inmates all commented on the apparent depth of knowledge of the criminal law process displayed by some of the more experienced long-term inmates:

*Yeah, but I’m lucky in that case, you know what I mean. As I’ve said I’ve got a bit of knowledge about the law. ...*

— **Simon, male sentenced inmate, medium security,  
35+ years, non-Aboriginal, urban prison**

*Most of the old crims in the jail, they know more than you know. They know more than the [Principal Solicitor] knows — where to be able to tap into the services. I can tell you. ... They might act ignorant in some ways but really they know.*

— **Zone manager, ALS**

One interviewee specifically linked this knowledge with their prior experience:

*A lot of them know more about legal technicalities than we do because they've been in the system many, many times and they know all the key words that legal people use. We may not know ... I've had instances where I've asked inmates, 'What do you mean by this', and they'll sit and explain it to me. 'This is what happens, this is this, this is', 'Oh, yeah, okay, okay'. You know, like, good lawyers there.*

— **Custodial officer, urban prison**

However, the confidence and familiarity of some prisoners with the law and legal processes can mask gaps or inaccuracies in their knowledge. By way of example, one very experienced inmate spoke of his anxiety when faced with a legal process he had not encountered before:

*I know a bit, but not as far as parole, 'cause this is the first time I've had to actually apply for it. Every time it's been automatic. But if you don't know about that, you're just plodding along doing your thing, thinking everything's going to be all right. No one's told you what you really need to be doing, when it comes time for parole. It's like, 'Oh sorry, you should've done this and that'. And no one told me to do that. How the friggin' hell am I supposed to know that?*

— **Hugh, male sentenced prisoner on protection, 25–34 years, non-Aboriginal, rural prison**

A parole officer who works at a court noted how having *partial* knowledge, and possibly overestimating that knowledge, could work against an inmate:

*... I think the magistrates know the streetwise and court wise offenders as well, and, and sometimes they, you know, they don't want to pay the money for a solicitor. They sort of figure themselves they're either going to get the jail [sentence] or a, you know, they've got it all figured out in, in their head, and so they go and speak for themselves and probably don't do themselves any justice. And that's probably a discriminatory thing as well, they don't sort of come across particularly well, or they come across like someone that's used to sort of being in and out of court.*

— **Probation and parole officer, urban area**

Consequently, inmates' knowledge of criminal legal processes is likely to be biased towards those of their own experience. However, even with 'experience' as indicated by multiple incarcerations, inmates may not have developed the level of knowledge they are attributed with by stakeholders. Their previous experiences may have been tainted by the effects of such issues as limited education, poor literacy, mental illness, alcohol and other drug misuse, and/or the anxiety and stress of the experience itself. As will be illustrated in the next section, these characteristics militate against knowledge and skill being acquired and retained. Further, the presence of an apparently highly informed group of inmates obscures the fact that there are many other inmates who have very little understanding of the law and legal processes in general, let alone the possible course of their own legal matters.

Among the current sample, many inmates indicated that they had limited knowledge about: how to get legal information and advice within jail; what was the likely progress of their own matter; how to interact with their lawyer; and, what were the possible outcomes concerning their matter:

*... some people find it easy, they're used to it. Like myself I wasn't used to it ... and when you go to Legal Aid you have got to have everything ready, which I didn't, I didn't know and I just go in and then you know.*

— **Alex, male parolee, 35+ years, non-Aboriginal, urban area**

*See most of the inmates ... don't even know that they can get a private solicitor and get partial Legal Aid.*

— **Non-custodial staff member, urban prison**

Another issue is that, to access legal help from inside jail, inmates must also be able to find their way through the *correctional* system. As described in greater detail in Chapter 8, the route to getting legal help from within jail may be convoluted, with no single obvious starting point. This is particularly confusing to inmates who have never been in custody before:

*Myself it's not knowing for sure what the system is about I suppose. What I mean by that is who [do] you contact? You know, how to go about getting things. A lot of people ... I've seen come in, and they're so naïve about a lot of things. They don't know 'cause they've never dealt with a lot of this before, and they don't know who to actually contact to do these things for them.*

— **Mike, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, rural prison**

As suggested by Mike, those who have not been through legal or correctional systems before rely more heavily than more experienced inmates on support and assistance to access legal help and to participate in the legal processes.

### **Civil and family law processes**

The inmates we interviewed appeared to have less experience and knowledge about civil and family law, than they do about criminal law:

*... civil case are not my field, you know what I mean?*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

*I don't like to give too much legal advice on kids and that because I'm not up to date with the Family Law Courts, you know, I've never had to deal with them.*

— **Simon, male sentenced inmate, medium security,  
35+ years, non-Aboriginal, urban prison**

How to engage with bureaucracies and how to appeal their decisions were two areas particularly relevant to inmates, but about which they appeared to have limited knowledge. For example:

*Centrelink is a nightmare. It's really, really difficult. And so many people lose their housing, and have no idea how to get it back or what to do. Or don't even know how to get to their Centrelink office or fill in the form to get their benefits fixed. And they come out of prison with a debt, even if they've been on remand. They come out with a debt and it's like, 'Well, what am I going to do about that?' And they just don't have the capacity to even know where to start to address those problems.*

— **Worker, CJSN**

Thus, in contrast to criminal law processes, which by definition all inmates have been subject to, prisoners may not have previously participated in a civil law process. The tendency, discussed earlier, to not arrange personal matters through the law, only contributes to this lack of experience. The gap in inmates' knowledge may be further perpetuated by a tendency to focus purely on their criminal law matter when on remand. Attention to their civil matters may be further postponed once they are sentenced, as inmates focus on surviving or making the best of prison life:

*And it's often just the last thing on people's minds if they've just been arrested. And you know, we're down at whatever jail they're on remand at, you tell the welfare officer you're on a payment, a million other things going through*

*your mind. You've got so many restrictions on what you're allowed to do and who you're allowed to contact anyway. Last thing on your mind, is, ooh, must call Centrelink*

— **Caseworkers, Welfare Rights Centre**

*I think ... a lot of them don't worry about that. They, they worry about doing what they've got to do in surviving in here. 'I'll sort it out when I get out'.*

— **Throughcare officer, rural prison**

Consequently, some (usually long-term) inmates with a lot of experience with the criminal law process appear very 'savvy' about the law and legal processes, particularly criminal law. However, their familiarity and confidence about the law can mask both the gaps in their own knowledge and the presence of many other inmates with considerably less familiarity with the law and legal processes. Notably, the level of knowledge among our sample of inmates about civil and family law processes was considerably less than about criminal law, to the point where, in our interviews, the term 'legal' was commonly taken to only refer to 'criminal law'. This is consistent with inmates having less experience with civil and family law processes and the prioritisation of criminal matters over other legal issues.

At the beginning of this chapter we identified six broad characteristics of prisoners and their histories that can affect the capacity of inmates to access justice. We have discussed the impact of inmates' chaotic lives prior to prison, their financial capacity and previous experiences with the law. We now turn to issues relating to cognitive capacity, literacy and comprehension, before we turn to styles of interaction common among inmates and the impact of prison on life skills.

## Cognitive capacity, literacy and comprehension

*Like you're talking to me and it's hard to understand things, where they're coming from and what is it about and all that stuff. Like I sort of get what you're talking about, but I don't understand everything, you know what I mean?*

— **Freddy, male remandee, 25–34 years, non-Aboriginal, urban prison**

*[IF YOU DON'T MIND ME ASKING, HOW MUCH WAS THE DEBT?]*

*I don't know, I didn't even get into it because I'm a bit illiterate and I don't understand a lot of paperwork.*

— **Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

While prisoners are by no means the only people to face difficulties in reading and understanding legal documents, as a group, they are disproportionately affected by cognitive impairment and poor comprehension skills. Contributing to the high levels of cognitive impairment within the prisoner population are inmates who experience one or more of the following problems: intellectual disability; limited educational opportunities; poor literacy; acquired brain injury (ABI); alcohol and other drug impairment; and, mental illness. Limited proficiency in English is also an issue for a significant minority of inmates. Details of the prevalence of each of these issues among the prison population are outlined in Chapter 2.

A key point to make here is that within the inmate population are people who experience more permanent or long-term forms of impairment (e.g. intellectual disability, poor literacy and ABI) and people with short-term forms of impairment (e.g. alcohol or other drug intoxication or withdrawal, the impact of severe mental health episode or medication, anxiety and stress). Further, as this section will illustrate, some of the temporary forms of impairment tend to coincide with crucial points in the legal processes, such as at the time of arrest and police interview, and attending initial court hearings. This is critical because it is at these times when inmates must draw on their skills to engage with the process when they appear to have the least capacity to do so.

The capacity of an inmate to comprehend legal material and engage in legal processes may be affected by either one or more problematic issues, such as poor literacy, limited educational opportunities, limited proficiency in English, intellectual disability, ABI, substance misuse, mental health issues, anxiety and stress. The major effects of inmates not being able to comprehend legal information, advice or processes, identified in our interviews were:

- ◆ limited understanding of and effective participation in legal processes
- ◆ difficulties in the lawyer-client relationship
- ◆ withdrawing from assistance
- ◆ dependence on others.

Each of these issues is discussed below.

### ***Understanding and participating in legal processes***

It was evident from our research that inmates often did not comprehend the legal processes that they are subject to, commencing from the earliest stages of arrest and incarceration. Of note was the prevalence and impact of intoxication and acute mental health issues at these early stages, over and above the longer term effects of limited education, literacy and intellectual disability. For example, Ricky and Karla describe their experience of arrest and their cognitive capacity at the time:

*... in my case, it's from my own experience, you know. Basically, my mouth was my undoing of myself ... I was um, smashed at the time, on a cocktail of different drugs. I actually argued it in court, that really everything I told the police was, I believe, they shouldn't have been able to use anyway in court. Because they knew the state I was in and they just let me jibber on and I basically convicted myself with my own interview ...*

— **Ricky, male sentenced inmate, maximum security,  
25–34 years, non-Aboriginal, urban prison**

*I didn't remember too much of the day — I felt so shocked. I got arrested and they were asking me all kinds of questions, took all my stuff, and I don't really know, but, 'cause I was really shocked, and I was crying a lot.*

— **Karla, female remandee, minimum security,  
25–34 years, NESB, urban prison**

Comments made by prison reception staff suggest that the types of impairment described by Ricky and Karla are not uncommon among prisoners first coming into prison from police custody:

*... we've got lots of people with mental illness and lots of people with disabilities, and I'm sure a lot of those inmates would be in states of confusion and not have a handle on all that's happening. ... and the drug users too. We have a lot of people who come in and have to detox and ... who knows what they've been through and not been able to actually absorb.*

— **DCS policy officer, head office**

*... you sometimes will get people who are just off their dial, and that usually becomes then a medical kind of issue; how are we going to manage this until they're a little more compus mentus and that type of thing ... sometimes you may even have to re-screen; they'll try and screen and just can't do it [because] they're just talking in word salad and we'll need to see them again when the nurses have them detoxed.*

— **Non-custodial staff manager, urban prison**



There are a number of implications of the above situation. Firstly it raises questions about the competence of impaired individuals to participate in the legal processes that directly precede their custody (e.g. police questioning, etc.). Second, the capacity of inmates to identify and address legal issues arising from being taken into custody, such as housing and child custody issues, is also likely to be impaired. Finally, delaying the screening process until they are competent may mean that important criminal, civil and family law matters may be identified too late.

Inmates' lack of cognitive competence in these early stages of incarceration continues to interfere with their access to justice when they attend court. For example:

*When you look at the majority of people that appear in the prison system, the level of drug and alcohol withdrawal ... they may have just been dosed in the prison cells before they've come up so they're noddy.*

— **Staff member, CRC**

*You see when I did go to court ... he was giving me the information but I wasn't in the right state of mind you know. I didn't want to be there. I was sick. I wanted to get to jail. I wanted to hurry up and come to jail.*

— **Liz, female remandee, maximum security,  
25–34 years, Aboriginal, urban prison**

Consequently, it would seem that inmates, whether affected by drugs, alcohol, mental illness, shock and/or longer term forms of impairment, find it difficult to successfully negotiate the legal processes they are faced with during the early phases of incarceration. Their ability to absorb and impart information, so that their needs can be met, may be significantly compromised by their cognitive capacity during this period, a time when their legal needs are acute.

However, our interviews also indicated that, as inmates settle into prison, they appear less likely to be affected by alcohol or drugs and more likely to be medicated appropriately for their condition:

*And the other experience I think is that a lot of women who get into prison have a drug or alcohol problem. But whilst they're in prison, that is fairly controlled, and so there's a certain clarity and a certain capacity to follow through on ideas.*

— **Legal Aid solicitor**

*... it's quite interesting to see actually how inmates behave when they first come in. It's one of shock, regret, remorse, before they actually start coping, you know, with being in jail.*

— **DCS welfare officer, urban prison**

Accordingly, even though many inmates have very poor capacity when first incarcerated, it may be that further into their imprisonment there is a period of clarity and, for those incarcerated long enough to stabilise, an opportunity to address outstanding legal needs. However, it must be recognised that for some prisoners, intellectual disability, language barriers, very limited education or poor literacy will continue to affect their capacity to engage with legal processes throughout the incarceration process and beyond.

### **Using AVL**

As was discussed in Chapter 5, AVL is increasingly being used to enable defendants to appear in court, without having to be physically transported to the court house. However, our interviews have indicated that appearing in court by AVL may add an additional layer of confusion for some inmates.

*I will get more inmates coming back from video not understanding the process than I'll get from people actually physically going to court.*

— **DCS welfare officer, urban prison**

*[the] first time, I didn't know what to do with the telephone next to me [to speak to the lawyer in court from the AVL cubicle]. I didn't know how to talk to my lawyer. So, it was, you don't get a sort of prior explanation of how the system works.*

*[OH, YOU DON'T, NO ONE SAYS?]*

*No, no one says anything. They just call you to a room, you sit in there, they've got the cameras there and that. So you don't know what's going on. Really, it's frightening.*

— **Carlos, male sentenced prisoner on protection,  
35+ years, NESB, rural prison**

AVL has a particular impact on inmates who may already have difficulty understanding the court process, due to intellectual disability or language difficulties:

*And audio visual links is an area where the support role is really quite crucial because it's very, very difficult to understand from that side what is actually happening in the court. And particularly for our clients [with intellectual*

*disability], understanding that they're sitting in this room at the jail but they're actually ... in court. They don't make the connection that they're actually sitting in court.*

— **Worker, CJSN**

*[SO WHEN YOU USED THE VIDEO LINK DID YOU HAVE AN INTERPRETER?]*

*No. Because ... my Asian solicitor was there in the court room and he was representing us to say some, say, you know, yeah, he was speaking for us anyway.*

*[DID YOU KNOW WHY, WHAT EACH COURT DATE WAS FOR? DID YOU KNOW, DID YOU UNDERSTAND WHAT THE JUDGE WAS SAYING?]*

*No I didn't, yeah. As I said before, couldn't, couldn't speak English, so, yeah.*

— **Sam, male sentenced prisoner, medium security,  
< 24 years, NESB, rural prison**

Lack of comprehension, whether due to the complexity of the legal process or the comprehension capacity of the inmate or both, may result in some inmates participating in legal processes with little or no knowledge of what is happening. This appears to occur even though these processes can have a profound impact on their lives. In short, the legal process may progress on the false assumption that the inmate has a certain level of knowledge and understanding. This appears to be exacerbated when inmates appear in court by AVL.

### **Signing documents**

The issue of inmates signing legal documents without fully understanding the contents and implications of the transaction was also raised as an issue in our study. Examples were given of inmates consenting to legal transactions such as parole conditions and agreements with government agencies, without being able to read or understand the obligations they had accepted on paper. For instance, inmates had left themselves vulnerable to breaching bail or parole conditions and AVO/ADVOs, as well as contractual agreements such as tenancy documents and Centrelink agreements, because they did not understand what they were agreeing to:

*There's like a 'Preparing for work' agreement/arrangement. It's just signing off various agreements. And quite often people will say, 'Yeah, I'll sign anything', without necessarily having an understanding or knowing the implications or being able to read something that hasn't been read to them properly.*

— **Manager, Centrelink**

A financial counsellor working with inmates further observed that:

*... many people who are inmates, who I believe would come under the category of people to whom credit was provided irresponsibly. They don't know. They don't understand. They don't have sufficient skills in numeracy or literacy. They may have a plain English contract. It doesn't register with them. They may have mental or emotional problems.*

— **Financial counsellor**

Although again a tendency to engage in legal transactions without fully understanding the terms of that transaction is not unique to prisoners, this group are often subject to a range of obligations and conditions, the contravention of which can have considerable repercussions for them. For example, an inmate agreeing to parole conditions that they have not fully understood could well result in their return to jail.

However, it must be acknowledged that, as Elliot, another inmate identified, this lack of comprehension of the legal process may be as much a function of the language and culture of the law as it is a reflection on the cognitive capacity of inmates:

*... For some reason or other they don't get [their probation or parole conditions] read to them and explained ... at their intelligence level. And I think maybe [with] Legal Aid, when they put the questions across, they're so used to talking [about] legal things. Like if I was a carpenter and I [told] you to go and put a noggin in the ... you'd ask me what a noggin is. So it's just the terminology that's used. Like the guys in here have found it frustrating to them.*

— **Elliot, male remandee, maximum security,  
35+ years, non-Aboriginal, urban prison**

*... they sometimes have a need to see or seek Legal Aid. We then, I give them the relevant forms. Now those forms, I consider pretty complicated for inmates. I see a lot of these inmates, their education standards are, you know, are not as good as it can be, and these forms can be very complicated.*

— **Custodial officer, urban prison**

### **Exclusion from programs**

A further issue related to cognitive capacity and participation in legal processes was raised in relation to inmates with an intellectual disability (although it may apply a little more widely than this group). According to interviewees

from the IDRS and CJSN, inmates with an intellectual disability may not have the same opportunity to participate in educational programs that are required for eligibility for parole. They said:

*... our clients are very rarely eligible for services within like maybe anger management or maybe they've got some sexuality or sexual ...*

*[THEY DON'T GET ACCESS TO A REGULAR PROGRAM?]*

*No, they can't do any of the programs because*

*[WHEN THEY'RE ON PROTECTION?]*

*Or any time, because of the disability. So they're just kind of left on their own, in the cell and that's it. And they don't gain any benefit from possibly earlier release because they've done XYZ programs. So they end up usually serving the entire sentence.*

— **Solicitor, IDRS and CJSN**

The assertion made here is that because of an intellectual disability, inmates may not be able to join educational programs that are prerequisites for parole and so do not have equal access to early release. The interviewees went on to explain why they believed this situation occurs:

*[WHY AREN'T THEY ALLOWED TO DO THESE PROGRAMS?]*

*Because it's deemed that because of their intellectual disability they wouldn't have the capacity and there's no extra support for them to do it. Some of it is just [a] value judgement ... it's not necessarily correct. ... But then, by the same token, most of the programs that are offered are cognitively based which does not work for people with an intellectual disability, and they need to be modified. And there's no one to modify them, or there's no one to provide support so that they can access it and modify it. ... they can't do it in the same way as [the] others, and they can't read mail. Very rarely do they read mail. So you know, everything's in printed format. There's homework, which is cognitively-type geared ... So there needs to be modifications made but certainly like nowhere near impossible. It would be very easy to do.*

— **Solicitor, IDRS and CJSN**

In this way, intellectual impairment becomes a barrier to participating in a legal process, namely an application for parole. It appears that the mode by which certain courses are delivered is not appropriate for such people and this renders them ineligible for the course and in turn indirectly makes them ineligible for parole.

### ***Difficulties in the lawyer–client relationship***

As indicated earlier in this report, ‘access to justice’ implies that, with appropriate support or representation, participants in legal processes understand and can make informed decisions that affect their participation in that process and its outcomes. Lawyers and legal assistance services are key providers of that support. However, the client is still expected to understand and be active in this relationship. For instance, they must instruct the solicitor, take his or her advice, recount details of relevant events and provide documentation. It was evident from our research that because of reduced capacity, some prisoners faced difficulties in this relationship and, in particular, in being able to communicate effectively with their lawyers. Difficulties in communications included both understanding their lawyer’s advice to them, as well as articulating their instructions to the lawyer:

*Yeah, sometimes like I try to sit and really have a good think [about] what they’re saying, what the meaning is for it. And how can I put it back to them? But some, some stuff they ask me is like, I don’t understand properly really well.*

— **Sharon, female parolee, 25–34 years, Aboriginal, urban area**

In Sharon’s case, she took her caseworker to meetings with her lawyer so she could have someone explain what transpired to her at a later time. Workers also recognised the difficulties faced by prisoners in the lawyer–inmate relationship given the various impairments with which this group is often afflicted:

*Because a lot of times these people have no communication skills, they have no living skills, no social skills. So it’s very hard for them to get across, you know, what they need. And it’s also very hard to get people to advocate for them because of those problems. And sometimes along with those mental health issues and behaviour problems that are not really conducive to people helping them, because of their nature.*

— **Custodial officer, urban prison**

As described earlier, the shock of their situation, together with the anxiety, stress of incarceration and the legal process, a prisoner’s capacity is reduced so that it is hard for them to hear the advice they are being given by their lawyers and to act accordingly:

*... I see a lot of people who are in shock I reckon; they really don’t have a clue and I think that is a huge barrier to them actually taking [it] in. Their lawyer may well have given them written advice but they are not in a position, they are just not in the mental state where they can take it in.*

*[WHEN YOU SAY SHOCK, SHOCK FROM THE FACT THAT THEY HAVE ENDED UP IN [PRISON]]?*

*Yeah, they have killed their best friend, or they have done something terrible or they have ended up in the cells and all of a sudden they are at the MRRC; and particularly first timers. But even people who aren't in the system ... they could have been rolled around in a paddy wagon for a couple of days as well and they really are in a mental state. Particularly the MRRC I think where they just haven't taken in what has happened to them. So a lot of our job can be reiterating what has already been said to them ... you get people who are sentenced and they will go, 'Oh I don't know what happened.'*

— **Legal Aid solicitor**

The situation is exacerbated by the systemic constraints that commonly affect lawyer–client relationships involving prisoners:

*... time is of the essence at court. And the reality is that [the] Legal Aid solicitor has five minutes, 10 minutes even 15 minutes with the inmate. If that inmate gets frustrated ... the limited communication they may have, goes out the window ... They can also get focused on one point. And sometimes that point is actually completely irrelevant or not what they need to be focusing on.*

— **DCS welfare officer, urban prison**

Aspects of the systemic environment that severely compromise communication between lawyers and their prisoner clients are further discussed in Chapter 7.

A number of interviewees reported that, when inmates did not understand what they had been told by their lawyers, they did not necessarily admit to their lawyer that this was the case:

*... the issue of intellectual disability, mental health, just poor education levels, ... they're not spoken to in an appropriate manner ... and they're too embarrassed to say, 'I have no idea what you're talking about' and so they shake, they nod their heads and everything ... the Legal Aid solicitor can walk away and think, 'Well, I explained everything and they said yes', but the person has no idea.*

— **Staff member, CRC**

*... They just accept what's been said and walk away not knowing what's been said ... They don't bother complaining about it, they just come away and say, 'I didn't understand what he was talking about'. I said, 'Well you shouldn't have told him that, or should have told her that'.*

— **DCS client services officer, head office**

As these quotes indicate, solicitors may leave an inmate unaware that their client has not understood the advice they have been given. Consequently, not only is the client left with an incomplete picture about their case, the lawyer may also be labouring under the false impression that he or she has all the relevant facts about the matter. This is because they are not aware that the inmate could either not express themselves properly and/or did not understand that there were some particular facts they should have disclosed. Effective participation in the legal process in such circumstances is clearly undermined.

### ***Withdrawal from assistance***

Our research has indicated that as a result of not being able to read or comprehend legal material, advice or legal processes, some inmates withdraw from legal help. In some cases inmates did not seek out legal information and assistance while, in other cases, they actively *avoided* help:

*Some of them can't read and write. So they don't even bother accessing any [other] information.*

— **DCS client services officer, head office**

*Literacy obviously plays a part. Another thing that we often come up against as barriers is their experiences in school libraries. They have really been put off libraries, hugely by the school library. And especially if they are not too literate and they are not readers, they don't come near us. And they may not think of us as a legal information provider. Unless somebody says, 'Did you know you could do this?' But a lot of them have not been in a library in their life.*

— **DCS library staff**

One worker described an instance when an inmate hid from her legal counsel because she did not understand what he was telling her:

*So I had a young girl ... the ALS kept sending a barrister out which cost them nearly over a thousand bucks each time he came out. And basically I had to go down and get her out of the cell and say, 'You are going to see him.' And the only reason she didn't want to see him is the fact that she didn't understand what they were talking about.*

— **DCS client services officer, head office**

As a result, inmates can become further alienated from the services that are there to support them:



*And then if you are also dealing with things like either an intellectual disability or very poor literacy rates or low education rates or any of those things and someone wacks a twelve page form in front of you. A lot of people just say, 'You know, I never wanted that house anyway'.*

— **Homelessness worker, urban area**

Consequently, an inability to comprehend legal information or advice, whether because of low literacy levels, anxiety, intellectual disability or limited English, may result in inmates avoiding assistance. Perpetuating this problem is a sense of shame. Consistent with participants in other Foundation research (Forell et al., 2005, p. 122–123), some inmates in this study reportedly masked their inability to read or understand information and advice relevant to their legal problems. As a number of workers noted:

*... it's not very easy for someone who can't read and write to go and say to someone 'I can't read and write. How do I fill out this form?' and it's just miserable and awful to watch. And sometimes we find that is one of the most painful things for people to recognise with us. It's like, 'Oh yeah. They'll tell us about the heroin habit. They'll tell us about the criminal history. They'll tell us everything.' And it takes ages to actually discover that they can't read and write and their refusal to deal with [certain issues], whether it's housing or anything else, is simply that fear of confronting one very small thing.*

— **Homelessness worker, urban area**

*... nobody wants to, for example, fess up that you can't read.*

— **Solicitor, ALS**

Accordingly, not only does the person avoid assistance because it is confusing, they are unlikely to be open about the real reason for avoiding help due to a sense of shame. Lawyers and workers may not be aware of, or may misunderstand the inmates' motivations for not seeking assistance, adding to the challenge of addressing their concerns.

### ***Dependence on others***

A final impact of not being able to read or understand legal documents or processes is a dependence on third parties for assistance. Inmates who cannot read or understand material often rely on others to pass on legal information, to read legal documents or to explain contracts or legal agreements (e.g. parole conditions). A good example includes inmates from non-English speaking backgrounds.

*[The Information leaflet] outlines basically the running of the jail ... Methadone times are such, pills, whatever. Visits on Saturday [are] such a time, all well and good. But to an Asian inmate he will just look at it and it means nothing to him. So he's off to a bad start. So he will come to me, or a wing officer, and try to communicate. And we'll try to get by the best we can, and then no doubt he will be looking out for someone else of a similar background or nationality who might be able to help him.*

— Custodial officer, urban prison

While inmates who do not speak English may have access to an interpreter at court or in formal conferences with their lawyers, they are often dependent on DCS staff and other inmates from the same language background to explain prison processes, legal processes and to interpret documents in their day-to-day life in prison. Details of the particular vulnerabilities of being dependent on a third party in a correctional environment are further discussed in Chapter 8.

### ***Summary***

Effective participation in the legal system demands a cognitive capacity, which many inmates do not have. Their lack of such capacity may be either temporary – due to acute mental illness or because of their alcohol or drug related issues – or it may be a more permanent problem because they are suffering from an intellectual or other disability. Effective participation also demands an ability to communicate relevant information succinctly (e.g. in a short conference with a lawyer before court) and to comprehend relatively complex written text and at times complicated legal language, in a very formalised and intimidating environment. The prevalence of poor literacy, low levels of education and limited English among prison inmates reduces the likelihood that the inmates will meet these demands and participate fully in legal processes.

Of further concern was the ease with which the inability of inmates to fully comprehend legal information, advice or outcomes could be overlooked. Previous experience or time inside can be taken as a proxy for knowledge, even though intellectual disability, anxiety and stress, or other cognitive impairment may have prevented information about the legal process being assimilated and retained. Lack of capacity can also be masked by bravado or silence as an inmate may be too embarrassed to admit that they did not understand or cannot read. Finally, people can be so intimidated or overwhelmed that they withdraw from legal help and, as will be demonstrated in the next section 'Life Skills', simply 'take what comes'.

## Life Skills

A final aspect raised by interviewees in this study was the issue of life skills. In the context of this report, ‘life skills’ mainly refer to interpersonal skills (such as the way inmates interact with each other and the authorities) and their daily living skills (such as managing finances and using new technology). It became apparent that the ability of inmates to prevent and address their legal issues was dependent on having appropriate and effective interpersonal skills as well as general living skills. However, there were many examples given where inmates’ capacities on these two fronts were inadequate and in some ways a function of their incarceration.

### Interpersonal skills

*... So I think you can get a lot of information. You can get resolution. But it depends on the personality of the inmate.*

— DCS welfare officer, urban prison

Our interviews have suggested that *some* inmates are excellent at accessing services and utilising legal and administrative systems, for example: finding a lawyer, organising with SDRO to repay fines, running an appeal against their conviction or facilitating visits with children from which they have been estranged. They are skilled at dealing assertively and appropriately with government agencies and can effectively engage with and instruct their lawyers. At a roundtable of solicitors and barristers, observations included:

*What amazes me is that some inmates can seem to be able to do 200% and other inmates are in the negative. And that is obviously personality. I get calls from some inmates where I say ‘Gosh why are you ringing me again? How do you get access to the phone?’ They do. Other inmates say, ‘Look it has taken me a month to get to the phone.’*

— Legal Aid solicitor

However, while some inmates are extremely effective at accessing legal help, other inmates are not so able to achieve the tasks necessary to effectively participate in the legal system. Two dominant styles of inmate interpersonal behaviour were identified as pertinent to inmates’ access to justice in the present research. The first was a tendency to passive behaviour and withdrawal from problems and assistance. Aggression was the second style of behaviour, with appropriately assertive behaviour being less evident.

### ***Passivity***

The persistence and success of some prisoners in pursuing their rights appeared to mask the fact that many more inmates are not assertive and will not take action concerning their legal issues or seek redress. Resignation and acceptance of situations, even when that situation was less than satisfactory, seemed to be one reason behind this absence of action:

*... They're not used to asking and they're not used to picking up the phone and asking for things, or querying things or questioning things. Or if they get an answer that doesn't make sense, they don't think they can say, 'Well, hang on, that's not making sense to me.' And so they just kind of accept things that maybe other people might not accept.*

— **Probation and parole officer, urban area**

Some people appeared to accept the situation as it is, because they believed any action they undertook would not make any difference:

*[AND HAVE YOU EVER BEEN SERIOUSLY UNHAPPY WITH THE LEGAL ADVICE YOU RECEIVED?]*

*Oh yeah, just like when they don't give a fuck [laughs] ... but I've got no money so there's nothing I can do. I've just got to cop it on the chin.*

— **Damon, male sentenced prisoner, medium security, 25–34 years, non-Aboriginal, rural prison**

*Yeah, I'm just sort of forgetting about it, and just kicking along, you know. I'm not worried about it. You know, if they pay me they pay me, if they don't they don't, you know. There's nothing I can do about it. It happened before I went into jail, so you know.*

— **Gareth, male ex-prisoner, 25–34 years, non-Aboriginal, rural prison**

Previous experiences have sometimes fuelled this perception that taking action is not effective:

*I don't see that anything is going to happen if I put a complaint ... for what I've been experiencing in the system, I could complain, but it's like, nobody's going to hear what I have to say ...*

— **Carlos, male sentenced prisoner on protection, 35+ years, NESB, rural prison**

*... some of the black inmates just won't ask for help. Because they're used to not getting it.*

— **Custodial manager, rural prison**

Others felt that the process for taking action was just too difficult or felt worn down by the process:

*I've given up on trying to get some legal action while I'm in jail. It's just too hard. It just drains you of all that get up and go.*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

*By the time it all gets into court and everything they just want to get it over and done with. So whether they're guilty or not, they'll go, 'Guilty your Honour.' just to get it over and done with.*

— **Langdon, male sentenced inmate, maximum security,  
35+ years, Aboriginal, urban prison**

Interviewees also identified certain subgroups of inmates, such as those with intellectual disability, as being less assertive than others. For instance:

*They're not necessarily assertive so, you might have a prisoner ... in jail who will demand to get a phone call to his lawyer. Our [intellectually disabled] clients would not do that in a million years.*

— **Worker, CJSN**

Motivation was also reported to be impaired, for some, by medication or illicit drug use:

*And you don't really care as much, I suppose. You're not as aware as when you're straight of everything. [When you are straight] you're a bit more aware and conscious of what's going on. And when you're on that stuff [methadone], you're like zonked out. Whatever happens, happens.*

— **Hugh, male sentenced prisoner on protection,  
25–34 years, non-Aboriginal, rural prison**

There were also examples of this passivity pervading inmates' relationships with their lawyers. This is problematic, as the inmate should be instructing their lawyer and their lawyer should be acting accordingly:

*They have a right to say to that solicitor, 'No, I will plead not guilty.' or, 'No, you will say this on my behalf.' And they still have a major problem with that. In being that assertive with their solicitors ... Without getting aggressive.*

— **DCS welfare officer, urban prison**

A theme that runs through the comments made above is that, in the view of some inmates, the odds of achieving fair outcomes through taking action were

low. The passivity of inmates appears to be fuelled by the view that either there was nothing that could be done to address the problem, that the problem is too difficult to address or that the situation is just ‘the way things are’ and/or is what they deserved in the first place. It may also be that the depression and despondency among inmates described below contributes to these views. Further, as discussed in Chapter 9, passive behaviour — following orders and accepting the routine — appears to be reinforced by the jail culture.

### **Depression and despondency**

It was evident from the interviews that depression and despondency contributed to prisoners’ passivity in addressing their legal and other needs:

*I got so depressed I don't care and, I know, it's almost June and I still haven't contacted Telstra to tell them, or work out how I'm going to pay this bill.*

— **Ryan, male parolee, 35+ years, non-Aboriginal, rural area**

*... First of all, their morale is just rock bottom. A lot of people ... want to close down and they don't even want their families to come and visit them, because they just feel they are in a hopeless situation.*

— **Spokesperson, Justice Action**

Not surprisingly, the situation inmates find themselves in can contribute their feelings of depression and despair:

*... but you think you're going to get ten years. It's a lot, that's the better part of my life gone. Game over, you know. You might as well just friggin' knock yourself. Some people get like that, depressed, when you first come in. Especially when you're at Silverwater and that; it's real crazy in there. People getting bashed and just nutters, and you think, 'Man, what've I done? I'm in here with all this violent friggin' circus, probably going to do ten years,' and you get a bit depressed.*

— **Hugh, male sentenced prisoner on protection, 25–34 years, non-Aboriginal, rural prison**

Workers described the impact of depression and despondency on the capacity of inmates to ensure that their matters were progressing:

*Also depression is a major issue ... If people are depressed, people do not want to act. Their legal issues go to the back of the line and may not be dealt with until the last minute.*

— **Community Referral Service, NSW Law Society**

*So the inmates that [are] despondent, sometimes I think, it's not that they get [a] lesser level of service, but they can just get a little bit forgotten. You know? Or someone doesn't push quite as hard for them, because they're not as vocal. And that's ... when they get despondent, they become less vocal.*

— DCS welfare officer, urban prison

### **Shame**

One other emotion identified by a number of inmates as reducing their preparedness to seek legal help, was the sense of shame and embarrassment about the trouble they were in, particularly when they first came into custody:

*[AND HOW COME YOU DIDN'T GET SOMEONE TO REPRESENT YOU? WAS THERE ANY REASON?]*

*Yeah well, because I didn't have any. I wasn't sure, it was just part of that shock of being arrested and coming next day to the court you know. So, I didn't contact no one, I wasn't sure if I could, if I should contact someone, maybe get away from this, and not [laughs], not let anybody know that I was in such trouble.*

— Carlos, male sentenced prisoner on protection,  
35+ years, NESB, rural prison

While some inmates were very active in pursuing their legal and other needs, many inmates were not so assertive. Feeding into this passivity were feelings that taking action would make no difference, that it was too hard or that they 'deserved' the situation in which they now found themselves. Low self-esteem, a depleted sense of entitlement and a sense of shame, together with depression and anxiety, also appeared to act as barriers to inmates taking action to address their legal issues. Certain groups of inmates, such as Indigenous inmates and inmates with cognitive impairment may be particularly vulnerable to this passive, defeated state. Finally, the broader literature has suggested that prisoners' levels of passivity may also increase and that they may become more socially withdrawn as they settle into prison life (Paulus & Dzindolet, 1993, p. 164).

### ***Aggressive, not assertive, behaviour***

*They're used to doing one of two things. Ignoring it or going off about it. They're actually not used to doing the in-between – negotiation.*

— DCS welfare officer, urban prison

Inmates' lack of assertiveness was a common theme raised during our interviews. In some circumstances this appeared to result in the passivity described above. However, in other cases inmates were reported to revert to more agitated and aggressive behaviour:

*And I think, like they haven't got that assertiveness. I mean they have it ... but sometimes it comes out in the wrong way; then it's their aggressiveness.*

— **Chaplain, correctional centre**

*A lot of these people that we are working with, marginalised, don't know their rights. Hence, they come in aggressive, thinking they can assert their rights but they don't know what they want to ask for. But, they want to appeal a decision, they don't agree with a decision.*

— **Manager, Centrelink**

Some inmates described aggressive forms of behaviour as 'their way of doing things' or the way to achieve a result:

*... If you go off in there, you can get extra phone calls and they'll go out of their way a little bit.*

*[WHAT DO YOU MEAN, IF YOU 'GO OFF'?]*

*Start throwing things, going nuts just to get, 'Hey I need to ring this man!'*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

The boundaries between assertive and aggressive behaviour may not always be clear and for some inmates, aggressive behaviour *had* assisted them to achieve their goals. Indeed, like passive behaviour, it appeared that aggressive behaviour can be reinforced in custodial settings (see Chapter 9). In this case, aggression can aid survival in prison, to maintain status among other inmates or gain attention from service providers:

*The squeaky wheel gets the oil. So, the inmate who's yelling, 'Welfare! Welfare! Welfare!', you'll eventually see them just to shut them up, right. It's no different with solicitors. If you've got a client who's [saying], 'Right. I want to know what's happening next week.' You know? You're more on the ball for them. And that's human nature.*

— **DCS welfare officer, urban prison**

*And socially, they've been used to dealing [in] that whole aggressive versus assertive [way]. So they're actually used to and in many respects, in the yard, are forced to use an aggressive pattern of communication and yet they are*



*meant to be able to just pop on the phone and go, 'Oh!' and be nice, polite and assertive.*

— **DCS welfare officer, urban prison**

With a tendency towards either passive behaviour or aggressive behaviour, inmates were reportedly poorly practised at being assertive in order to gain assistance. Further, the behaviours that are conventional in the prison context, such as, aggressive 'survival' style habits suited to the prison yard, are likely to be counter productive in non-prison settings.

### **Impulsivity**

Another factor contributing to more aggressive styles of behaviour, according to a small number of interviewees, was a degree of impulsiveness and impatience evident among inmates:

*Because many of our clients have mental health and drug and alcohol issues. They're the busiest people you'd ever want to meet in your life. They cannot wait five minutes, they're really busy, they've got to be doing this and going there and, 'I can't wait, I can't wait.' So them going down to Centrelink, and we've got a few clients that have, you now, got a twelve month ban from Centrelink anyway because of their behaviour ... they just haven't got the patience.*

— **SAAP worker, urban area**

Impulsiveness also presents a particular challenge for inmates once the physical boundaries and routines of prison are lifted post-release. Inmates report not always being able to cope with the loss of these boundaries after their release. This may leave them vulnerable to re-offending:

*... when some of the guys get out of jail ... they're pretty much lost, you know? They're like a little kid in a fun park. Doesn't know which way to go. You know? And doesn't know the safety rules of the rides. You know what I mean? You know, he's got no one there to point out how to do his seatbelt up, you know, so to speak. Or how to bring that thing down, that keeps you in, you know what I mean, on the ride. You know what I'm trying to say?*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

Previous research has identified impulsiveness as a characteristic of those committing certain types of criminal offences and, by association, a trait of certain subgroups of prison inmates. For instance, Makkai and Payne (2003) reported from their study of incarcerated drug offenders that:

*regular amphetamine users were more likely to be engaged in violent offending such as physical assault and were significantly more likely to act impulsively with no planning.* (Makkai & Payne, 2003, p. xvi)

In a discussion of the epidemiology of prison violence, Butler and Kariminia (2005) assert that ‘the link between impulsivity and offending has long been established in the criminology literature’. International literature reports high levels of Attention Deficit Hyperactivity Disorder (ADHD) among adult prisoners (e.g. Roesler et al., 2004 and Rasmussen et al., 2001). Having reviewed relevant studies, Barkley, Murphy and Fischer (2007) concluded that ‘adults who engage in antisocial activities, especially as reflected in adult prisoners, are more likely to have ADHD than would be expected by chance alone’ (p. 309). Butler and Milner (2003) also draw a link between impulsivity and brain injury in their research into the health of NSW inmates. Their data on the prevalence of high brain injury among NSW prisoners is outlined in Chapter 2 of this report.

In summary, our analysis suggests that inmates tend towards both passive behaviour and/or aggressive behaviour and appear least practised and less skilled at dealing with issues assertively. Further, these behaviours, although generally maladaptive, may actually reflect modes of behaviour that achieve inmates’ goals in the prison environment (see Chapter 9).

### ***Preferred modes of communication***

Another aspect of interpersonal skills concerned the modes of communication in which inmates best preferred. It became evident in our interviews, that some inmates had difficulties with certain forms of communication. For instance, one officer identified many male inmates as being poor at communicating effectively by telephone:

*So the thing that the guys in particular are really bad at ... communicating on a telephone. So that medium itself makes it even more difficult for them, than being face-to-face. A guy is much, much better face-to-face. You put them on a phone and a lot of the time they don't even know what to ask. They know it up here in their heads, but they don't know how to actually express it. ... And that's another big barrier for them. Because most of the information [they can access] in here, is going to get to them via the phone. So the face-to-face [information] is really, really important with them.*

— DCS welfare officer, urban prison

We identify the mode of communication as an important issue because telephone based services probably represent the most direct, accessible professional legal advice available to inmates. Face-to-face legal advice was identified as the preferred mode of communication for most inmates, but due to the systemic barriers identified in Chapter 7, this form of advice is less readily available, particularly for civil and family law matters.

The other mode of communication open to inmates is by letter. However, as identified earlier, the low literacy and education levels within prison reduce the utility of this form of communication for some inmates. Accordingly, inmates' own variable personal skills and styles of communication add another layer of complexity to the provision of legal assistance in prison.

### ***Summary***

Styles of interaction used by the inmate population, namely passivity and aggression, and inmates' preferred modes of communication (e.g. face-to-face, *or at times, fist-to-fist*) interact with the issues identified earlier in this chapter, which affects inmates' capacity to ask for legal assistance, understand the advice or information given, and to appropriately participate in legal processes. While some inmates are very effective at getting their needs heard and addressed, many more inmates are not so assertive, to the extent that they will not seek to address problems they are facing or get any assistance to do so.

In contrast, other inmates may resort to behaviour patterns that have been adaptive in the prison or other contexts and are aggressive in their attempts to address their needs. Again, the frustration of trying to get information about the progress of their legal matters and to address legal problems from within jail may further encourage this type of response. Once the very defined boundaries, routines and support networks of prison are removed, some inmates find it difficult to successfully modify these behaviours to those more conducive to receiving assistance on the outside. While this may also be true of people institutionalised in other settings, it remains a pertinent issue for prisoners.

### **General living skills**

Having operated outside the mainstream before coming to prison, as argued earlier in this chapter, some inmates come to jail not highly skilled or practised at effectively managing their personal affairs or dealing with conventional society:

*Especially when you're not functioning in the normal community; you're not getting normal pay and you're, you're in a lifestyle where you might be rolling in it one day because you've just sold some drugs or you've won at gambling, and then you might have a couple of weeks of nothing. So there's no, no chance to really build normal skills when dealing with credit. Even budgeting, basically.*

— **Financial counsellor**

This is particularly the case if people had led the types of chaotic lifestyles described earlier:

*Where our clients who, prior to custody or their dealings with the laws and the courts, were normal people who were successful, had houses, bills, debts, families and they're used to managing situations. And the jail system is a lot easier for them to manage. Where those who are not used to managing their situations, live on the streets, take drugs, a lot of 'em steal for their living, every minute of the day really is a struggle.*

— **DCS welfare officer, urban prison**

While inmates may undertake education courses in jail to improve particular skills, there is little scope within the routine of prison for inmates to make decisions about or take responsibility for their day-to-day lives. Furthermore, inmates are detached from day-to-day responsibilities of the outside world such as budgeting, paying bills, caring for children, arranging work or finding accommodation. A number of stakeholders suggested that inmates lose the confidence and capacity to perform some of these daily tasks:

*Some people I've worked with in the past year and on other occasions have raised the issue of when people come out, especially after long periods of time in jail and how de-skilled they are in dealing with society.*

— **Policy officer, PIAC**

*Well it's probably something that some have lost, you know. Got so institutionalised that they've lost any skill in trying to take those steps and do it.*

— **Chaplain, correctional centre**

For those who have been in the system a long time, some may fear their release because of their lack of skill:

*... the closer I'm getting to going home, or getting out, the more terrified I am ... Not of re-offending ... it's nothing to do with that. In here,*

*everything's laid out. But not out there. And I can understand why the boys get to thinking, 'Oh, shit ... gee, I've got to pay those bills. There's another bill. Job, where's me job, and the house; well, I've got to deal with all that. I've got to get a place.'*

— **Dan, male sentenced prisoner, 35+ years, Aboriginal, rural prison**

In an analysis of the effects of long-term incarceration, MacKenzie and Goodstein (1985) described a process of prisoners becoming 'institutionalised':

*... losing interest in the outside world, viewing the prison as home, losing the ability to make independent decisions, and, in general, defining oneself totally within the institutional context.* (MacKenzie & Goodstein, 1985, p. 398)

The separation of prisoners from their issues 'on the outside' has also been identified in the literature as an effect of time in prison (Paulus & Dzindolet, 1993, p. 149 and MacKenzie & Goodstein, 1985). This description appears to combine a number of other characteristics of inmates described in this chapter — the increasing passivity and the loss of confidence and skill — demonstrating how these characteristics and phenomena interact and confirm one another.

Yet it is not just the case that an inmate becomes deskilled at managing themselves and their affairs while in jail. While inmates are incarcerated, technology in the outside world is rapidly changing and moving on. By the time they are released, inmates may not be familiar with, or at least not confident to use, technologies and communication mechanisms, which have advanced since their incarceration.

For instance, recognising that prisoners have no access to mobile phones or the internet, an inmate jailed for, say, five years may have no experience of internet banking, have never used BPAY, or filled out an application form online. They would not be familiar with SMS messaging or third generation mobile phones. An inmate who has been incarcerated for 10 years may have never seen the 'Google' search engine, and may be alarmed at the extent of information that is available on the internet. All inmates are coming out into an environment where mobile phones are replacing landlines as a primary form of contact/communication. Thus inmates may be uncomfortable or at least unfamiliar with technologies that are helpful in accessing legal assistance.

## Conclusion

*It's difficult enough for somebody that's educated, confident [and] forceful to get what he wants through the system. If you're young, Aboriginal, uneducated and you're not used to talking to people in authority, you're starting [at] a disadvantage there. You've got no money and you have to depend on the public purse to get your lawyer.*

— Custodial manager, rural prison

This chapter has outlined how the personal histories and experiences of inmates, their cognitive capacities and personal characteristics all contribute to the legal issues faced by prisoners and their capacity to resolve their legal needs. It seems opportunities to access justice may be missed because of (among other things) barriers relating to the inmate's personal capacities.

Prisoners commonly reported that their lives had been spiralling out of control prior to their coming into custody. They had commonly experienced mental illness, alcohol and other drug misuse, difficult and unhealthy family relationships, criminal activity, prior custody and poverty. As a result, inmates often had gone to jail with multiple legal issues (criminal, civil and family), the extent of which they were not necessarily aware. Further, inmates had tended to have made financial, family and living arrangements outside formal legal processes. Having severed or damaged connections with sources of assistance and lacking trust in formal legal processes, some inmates were also reported to be drawn towards more marginal solutions to their issues. Some prisoners saw the most ready course of action to resolve issues as being those outside the law (e.g. informal negotiations), and in some cases, against the law (e.g. violent retribution or 'settling' of a score). The range of options that inmates saw as open to them appeared further limited by their usually depleted financial resources and lack of appropriate documentation.

To successfully address legal issues, it helps for inmates to be motivated, tenacious, articulate, patient, organised and familiar with the law and the relevant legal processes. In contrast, the profile of the prisoners in NSW is characterised by poor literacy, mental health issues, histories of alcohol and other drug misuse and cognitive impairment. Many prisoners have had limited or interrupted education. Periods in custody, separated from society and its processes, only lessen inmates' confidence and skills at being able to function constructively when they return to the community. Without recourse to the necessary skills or support to address legal issues, inmates tended towards maladaptive interpersonal styles.

A particular concern raised in this chapter was the ease with which an inability of a prisoner to comprehend legal information, advice or outcomes could be overlooked. Assumptions can be made about how much a prisoner has learned and understands about the process, from their previous interactions with the law. These assumptions may be wrong, particularly if the inmate did not have the capacity to ‘take in’ what was going on during those earlier processes. Further, inmates may mask any lack of capacity by bravado or by silence, because they are too embarrassed or overwhelmed to admit that they do not understand the advice or cannot read the information. Difficulties understanding and engaging with lawyers and the legal process also appeared to alienate inmates from using the law in their interests, with some prisoners actively avoiding legal help. Inmates were reported not to use the legal system to redress injustice because, in their experience, it was intimidating, incomprehensible and unlikely to operate in their interests. When compelled to participate, some people did so in a state of ignorance and ensuing anxiety.

While many of the characteristics identified in this chapter — intellectual disability, alcohol and other drug related impairment, passivity, aggression and a tendency to shy away from formal legal processes — are not unique to prisoners, the impact of each of these characteristics on access to justice is exacerbated in a custodial setting. When prisoners are released from jail, their prison time adds another layer to their increasingly complex histories. Inmates return to the community carrying their status as ‘ex-prisoners’, with attitudes, demeanour and skills that undermine their chances of surviving in the mainstream world.





# 7 Systemic Environment

As outlined in the Chapter 6, prisoners arrive in prison with a range of characteristics and experiences which affect their own personal capacity to access justice. This chapter focuses on how the capacity of an inmate to access justice is affected by the formal systems with which they come into contact as a consequence of being in prison and having legal needs. These systems include the legal system (legal services, courts and tribunals), the custodial system (prison and parole services) and bureaucratic systems (government departments such as Centrelink, DOH and the DIAC). In this report we refer to all these systems collectively as the ‘systemic environment’. While there are other systems that prisoners are likely to come into contact, the systems highlighted above are the ones most commonly referred to by our interviewees.

Chapter 5 describes the ways in which prisoners access legal information and assistance and participate in legal processes. However, interviews for this study suggest that there are a number of features of these systems, which in practice may undermine inmates’ access to legal help and participate in legal processes. Broadly speaking, our analysis indicated that barriers arise from:

- ◆ the limited resources available to ensure the various systems operate as intended
- ◆ systemic processes that directly or indirectly disrupt inmates’ access to assistance with legal issues.

Before describing the impact of systemic resources and processes on inmate ability to obtain legal assistance, we will briefly review the systems in place to facilitate inmates’ access to justice.

## **Systems in place to access justice**

As discussed at the outset of this report, DCS aims to ‘manage offenders in a safe, secure and humane manner’.<sup>42</sup> Complex systems are in place to achieve these aims including: prison security, protection and segregation facilities, and the classification system, which classifies inmates according to their security risk and ‘developmental needs’.

DCS also has systems and resources that address the welfare needs of inmates, including those that may help with the resolution of legal problems. In brief, those that facilitate (although are not dedicated to) access to legal information and assistance include: prison libraries; the ‘visits’ system; the telephone system; and, education and training. Prison staff, although not strictly a ‘system’, is also part of the wider systemic environment that supports the welfare needs of inmates, including their legal needs. Further details of these systems are contained in Chapter 5.

Legal services intersect with custodial systems in the provision of legal advice services in prisons and at courts (e.g. Legal Aid, the ALS and private lawyers). Prison inmates also contend with the legal system (various courts and tribunals) and bureaucratic systems (including the SDRO, Centrelink and DIAC) in order to resolve their legal problems.

## **Systemic resources**

As summarised above, formal legal information and advice services are made available to prisoner inmates. However, our analysis suggests that these limited resources are strained and accordingly undermined by the high demand placed upon them. The following section examines how the ability of inmates to access legal information, contact their lawyer or participate in a legal process may be constrained by limits on the resourcing of:

- ◆ legal services
- ◆ DCS staff (including custodial officers and welfare staff)
- ◆ DCS facilities (including computers, library and education facilities, telephones).

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<sup>42</sup> See [http://www.dcs.nsw.gov.au/about\\_us/Mission\\_and\\_Vision.asp](http://www.dcs.nsw.gov.au/about_us/Mission_and_Vision.asp)

## Legal services

Both Legal Aid and the ALS are important providers of legal advice and representation to NSW prisoners. Our interviews indicated, however, that the demand placed on Legal Aid and ALS lawyers both at court and when they visited prisons often outweighed their capacity to meet this demand.

### *PLS visiting legal advice service*

Once in custody at a remand or sentenced jail, inmates may access the PLS (Prisoners Legal Service) legal advice service provided in all prisons.<sup>43</sup> The ALS also runs regular field officer advice and support services to Aboriginal prison inmates.<sup>44</sup> Many interviewees for this study commented on the high number of inmates that lawyers from both Legal Aid and the ALS would typically have to see. Often this meant that the time available for each inmate was brief:

*Sometimes you might need more than a few minutes but because they've got so many they want to see, then they can only give you, like, two, three minutes to see you, and they've got to get quick details and then rush off. They need to send more lawyers out here.*

— **Charlie, male sentenced prisoner, medium security,  
35+ years, non-Aboriginal, rural prison**

It was also reported that even when an inmate had put down their name for an appointment to see the Legal Aid solicitor or ALS field officer, they were not always able to see them on the day they attended the prison because of the large number of inmates booked to see a lawyer:

*Many times I'm helping inmates fill out a Legal Aid application or putting their name down (in) the Legal Aid book at the prison. And sometimes they are seen and sometimes they are not, it just depends on the sheer volume of people who need to see them.*

— **DCS welfare officers, urban prison**

*We had a visitor that'd come in ... [a] regional officer that just visits Kooris, you know and ask the names if they want to see legal and all that stuff. And there'd be that many of us sometimes we wouldn't even get out, you know what I mean.*

— **Liz, female remandee, maximum security,  
25–34 years, Aboriginal, urban prison**

<sup>43</sup> As noted in Chapter 5, the Legal Aid Prisoners Legal Service provides a regular advice service to inmates in Sydney prisons. In rural and regional prisons, local Legal Aid staff conduct similar services.

<sup>44</sup> Lawyers and field staff (field staff are ALS employees who are not lawyers but who assist ALS lawyers to gather information from inmates with respect to their legal matters) regularly visit prisons and assist Aboriginal inmates whether they are ALS clients or not.

Even when an appointment is kept, some inmates felt that they did not have enough time to fully explain to the lawyer their case. Further, as suggested by the following quote, in the rush to impart information quickly, some inmates reported forgetting to tell the lawyer all the facts relevant to their case:

*Although what is difficult is they have a lot of people to see. So, when they do come out to jails ... their time is very limited. It's a rushed session and ... when I don't ... express myself properly, I feel like I'm always forgetting something.*

— **Luke, male remandee, medium security,  
25–34 years, Aboriginal, urban prison**

As raised in Chapter 6, the limited time available to see lawyers particularly affects those inmates who, through disability or impairment, may have trouble communicating succinctly and effectively with their lawyer.

With high caseloads, opportunities for lawyers to address inmate's legal needs beyond their criminal matters, such as to answer a question about a debt problem were also reduced. As one solicitor commented:

*Some Prisoner Legal Services (PLS) try to do a little bit [of civil law matters], but, I think with their existing work load, the majority of them just say, 'Look, talk to Welfare.'*

— **Legal Aid solicitor**

Some interviewees also noted that the advice service could not always assist with civil or family matters, if those issues were outside the expertise of the attending criminal lawyer. As one stakeholder explained, however, the complexity of different areas of law makes it difficult for those staffing the visiting legal advice service to be able to cover all areas of law to the depth required by the legal problems faced by the inmates:

*... as you know, criminal law has become more complex and more specialised, and the same can be said of all the civil law areas. So debt is a huge area, Family Law, and it's not reasonable in my view to expect the people who are working in the PLS ... [to] be an expert in that area.*

— **Financial counsellor**

Inmates can also use the advice session with a Legal Aid solicitor in prison to arrange for Legal Aid representation when they go to court. However, in some circumstances, as the following quotes indicate, inmates reported that they were not always able to see a representative from Legal Aid before they attended court:

*It's very hard to see one in jail because you've sort of got to get on a waiting list and wait for your turn to come up. Like a couple of times I've had to go to court and I haven't had a lawyer or anything.*

— **Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

Inmates felt that by not getting to see their legal representative, or only seeing them for a short period of time, their cases were not given the best possible chance:

*[It would] be good to sit down for half an hour ... and go through everything, and say look, this is why it happened, or these are the circumstances of why it happened. Explain things a bit better ... and maybe then he'll feel that, well, this bloke's telling the truth, I believe what he's saying so. Maybe then they try a little bit harder. But it's pretty brief ... it's like a production line, really, isn't it? ... usually when they come to the jail they see other cases as well, so they usually come out there and see a few of youse at once. And, you know, you get five minutes each, so they don't really get a good picture of the person you are.*

— **Hugh, male sentenced prisoner on protection, 25–34 years, non-Aboriginal, rural prison**

The regularity of the legal advice service was also raised as an issue. Workers at a regional correctional centre reported that local solicitors providing the legal advice service on Legal Aid's behalf at that particular prison did not always attend when expected and that, periodically, there were significant lapses between the times they did attend. One DCS worker speculated:

*... I suppose the issue there is their staffing and resources. They don't seem to be very regular in their attendance ... sometimes the list of inmates wanting to see these people (is) quite big.*

— **Non-custodial staff manager, rural prison**

As this quote would suggest, prolonged periods between legal advice clinics only exacerbates the demand on lawyers' time when they do finally attend the prison. It should be noted that these issues are not necessarily particular to visits to NSW prisons. Similar concerns were voiced in a 2004 study of Legal Aid services in to women prisoners in Queensland (de Simone & d'Aquino, 2004, p. 5). Consequently, the shortage of legal resources in terms of lawyers with the PLS does impact upon inmates' ability to obtain comprehensive and timely legal advice.

### ***Legal Aid: rural areas***

Inmates are able to obtain a grant of Legal Aid to secure representation from a private lawyer or from a Legal Aid solicitor. However, our interviews suggested that limited numbers of solicitors were available to conduct Legal Aid work for inmates in regional correctional centres. This is illustrated by the following quote:

*There are only two Legal Aid solicitors that service that area, where's he going to go? Who else is going to help him? He can't afford to pay for his own private solicitor. That's a major problem.*

— **DCS welfare officers, urban prison**

One factor limiting the availability of lawyers in rural and regional areas is the potential for conflict of interest issues, for instance, when the lawyer is already representing another party in the case and no other lawyers are available. An ex-prisoner living in a regional and rural area of NSW said:

*I got to see one lot of Legal Aid. And then it come up ... I was on remand [for] ... four weeks. And then I get to court and this solicitor's got to leave my case because it was a conflict of interest. So I was stuck in limbo, again.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

The view was also expressed that, with fewer lawyers in rural areas, the range of expertise available was also narrower:

*Just at times here in X [town near current prison], I've felt these fellows are a bit disadvantaged because they haven't got people who really have expertise in that particular area and it's very hard to get access to them.*

— **Chaplain, correctional centre**

Limits on the funding of Legal Aid services and ALS, and the corresponding difficulties in meeting the demand for their services, was acknowledged by the Senate Legal and Constitutional References Committee 2004 inquiry into *Legal aid and access to justice* (pp. 4–8, 76). Submissions to the inquiry also suggested that legal aid services are ‘spread too thinly’ in rural and regional areas and that people living in such areas are ‘disproportionately disadvantaged by gaps in the legal aid funding scheme’ (Senate Legal and Constitutional References Committee, 2004, pp. 114–115).

### ***Legal Aid: duty lawyers at court***

As alluded to above, an inmate may not get to speak to a lawyer or ALS before appearing in court. Consequently, the first lawyer they may get to speak to is

the Legal Aid duty solicitor<sup>45</sup> who is at the court on the day of their hearing (e.g. for their bail hearing or concerning the matters for which they are being incarcerated). Our interviews suggest that, as with the PLS in prison, the high demand for the services of the duty lawyers at court has impacted on the amount of time they have to provide advice to clients before their matter was heard. Typical of the many comments made to this effect was:

*Like some days there are 20 odd fellows down in these cells. And like three minutes, four minutes each. And that's it.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

Further, there can be little confidentiality under circumstances where there is such a press of demand:

*On the day it's ... like they come and see you in the cells. And you've got everyone else there, and some of them are a little bit, they don't want to say something about their charges ... they talk to you at the front of the cell there and through the bars.*

— **Dan, male sentenced prisoner, 35+ years, Aboriginal, rural prison**

Consequently, while systems are in place for Legal Aid to provide legal advice and assistance to prisoners, our research suggests that the capacity of these services to provide the range and depth of legal assistance required by some inmates is restricted by limited available resources.<sup>46</sup> In particular, inmates felt they needed advice beyond that pertaining to criminal law and that they needed more time and privacy with their legal advisers in order to engage fully with the process of resolving their legal issues. Yet the number of prisoners seeking advice has far outweighed the number of lawyers available. In our research, Legal Aid emerged as a key resource upon which many inmates relied, but one apparently stretched well beyond its capacity.

### ***Legal assistance on civil matters***

A final area that arose in our interviews in relation to legal service resources was an apparent imbalance in the availability and integration of legal assistance for civil matters and those for criminal charges. It is clear from the descriptions given in previous chapters that prisons, as an integral part of the criminal justice system, have a range of mechanisms that serve the resolution of inmates' criminal matters. However, in the case of civil matters it appears

<sup>45</sup> In some courts there will be an ALS duty lawyer to provide representation to Aboriginal clients on list days.

<sup>46</sup> It should be noted that the interviewees for this study did not note shortages among private solicitors.

that access to assistance and the ability to participate in legal processes is more difficult from prison. One reason for this is an apparent lack of ready access to legal advice on civil issues:

*So unless you've got services like, say IDRS, that has solicitors who will go to jail, interview clients for particular matters but dig a little bit deeper, you're kind of going to miss all the other stuff.*

— **Solicitor, IDRS and CJSN**

*We don't get [funded] to run civil litigation. We haven't got the money to do it.*

— **Manager, ALS**

*If it's a criminal matter they will be referred to Prisoners Legal Service. And there is, not perfect machinery, but there [are] adequate mechanisms within the System for the person to get some referral and for a visit to occur. ... When it comes to civil matters, there is nothing ... So I'd have to say that I don't see that people who are in custody have access to legal advice as a right in civil and other related matters.*

— **Financial counsellor**

At the time of writing, there were a small number of strategies to assist inmates with civil legal matters, such as the civil law pilot project provided to female prisoners by Legal Aid. There are also strategies to prevent civil law matters from getting out of hand (e.g. the automatic notification to Centrelink when people are received into prison which stops inmates receiving welfare payments for which they are no longer eligible). However, the general impression from the data collected for the current project was that civil matters had less priority in terms of resources.

*You get a lot asking about civil and compensation but we don't actually do a lot with civil because sometimes the civil stuff is far better for them to pursue on the outside ... And the other thing is or pursue it at a jail of classification because for us a civil matters isn't necessarily ... we're not going to deem it a priority necessarily ... Because this is still a crisis remand jail and we will always give preference to the crisis based issues.*

— **Welfare officer, urban prison**

A second barrier in terms of resources to help with the resolution of civil matters is the lack of support for prisoners to participate in the legal processes designed to resolve the matters. For example, while inmates are routinely taken to court for their criminal hearings, hearings for civil or family matters are not so readily accessible from prison:



*I've never known them to get out to go to a family court hearing. It's more a question of adjournment or representation in their absence ...*

*[WHY IS THAT? IS THAT TECHNICALLY OK?]*

*Well, because, I would suspect that if you looked at it, that it's the inmate has to pay the cost of the, of the department's transfer to that court. ... So if there's any personal injury, it has to come out of the pocket of the inmate.*

— **Legal Aid solicitor**

*I had an agreement with my ex-wife to pay her X amount of dollars per week and then I went into jail. ... Now I got on the phone to Child Support [the CSA] from jail...and they said I would have to go back to court and change it. And I couldn't do that because I am in jail...*

— **Malcolm, male parolee, 35+ years, non-Aboriginal, urban area**

As one interviewee explained, this may effectively translate to a blocking of access to justice as time limits expire and the chances of finding supporting evidence dwindle:

*One of the things that occurs, of course, is that if you are an inmate and you've got further charges, Corrective Services will ferry you all around the State to appear in court, where possible. There isn't any such service available that I know of for people to attend court in civil matters. And the result is that they can't protect property. They can't be heard in a court environment and the, as you'd know, there's lot of situations where there are time limits on taking an action and ... if a matter is heard way down the track, you might not be able to get access to witnesses or information, or other things to support their claim. So functionally it, I see that it really does restrict their access to justice. In particular, I see that it restricts their access to justice in various consumer forums [such as the jurisdiction of the Consumer, Trader and Tenancy Tribunal] ... In all of those areas a person who is not in custody can go, for a very small fee, have a matter heard. They don't need legal representation and the matter is, you know, resolved in an expeditious way. If you're in custody that's not available to you.*

— **Financial counsellor**

In Chapter 6 we described how inmates tended to focus on their criminal matters over their civil matters. It would seem that the systemic environment also provides less opportunity for prisoners to address their civil matters, particularly in terms of access to legal advice and participation in the legal processes.

## **DCS staff**

DCS custodial and welfare staff play a central role in assisting inmates when they have a legal problem. For a detailed discussion concerning this role, see Chapter 8. As well as taking on case management roles with inmates, custodial officers carry out a variety of administrative functions, all of which facilitate inmates' access to legal assistance. These functions include processing mail, escorting inmates to legal interviews, providing inmates with forms and information about appealing, and writing their names down in appointment books for legal interviews.

Each government-run prison has one or more welfare officers who provide assistance with personal issues, such as child access, housing, debt management and advocacy on behalf of the inmate. Welfare officers also perform a range of other tasks including assisting inmates with forms, explaining documents and processes, facilitating telephone calls with lawyers and liaising between the inmate and government departments on matters associated with their legal issues.

However, interviews for this study suggested that the capacity of officers to perform these tasks can be undermined by available resources not always matching the high demand. Our analysis identified a number of features of staff roles that affected inmates' pursuit of legal assistance, primarily concerning staff shortages for both custodial and welfare staff.

### ***Custodial staff shortages***

Staff shortages were an issue raised by prisoners and stakeholders when identifying the barriers for prisoners to access assistance with their legal problems. There appeared to be two major implications of DCS staff shortages for inmates needing assistance with legal problems: increased lockdowns and the reallocation of staff.

### **Lockdown**

Lockdowns (including locking inmates in their cells overnight) are part of the daily routine of NSW correctional centres. However, if staff shortages are sufficiently severe, the prison may be put into lockdown (over and above regular lockdowns). Inmates are then restricted in their movement around the prison and are effectively prohibited from leaving their cells until the lockdown ceases.

*[A FEW PEOPLE MENTIONED THE RATE OF LOCK DOWN– THAT THEY SEEMED QUITE FREQUENT. WOULD YOU AGREE WITH THAT?]*

*Yes. And that's due to staff shortages. ... we might lock down if we've got a hospital escort. Like an inmate has to go out for emergency. So they might try and take officers from somewhere, so they'll have to lock down a Unit to take officers from there, to take someone to hospital.*

— **Custodial staff member, urban prison**

Although correctional centres are encouraged to allow legal representatives access to their clients during lockdown, legal visits are only allowed on a limited basis and are at the discretion of the General Manager (NSW DCS, 2006c, s. 15.11.6).

In 2004 DCS introduced a program of correctional workplace reform called *The Way Forward* which aimed 'to achieve safe and effective correctional centre management and substantially improve operational cost efficiency' (NSW DCS, 2004b, p. 2; also NSW DCS, 2004c). Changes to staffing arrangements were a key aspect of this policy. There was some suggestion in our interviews that aspects of the new staffing arrangements reduced visiting hours, for legal visits:

*OV1: There was a lot recently because The Way Forward changed the visiting procedure in this jail. Visits used to be an hour and a half. They went straight through the day.*

*OV2: Legal visits went through till 6 pm I think.*

*OV1: Yeah. Now when The Way Forward was introduced, they suddenly locked the prisoners down at lunchtime.*

— **Official Visitors, urban prison**

Accordingly, lockdown may occur because there may be insufficient staff to cover all of the various operational tasks of a prison. This may impact on inmates meeting their legal needs as they cannot attend the prison library, make telephone calls, and, at times, not be able to meet with their legal representatives during lockdown.

### **Reallocation of staff**

Staff shortages also appeared to result in prisons having to reallocate staff from one task to another. In the main, officers were 'stripped' from certain administrative positions to fill key security positions when staff shortages occurred. In our study, examples were given of positions being stripped from

functions such as the mail room, officers who place numbers on prisoners' phone cards and library escorts, which in turn affected inmates' access to justice. For example, the stripping of the mail sorting position delayed the delivery of mail to inmates, including legal correspondence:

*We don't get mail regularly at all. Very, here, there and everywhere. I've had letters that have taken over three weeks to get delivered ... I know it's not the mail officer's fault, but as soon as they need somebody else she's the one that they take away, and so the mail doesn't get done ... I know two other [inmates whose] briefs didn't come till after they went to court.*

— **Jane, female remandee, minimum security,  
35+ years, non-Aboriginal, urban prison**

In this interviewee's experience, the practice of stripping positions had resulted in some inmates not receiving essential documents before going to court.

Custodial officers are also responsible for confirming lawyers' telephone numbers, in order that inmates can call their solicitors.<sup>47</sup> This second example describes the impact of officers being reallocated from the position, which processes numbers onto phone cards:

*When the form goes in, it goes to the deps clerk. The deps clerk is the position that actually makes the calls out to the solicitors ... Now, from a practical perspective in a jail, the deps clerk position is a position that can be stripped when they are short of staff. So if they are short of staff, it could be a day, two days, three days and that position is stripped and there is nobody in there. So that causes a massive backlog with phone numbers being put on.*

— **DCS welfare officer, urban prison**

During the period whilst inmates are waiting for their telephone contacts to be approved, they cannot directly telephone their lawyer. Rather, they have to seek an appointment with the welfare officer to make a call from their office, and, as is argued below and in Chapter 8, appointments with welfare officers are also often delayed because they are a resource that is also in great demand.

When there was a shortage of staff, positions that enable the prison library to be open may similarly be reallocated:

*In order for the library to be open, you have to have an officer present. That position is what's called a strippable position. So that means if there is sick leave somewhere, they don't get an officer. So the library is never open more*

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<sup>47</sup> See Chapter 5 for more detail on this process.

*than five hours a day and often it can be one or two days a week. So a lot of the inmates never actually physically get to the library.*

— **DCS library staff**

Legal interviews themselves may also be forgone because an officer is stripped from escort duties for higher security inmates:

*People get legal visits but because they've got to be specially kitted out, there's got to be enough officers to take them. And if there are not enough officers, the legal visit doesn't happen.*

— **Official Visitor, urban prison**

Our interviews clearly show that inmates often depend upon the assistance of custodial officers to arrange or facilitate their access to legal information or assistance. However, as argued above, staff shortages in one area of operations can entail staff being reallocated away from administrative positions that underpin inmates' access to legal assistance and/or information. The following quote illustrates how the prioritisation in resourcing may occur:

*If Legal Aid wishes to see a remand inmate, we'd escort that inmate up and generally it's not straight away ... If the officer's flat out with about five or six other inmates, they prioritise. And escorting an inmate up to Education is not a high priority.*

*[SO WHAT MIGHT THAT MEAN? THAT THEY MISS OUT ON THEIR APPOINTMENT?]*

*It's a possibility. If there are five officers in a unit; if two out of that, or even one is out of that unit doing something else, another officer can't leave that unit and leave three staff in there by themselves. That's not allowed. That's dangerous. So they'll have to wait until this other officer comes back, and who knows what they're doing or how long they're going to be.*

— **Custodial officer, rural prison**

Consequently, in a contest for staff resources, there is a privileging of certain types of tasks, whereby those relating to legal assistance are relegated as less important than those relating to safety and security. Consequently, in the context of staff shortages, addressing inmates' legal needs may be postponed or remain unmet.

### ***Shortage of welfare officers***

As will be described in Chapter 8, welfare staff provides a key link to government and legal services. However, our research has suggested that,

in most jails, the number of welfare officers available does not meet the demand for their services. Unfortunately, it is not possible to formally examine the ratio of welfare staff to inmates as annual statistics are given only for all operational staff, including court correctional officers. However, as the data given here and in Chapter 8 suggest, welfare officers are often extremely busy and consequently inmates may not be able to access them in a timely fashion. The challenge this presents was described by DCS staff and inmates:

*As soon as welfare comes in that's it; they all hoard over and scream, and yell, 'I need to see you! I need to see you!' It's just ridiculous [that] we're a one-position jail. That's where my gripe is. We need to have more [welfare officers] because we can't meet the demands.*

— **Non-custodial staff member, urban prison**

*Even speaking to Welfare is a nightmare. Three weeks and I still haven't seen them ... it is very hard. They're run off their feet.*

— **Jane, female remandee, minimum security,  
35+ years, non-Aboriginal, urban prison**

Given the pivotal role that welfare officers play in linking inmates with people and services to help address their legal needs (as detailed in Chapter 8), their scarcity can have significant consequences for inmates seeking assistance:

*If you're with Legal Aid, it's difficult to get access straight away to Legal Aid, you have to wait ... I mean, you've got to go to Welfare and wait two weeks, up to two weeks to get a phone call to Legal Aid.*

— **Aaron, male sentenced prisoner, minimum security,  
35+ years, non-Aboriginal, urban prison**

*So then you've got to put your name on the Welfare list, wait a week or two until the lady or the man of Welfare have time to see you, and then they'll ring Legal Aid and you start from there. So ... you're two weeks behind already.*

— **Neal, male remandee, minimum security,  
25–34 years, non-Aboriginal, urban prison**

As the role of custodial officers has been broadened under *The Way Forward* policy to include more responsibility for the care and case management of offenders, the possible implications of the dual role of custodial officers in terms of facilitating inmates' access to justice are further considered in Chapters 8 and 9.

## **Consequences**

It appears from the data given above, when a shortage of custodial staff occurs, that positions which facilitate access to legal assistance and support are among the first to be compromised. Specifically, tasks that may impact on the pathways inmates use to address their legal needs, such as processing lawyers' numbers onto phone cards, or processing mail (including legal mail) may be stripped of their human resources and reallocated to security functions. When staff shortages become critical, the whole centre may be locked down, further restricting the capacity of inmates to engage with the outside world. In addition, our interviews suggested that, in many jails, welfare officers are in short supply and consequently challenged in their capacity to assist all their inmate clients.

## **DCS facilities**

There is a range of facilities in correctional centres that inmates can use to access legal information and advice. These include electronic equipment such as computers and video players, the library and the prison telephone system. Our interviewees suggested that significant shortages of these facilities impacts on inmates' access to justice.

### ***Computers, electronic equipment and libraries***

Prisons have education departments that in addition to running courses for inmates also have computers (but no internet connection) available for use by prisoners for educational and legal information purposes. For example, inmates can use computers in the Education unit to read briefs which are sent to them on CD-ROM. However, interviews for this study suggest that there is a significant shortage of working computers in these Education units.

*And if you can get in there ... you are in there with another 30 people. You can't all use the computer at the same time*

— **Spokesperson, Justice Action**

As a result, inmates reported being unable to access their briefs on CD-ROM, hindering their preparation for their case. It was also suggested that shortages in available computers affected the professional use of computers by welfare and library staff, particularly when they agreed to allow inmates to use their computers.

*You know how they get their briefs on CD-ROMs now? ... There is a real problem finding a computer that they can read it on ... and X [jail] ... is bereft of computers ... And the librarian out there ... said that the Education people are using her computer for inmates to read their briefs on. And she didn't really want them to do that because she can't work.*

— **DCS library staff**

In another example of how processes to assist inmates can be compromised by limited resources, a DCS staff member reported that new inmates in one jail were not able to watch an induction video<sup>48</sup> because the video recorder had been broken for four months.

Interviews with inmates and DCS workers from different prisons also suggested that the legal materials in many of the prison libraries were often very limited, outdated, or not available because they have gone missing.<sup>49</sup>

*Legal, well they have access to the library here ... I went down the other day and all of the books are outdated, you know, should be in a museum.*

— **Custodial officer, urban prison**

*There's nothing at this library here, but there's no law books or anything here at this library, what law books they have got are, they, they don't cover ... criminal, that sort of stuff.*

— **Jack, male remandee, age unknown, non-Aboriginal, urban prison**

The formal provision of information resources in the form of library materials were seen to be, at the time our data were collected, inadequate at some prisons. However, since our interviews were completed, DCS has funded LIAC (the State Library of NSW's Legal Information Access Centre) to expand its coverage to include all correctional centre libraries in NSW. This means that each prison should now have a complete set of LIAC materials which consist of plain language legal information on a wide range of criminal, civil and family law issues.<sup>50</sup> Further, inmate clerks were being trained to assist people to find legal information, although they do not provide legal advice.

### ***Internet access***

Prisons are designed to keep inmates largely separated from the outside world. Walls, fences and surveillance provide the physical barriers while bans

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<sup>48</sup> See Chapter 5 for further details.

<sup>49</sup> Chapter 5 outlines what materials prison libraries contain.

<sup>50</sup> See <http://www.liac.sl.nsw.gov.au>



on mobile phones and access to the internet present another layer of security. The DCS standard operating procedures stipulate that computers used by inmates ‘must not contain, be connected to, or have the facility to be connected to any internal or external communications device (i.e. modems, modem card or modem chip)’ (NSW DCS, 2006c, s. 5.4.1.1(c)). In practice, this means that there is no internet connection to any computers within the parts of the jails accessible by inmates, including those computers used by welfare and education staff. Accordingly, neither inmates nor the DCS workers who may be assisting them to find legal information can access the web from within the jails:

*We don't have internet access in here, so I have to go outside for any of the searches for legal information.*

— **DCS library staff**

Legal Aid solicitors (and other services) are allowed to bring laptops into prisons for instance, to playback electronic evidence to the client (PLS solicitor, personal communication) although they are not allowed to use these computers to access the internet from within prison. Lawyers reported the frustration of not being able to search for information online when they visit an inmate in prison:

*It's a real pain because you are getting inquiries a lot which you can only answer by going back to the office and looking up on Court Net, or looking up the Legal Aid database to find out what's going on. And then you have to get back to them to let them know what is going on. And often, the time frame is too short and they are going to court next week and they don't really have a clue.*

— **Legal Aid solicitor**

Consequently, the internet, an important source of information in the general community, is an avenue that is closed to inmates on the grounds of security. This is not to judge the appropriateness or otherwise of such a form of regulation, but rather, to note how being in prison limits the pathways by which people can access legal information and help.

### ***Telephones***

The availability of telephones to maintain both social and legal connections is a key issue for inmates. Each correctional centre has a certain number of telephones for inmates available at set times throughout the day.<sup>51</sup> Some inmates and workers reported that there were often such large numbers of

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<sup>51</sup> The inmate telephone system is discussed in more detail in Chapter 5.

inmates trying to access the telephones during those times that, as a result, it was difficult for them to make a call when they wanted or needed to:

*Because there's only one phone in each side, and they have to share it with ... anywhere between 12 and 15 [people] in there. So it's a problem getting access to the phone.*

— **Custodial officer, urban prison**

The issue of the number of telephones, however, must be looked at in the context of the procedures by which their use is governed. Although our interviewees talked of inmates needing to make a call outnumbering the telephones available, this issue may, at least in part, be an artefact of other systemic features, such as lockdown and prisoner classification. The impact of these features will be discussed in detail later in this chapter.

### **Courses**

Another resource that may affect inmates' access to justice is the provision of educational courses and training within prisons. A few inmates from a rural prison reported missing out on the opportunity to undertake certain courses due to limited places:

*I'm always on their backs to do these programs to address their offending behaviour and they'll say, 'I was up there. I got knocked back because of the amount of time I've got to do.' And they get frustrated about it. But with 750 blokes, if they've all got to get up and do that similar program, it may only be one counsellor or two counsellors doing the program in the one room.*

— **Custodial officer, rural prison**

This in turn impacted upon inmates' chances of being released on parole. As stated in Chapter 4, the SPA (State Parole Authority of NSW) takes into account whether there is 'sufficient reason' that the prisoner will be able to adapt to community life (Barry, 2004, p. 190). One way of demonstrating a capacity for going back into the community may be the completion of certain courses, such as anger management. Accordingly, when inmates cannot be accommodated on a course, their chances of being granted parole may be compromised:

*I even rang the Ombudsman there and said, look, I'm just scared because I'm not going to get parole because I haven't done these courses. They rang the jail and they said there's a six to 12 month waiting list to get into some of the courses, and there's no priority system.*

— **Hugh, male sentenced prisoner on protection,  
25–34 years, non-Aboriginal, rural prison**

Completing a course that may improve inmates' chances of being granted parole may also be affected by transfers between prisons. An inmate may not be able to commence or continue a course, as not all courses are available at all prisons. Further, there may not even be an available place even if the relevant course is offered:

*The big downside is that they can get dragged off programs. And if the parole officer said six months ago, 'You do this anger management program and this will help you get your parole. This is what you need to show to the Board.' And then it doesn't start for three months, so they're waiting around for it to get on. They get on and then a week later they get moved for whatever reason, well then that's unfortunate.*

— **Probation and parole unit leader, rural area**

Other consequences resulting from transfers within the prison system are discussed in more detail elsewhere in this chapter.

## **Summary**

In addition to the various practical barriers to inmates accessing legal assistance which arise from the nature of imprisonment, formal provision of systemic resources that falls short of the demand placed upon them can further disrupt access to justice for inmates. It is apparent from the data reported here that there are significant resource constraints on both DCS and some public legal services, which in turn affect the capacity of inmates to access legal information and legal assistance from within prison.

Our interviewees identified staffing levels and facilities as systemic resources where demand outstripped supply. For example, the capacity of welfare officers is stretched by the sheer volume and complex needs of their inmate clients. Similarly, the availability of custodial officers to undertake functions which facilitate inmates' access to justice (e.g. to provide escorts to the library or legal visits, to ensure mail is delivered or that telephone numbers are made accessible to inmates) is sensitive to staff shortages: when staff numbers are low, security functions take precedence and consequently these tasks may be delayed or abandoned.

Our interviewees also indicated that the demand for Legal Aid and ALS services outstripped supply, resulting in less time being available for legal advice to be given to individual inmates both at prison and at court. In some circumstances, inmates were not always able to see a lawyer before they went

to court because of such shortages. Further, the demand on the resources of such legal services undermined the perception amongst inmates about the quality and accessibility of these services.

In terms of facilities, a shortage of computers to read CD-ROMs and outdated library facilities at some correctional centres can prevent inmates from accessing legal information. Further, inmates in one particular correctional centre felt that limited places in certain education courses were preventing them from obtaining parole. The lack of access to the internet and a perceived shortage of telephones were also felt to compromise inmates' ability to marshal information for their legal matters and communicate effectively with their legal advisers (*inter alia*). Consequently, shortfalls in resources that support prison inmates in addressing their legal matters within the broader systemic environment may act as a hindrance to gaining legal information and assistance, and effectively participating in the legal process.

## Systemic processes

The discussion above draws attention to aspects of the broader systemic environment where there is an apparent shortfall in resources. This shortfall consequently affects prisoners' capacity to address their legal needs. Our analysis also suggests that the processes that operate within the systemic environment also shape the success or otherwise of inmates' access to justice. The processes most commonly mentioned by interviewees in this study are grouped under the following headings:

- ◆ telephone use
- ◆ classification, segregation and access to legal help
- ◆ movement of inmates
- ◆ lockdowns.

### **Telephone use**

In the previous section, the issue of the availability of telephones was raised. It would seem that in the opinion of some interviewees, availability was a matter of numbers — too few telephones for too many inmates. Whether it is only, partly or even at all, sheer physical numbers of telephones should be weighed against how the telephones that are there are accessed. Interviewees for this study highlighted a number of other aspects of the prison telephone system

and its use that impact on their role in inmates' pursuit of assistance with their legal problems. These were:

- ◆ time restrictions and privacy
- ◆ direct telephone contact with lawyers
- ◆ telephone contact with government and other agencies

### ***Time restrictions and privacy***

Time restrictions operate on the length of calls that can be made by inmates. Male inmates receive 10 minutes for legal telephone calls and six minutes for personal telephone calls and female inmates receive 15 minutes for legal telephone calls and ten minutes for personal calls. The purpose of placing time restrictions is to make the telephone system more accessible to all inmates:

*For instance, in the old system an inmate could make a hundred calls a day. In this one, it doesn't happen ... I think it's much better too because six foot six, wanted for manslaughter, wants to sit on the phone for three hours and the five foot four in for a driving charge is not going to get near is he? [Now] the system cuts him off, he walks away. He doesn't take it out on the other guy. I think it's better. It's fairer.*

— **Custodial manager, rural prison**

However, inmate interviewees for this study described feeling that they did not have sufficient time to discuss often complex and serious matters over the telephone with their lawyers. Inmates reported the frustration of having to 'go to the back of the line' once their call time had expired, and wait until all the other inmates in the line had used the telephone before they could complete their call. For example, Luke said:

*It's a problem though because it's a six minute phone call [sic] and it's timed, computerised automatically and it can take a minute or a minute and a half sometimes to two minutes or three minutes before you actually get put through to your solicitor. And then you've only got three minutes and then you've got to ring back and ring back again to get say a twenty minute conversation in, and that can be frustrating.*

— **Luke, male remandee, medium security,  
25–34 years, Aboriginal, urban prison**

Concerns were also raised regarding the privacy of legal discussions made on the telephones located in the prison yard or the pods (wings):

*Because the phone's in the middle of the pod. There's 38 guys running around. It's noisy. There's no confidentiality. And look I mean I want to talk to a lawyer about a car I sold. No problem. I want to talk to a lawyer about the three young girls I molested. You're not going to have that conversation.*

— **Custodial manager, rural prison**

*There is a special section on their phone [card] where they put their solicitor's numbers because they actually get a longer call. But it is still often not a long enough call to talk about the in-depth legal issues, not to mention you are talking about your in-depth legal issues with every other Tom, Dick and Harry lined up behind you waiting, pissed off because you are taking too long on the telephone — its not conducive to a good conversation.*

— **DCS welfare officers, urban prison**

A final issue regarding the system governing the use of telephones was their practical availability. The following quote clearly demonstrates a conflict between the routines that some inmates must follow and the access hours for the telephones making them a scarce commodity:

*To contact a legal practitioner can be difficult because our phones are only on for certain hours. Now, the phones go on at eight-thirty in the morning, we leave for work at a quarter to nine. The phones stay on all day, but they're in the accommodation units, so therefore we have no access to the phone until two o'clock in the afternoon, and then we'll have twenty (people) all wanting to use the phone in that space of one hour:*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

### ***Direct telephone contact with lawyers***

Another challenge for inmates seeking to consult with their lawyers by telephone raised in our study was that an inmate may have to go through switchboards, receptionists or automated telephone systems before being put onto the person who can assist them. This further curtails the already limited time available to inmates:

*This is why I don't worry about on my phone 'cause then you've got to go through their secretary and you know, it's only a ten minute call.*

— **Jack, male remandee, medium security, age unknown, non-Aboriginal, urban prison**

*I was on hold [to Legal Aid] for probably forty-five minutes. And I mean, if the inmates are trying to ring from down in the unit there's a ten minute limit*

*on their phone calls, the phone cuts out after ten minutes whether you're on hold or you're talking to somebody or whatever. So it's, it's difficult.*

— **Throughcare officer, rural prison**

The above quotes highlight the potential problems inmates might have in utilising telephone based legal services, a significant issue in light of the recent initiative in NSW prisons to have the LawAccess telephone number put on prisoners' phone cards. That is, even though inmates are able to telephone LawAccess from prison, the advice they can receive may be limited by the restricted time they can speak for. Recognising this potential problem, the LawAccess representatives interviewed for this study indicated that their staff are trained to directly transfer inmate calls to a solicitor:

*Because we do treat prisoners as priority clients, any time a prisoner is on the phone we will try and facilitate an immediate transfer to one of the lawyers, so that we can assist them directly, rather than have to worry about call-backs. Not always possible. But we're as flexible as possible because we recognise the special needs and the official difficulties that they're under.*

— **LawAccess**

In the absence of being able to directly contact lawyers, inmates have the option of leaving a message. However, as inmates can make outbound calls but cannot receive calls, a lawyer is unable to call them back in prison:

*I never really call her on the phone 'cause she's normally not there anyway, and if I leave a message she can't call me back anyway.*

— **Karla, female remandee, minimum security,  
25–34 years, NESB, urban prison**

These issues are consistent with difficulties raised regarding Queensland jails (de Simone & d'Aquino, 2004, pp. 5, 64). Apparently, there is some scope for calls to be returned when a prior arrangement is made through the welfare officer. However, even prison staff may face difficulties in contacting lawyers on behalf of inmates, for example, when confirmation is sought for placing a lawyer's number on an inmate's phone card:

*We've got to catch them when they're actually in the office so they can give us their verbal, 'Yes, it's okay for that to happen' ... The form can sit there for five or six days and we've tried to ring the number four or five times a day, and they just don't answer. Or the secretary says, 'He's not here.'*

— **Custodial officer, rural prison**

As a result, the organisation of both prison and legal advisers' telephone systems may not always fit well with the needs and/or circumstances of prison inmates.

### ***Telephone contact with government and other agencies***

Telephone contact with government departments also brought with it, according to our interviews, its own set of issues. Our data indicated that inmates had complications telephoning departments such as Centrelink, the DOH, DIAC and SDRO to address outstanding legal problems. To begin with, some inmates reported difficulties putting certain departmental numbers on their phone cards:

*You've got to actually put the number on your phone [card] and they weren't willing to put the Immigration number onto my phone.*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

Further, with limited numbers of contacts being permitted on phone cards, some inmates were unwilling to forgo a place on their card for an organisation they may only speak to once. Similar attitudes were reported in a UK study of remand prisoners, who even considered putting lawyers on their phone cards as 'wasteful' (Brookman et al., 2001, p. 198).

Interviewees also highlighted how the time restrictions on telephone use in prisons clashed with the 'waiting on hold' call centre system adopted by government departments:

*If you're in remand, there's about 500 people waiting for a five minute phone call on a queue that's five hours long; and then you can never get through to Centrelink in that five minutes anyway. So, even if you wanted to ring Centrelink independently it was near impossible to do.*

— **Caseworkers, Welfare Rights Centre**

Difficulties accessing these agencies can result in inmates relying on third parties to assist them to resolve these issues, which itself can conflict with the privacy policies of departments:

*I owed some money ... [for] court costs ... I think it was \$80. Fine, I can't get hold of youse, ex-wife can you? ... Rings up, no fuck off ... Two weeks later I get another letter. You now owe \$95 ... Because you haven't contacted us and we've whacked on a little bit extra ... Because it's not me ringing, it's the ex-wife, they don't care. 'Oh well, we've got to speak to him. We're not speaking to you.' And you know what I mean? How can you get anywhere?*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**



### ***Strategies to improve telephone access***

Interviewees in our study suggested a number of strategies that may enhance telephone access to solicitors. One suggestion was to make direct contact with a solicitor via a mobile phone:

*He works in courts all day. So he has his mobile with him. So he'd rather me ring him directly and he's able to leave a message and he'd get that message back.*

— Penny, female remandee on protection, 25–34 years, non-Aboriginal, urban prison

*He goes beyond his job ... they have a call centre but I speak to him directly so it's him on his job, he's at home, he's knocked off or whatever.*

— Terry, male parolee, <25 years, Aboriginal, urban area

However, due to the higher call costs of ringing a mobile phone, convicted prisoners who have to pay their own legal calls, may not be able to afford this option.

A number of lawyers we interviewed said that they took account of the limited time inmates had to speak with them, by taking their calls as directly as possible and by getting 'straight to the point' (Community Referral Scheme, Law Society; LawAccess). To facilitate a quicker response to prisoners' calls, all telephone calls made by prison inmates should be announced to the recipient by the prison telephone system before the prisoner is put through. Such a facility cues the legal or other service to the fact that the caller is an inmate and consequently has a very limited amount of time to spend on the call.

The capacity for lawyers to routinely receive messages and return calls to their clients in prison was raised by both stakeholders and inmates as a potential strategy to increase inmate access to legal advice:

*I mean the other thing that would help us [is] if we could have some sort of system or process in place in prisons for us to call prisoners back. That would be really helpful, because it's not always guaranteed that there will be a lawyer off the phone, or in, or available, to talk to them.*

— LawAccess

*It'd be good if there was like a number that you could ring up and say, 'Listen, can you tell [lawyer], I'm his client, I need him to come to Sydney tomorrow, I've [got] court [in] two days.' Whatever, if I can't get a hold of [lawyer]*

*myself. It'd be good, you'd feel, you'd feel fantastic and at least you can get a, you know that the message has got through.*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

From our interviews, it is clear that telephones are a key link between prisoners and legal assistance located outside of jail. The restrictions, however, accompanying the prison telephone system may conflict with the types of telephone based services currently offered, resulting in very real barriers to inmates using these services. Communication with lawyers and other services by telephone seems to pivot on a number of issues. For one thing, time limits imposed on calls from inmates often do not allow sufficient opportunity for inmates to convey the details of their problem or for the service provider to give advice. This situation may be further exacerbated by the routing of calls through a receptionist, a call centre or an automated system. Together with the lack of privacy to make a telephone call, the outcome may be that the legal problem may go unresolved.

### **Classification, segregation and access to legal help**

The primary purpose of prisoner classification is to maintain the security of the prison (*Crimes (Administration of Sentences)(Correctional Centre Routine) Regulation 1995* (NSW), clause 10). An inmate's classification reflects their risk of escape, whether they are a danger to other inmates and staff or whether they are at risk of harm from other inmates. Accordingly, consistent with their higher security rating, medium and maximum security inmates have greater restrictions on their movement within correctional centres compared with inmates classified as minimum security. Inmates and DCS workers in this study provided examples of how these restrictions can affect access to justice on a day-to-day basis. In maximum security correctional centres, inmates have to be escorted by custodial officers when they move around the prison grounds and are locked in their cells for longer periods during the day. As one inmate noted:

*Like X [jail] was the worst, because you're locked in from three o'clock in the afternoon, you don't get out until nine [am]. So, you've got six hours and you're locked in for three hours over lunch, you know what I mean?*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

Restrictions on movement associated with classification makes it harder for maximum security inmates to access information from the library, get legal advice via the telephone and obtain assistance from welfare:

*Bigger charges see an inmate almost isolated for a said period of time ... Not from other inmates, but certainly from the liberty of being able to walk over to the welfare workers.*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

Other categories of inmates, who face restrictions on their movement within prison, include inmates who are on protection, or inmates who have been segregated from the main population of the prison. Because segregated inmates are prohibited from being in contact with other inmates, they reside in their cells for the majority of the day. This may make access to legal assistance at the very least difficult or, according to one mate, non-existent:

*Well, just before I go to the second trial ... the prison system puts me in a segregation area in the system that isolates you from the rest of the world. And they kept me there for three months ... I went to trial from there without being able to see my lawyers, without being able to call them, write to them, anything like that.*

— **Charlie, male sentenced prisoner, medium security, 35+ years, non-Aboriginal, rural prison**

Under ‘Segregated custody procedures’ in the NSW DCS Operations Procedures Manual, prison officials, in addition to allowing visits to segregated inmates, are supposed to:

*... ensure that inmates, who are in segregated custody, a safe cell or otherwise restricted in terms of telephone usage, are to be made aware that they are permitted to contact the office of the Ombudsman, the Independent Commission Against Corruption (ICAC), and the Legal Aid Commission and are to be given appropriate access to a telephone should they so request. (NSW DCS, 2006c, ss. 14.4.1.14 and 14.4.14.1)*

A prison chaplain and several welfare officers within prisons indicated that they accessed inmates on higher classifications or inmates who were on protection or segregation by actually visiting the inmate in their cell or wing:

*... I go down there a bit too, and then we have another chaplain that comes in on a Friday and we try and leave him with X [a protection wing]. But we'd be in and out there during the week.*

— **Chaplain, correctional centre**

However, one welfare officer described some of the difficulties they had experienced in accessing ‘high risk’ inmates and inmates on segregation:

*I've got to go down to X [wing] ... I can't get any inmate; I can't ask them to get an inmate out because these are extreme risk ... Then there's the ones that are [in] strict protection; they can't play with the others ... if they are on segro nobody can come out. You have to wait until that person's been seen by that one person. You might have four of us down there trying to see people all at once and it can't happen. I can be down there for two hours and see one inmate.*

— **Non-custodial staff member, urban prison**

Inmates identified as ‘at risk’ may be held in protective custody and separated from the main population for up to 23 hours a day, and consequently, their ability to access legal and other assistance may be further limited:

*I had to go to protection so it was very limited, the [legal] information that I was able to access.*

*[WHY IS IT LIMITED IN PROTECTION?]*

*Because ... you didn't have access to a proper library or things like this.*

— **Carlos, male sentenced prisoner on protection,  
35+ years, NESB, rural prison**

One stakeholder argued that inmates with intellectual disabilities may be disproportionately affected because of the tendency to place them in protection for their own safety:

*... the entire time they're on remand they're on protection, which makes it very difficult for anything to happen. It keeps them safe but that's about it ... they just have less access to anybody on protection. They are on different levels and so they just have less opportunity and they have less contact with officers who might potentially assist them.*

— **Worker, CJSN**

Accordingly, whilst categories of classification (including protection and segregation orders) maintain security within prison, they may further restrict the access of affected inmates to legal information, legal advice and assistance with legal problems. In addition to classification, the phase of incarceration which the inmate is in may also affect their degree of isolation from assistance with their legal problems.

***Remand: post-arrest pre-reception***

Two features define the early period of remand. The first is the fact that all remandees have criminal matters pending along with often acute civil issues relating to their sudden incarceration, including family law issues, particularly the placement of and access to children. The second is that, generally speaking, new remandees face more restrictions on their liberties than other prisoners, and that their access to legal help is correspondingly reduced. The interplay of these two factors and their consequences for access to justice are discussed below.

As noted in Chapter 5, when a person is first arrested, they may be detained in, and moved between, the cells at a police station, the cells at a police/court cell complex staffed by DCS (such as Surry Hills or Parramatta), and in the holding cells at court. A number of interviewees reported that inmates found it particularly difficult to contact a lawyer by telephone from the police or court cells, prior to going to court. Difficulties associated with contacting a lawyer at this stage of incarceration were stressed as a key concern to a number of inmates. Having consulted with other inmates prior to her interview with the research team, Noeline, a longer term inmate said:

*... I was given the sense of urgency that this is a problem within [court complexes]. Of being picked up by the police, not being able to ring a lawyer from the police station, being taken to court, the opportunity of [a] bail hearing, and the anxiety of not having a legal representative there. Hoping that someone else in the court cells' lawyer will adjourn your matter for you, so you're not totally unrepresented in court.*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

Indeed, whilst placed in a police or court cell, prisoners may not use the telephone except under the following circumstances: to assist the officer in organising sureties for bail; for crisis or welfare purposes; and, for inmates who have been held in the complex for a prolonged period of time (NSWDCS, 2006c, s. 3.2.1.7). Further, even if inmates are granted access to a telephone for legal advice, any advice may be limited by a lack of privacy in the police cells. For instance, LawAccess commented that when they speak to someone in police custody, they do not ask for too many details from the caller, because of concern that they may be overheard by a police officer who is close by.

Compounding these issues are the large numbers of inmates being held in police cells, whilst they await space in the remand centres. According to a DCS manager responsible for reception screening and induction at one prison, offenders should

not be kept in court or police cells for more than 72 hours. However, it appears that, due to increasing prison population and corresponding overcrowding in the prison system generally (see the data provided in Chapter 2), offenders are staying in police cells for much longer periods beyond this limit:

*Here they're supposed to be taken to a correctional centre or they shouldn't be in a cell location for more than 72 hours. That's not happening. That is unequivocally not happening. It can happen some of the time, but more often than not, by the time people are in Surry Hills they may have been at Campbelltown cells for a few days before that, and maybe Penrith cells before that, and so you have this situation now of almost a mobile transit jail population waiting for a bed to become available in the main system in the metropolitan area, either at Parklea or MRRC.*

— **Non-custodial staff manager, urban prison**

Consequently, inmates may be held for prolonged periods in conditions where they are less likely to be able to access legal assistance by telephone or in person at a critical time in their matter:

*I don't know why there's not a Legal Aid person there whilst you're being arrested. ... You don't get a chance to have legal advice before you're interviewed by the police.*

— **Chris, male ex-prisoner, 35+ years, Aboriginal, urban area**

The concerns raised by our interviewees about access to justice in the cells also echo those raised by the Victorian Ombudsman in a 2006 review of the conditions of police custody in Victoria. The Ombudsman reported concerns about limited access to visits and telephones, inconsistencies between watch houses in regard to prisoner access and communication, lack of privacy for legal and other visits, overcrowding and the length of time people were staying in police custody (Ombudsman Victoria and Office of Police Integrity, 2006, p. 8).

### ***Remand: reception***

Inmates to be held on remand are transported to a correctional centre with a remand facility and detained in the reception unit of the prison until they are classified. A major task for DCS at this early stage of incarceration is to undertake a risk assessment of new inmates, particularly in relation to their mental and physical health. Inmates are interviewed by a nurse to ascertain any health needs and by Inmate Development Services staff to ascertain any immediate crisis. New inmates are kept separately from the rest of the prison population until they sit before the case management team, which determines

their classification. Interviewees for this study suggested that this isolation from the rest of the prison effectively prevents inmates from accessing legal information and legal advice. One inmate described the experience of first arriving at a remand centre:

*You will find more often than not that when you are first brought into custody that you are, not so much segregated, but have limited opportunity to see support staff. Because you're locked down so often under the duty of care, you know, we must make sure that there's no risk intervention required here, so we'll check this person out for a period of two or three weeks. And those two or three weeks or one week can be crucial to a person's peace of mind, [and inmates] facilitating legal representation.*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

Another example was provided by an inmate who had been held on remand in a regional correctional centre:

*You're locked in the pod ... You wouldn't get out while you're on remand. And that's where the other prisons have got more access to legal things ... we couldn't get to the library, we couldn't get to see anyone in that way.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

Our interviewees also suggested that remandees are frequently moved between police cells and correctional centres during the early stages of their incarceration. This reportedly makes it difficult for them to access legal assistance from outside a prison (but within custody) whilst they are being transferred from one centre to another:

*... moving around everywhere ... the other most annoying thing about it is the fact that they don't let you settle. And I don't know whether that's to keep you off guard, but ... I came into X [regional police cells], got held there over night, then shipped out to [city police cells] ...kept in [those] police cells for two days, then shipped to [a jail], kept there for a day, sent back up to X [regional police cells] for my bail hearing, then shipped back to [a jail], then moved. Moved cells all the time, moved around to different pods, and then finally come out here, and then moved around again and again. And in amongst all of that, my people outside are having a hard time keeping up with where I am ... it's really downgrading.*

— **Justin, male remandee, minimum security, 25–34 years, non-Aboriginal, urban prison**

A detailed discussion of the impact of movement on inmates' capacity to access legal assistance is discussed in further detail in the following section.

Finally, the difficulties raised above are not confined with inmates trying to deal with their criminal matter. As discussed in Chapter 4, the sudden interruption of incarceration can generate specific civil and family law issues, particularly in relation to child custody, housing and employment/business matters. For example, one remandee reported the difficulties he had in contacting his workplace when he was arrested to inform them he was in prison:

*I haven't been able to organise anything ... I haven't even been able to speak to my work because of where I am at the moment ... I was running an \$150 000 a year company and I've probably lost that now, due to the fact that this has happened.*

— **Justin, male remandee, minimum security,  
25–34 years, non-Aboriginal, urban prison**

At this stage, inmates do not have phone cards and consequently have limited options in terms of telephone calls, as one welfare officer at a remand centre notes:

*Usually what the intake screener will do is, a lot of them are happy with one free phone call at that time, which may be to mum. ... But it may be they need more. They may need one to wife or, or mother; they need one to their mate to move their car or get the dog out [of] the flat or, you know, whatever. ... And he may need one to his boss to say 'Look, you know, sorry, the work car is by the side of the road, unfortunately the key's in here [jail].'*

— **Welfare officer, urban prison**

These observations resonate with overseas research which noted that contact with lawyers is one of the most pressing needs of people on remand but also one of the areas most likely to be affected by incarceration (Brookman & Pierpiont, 2003; Scottish Executive, 2000, para. 4.1).

As inmates move into the main remand jails or wings, some of the initial difficulties they faced in accessing legal help improve. Once in the main population, inmates can receive visits from their lawyers, access welfare and education officers and, once set up, have use of their phone cards. However one practice that our interviewees suggest continues to affect inmates access to justice, is the frequent movement of inmates from jail to jail and wing to wing within the prison system.



## **Movement of inmates**

In this study inmates were reported to be regularly moved around in the correctional system: within centres, from prison to prison, and between prisons and the police or court cells. It became apparent that the constant movement of inmates inevitably impacted on the provision of programs and services to inmates, whether it was legal help, education or health services. Indeed Justice Health reported that:

*In addition, inmates rarely spend their entire sentence within the same correctional centre. There are approximately 250 000 movements between correctional centres, police cells and the court system annually, further interrupting continuity of healthcare provision (Justice Health, 2005, p. 5).*

Inmates may be moved to another correctional centre for a range of purposes including: to attend court, funerals, medical appointments, police interviews, classification or for non-routine reasons, such as the closure of a centre, the need to increase the inmate population of a centre, a change to the security mix of the inmate population or to the overall limit of the inmate population, or any other reason specified by DCS (Barry, 2004, p. 901). Inmates may also be moved for security and inmate management purposes, for example, in order not to be able to associate with certain other inmates (e.g. members of their own or rival gangs). Inmates can be transferred against their wishes, and do not necessarily have any input as to where they are moved: that decision will depend on their classification and where beds are available (Barry, 2004, p. 901). Interviews for this study suggested that the process of moving an inmate from place to place impairs the capacity of inmates to keep in contact with their lawyers and to participate effectively in the criminal law processes. The following discussion centres on three main issues regarding inmate movement: transfers between prisons, transit from jail to court and the reduction of movement through the use of AVL.

### ***Transfers between prisons***

*There is so much movement these days ... The way they manage a lot of conflict is basically moving people around all the time. So, how on earth are they supposed to be in a position where they can access proper legal advice when they are in transit pretty constantly?*

— **Legal Aid solicitor**

Being moved from prison to prison not only makes it difficult for lawyers to locate and stay in contact with their clients, but means that in each new centre,

the inmate must re-establish systems for staying in contact with the outside world. For example, as described in detail in Chapter 5, when an inmate comes to a correctional centre, custodial officers must validate their legal and personal telephone contact numbers before they put them on their phone card. As previously discussed, this process can be lengthy and may prolong the period in which inmates do not have access to the telephone, and in turn, their lawyer. Clearly, moving prisons means that this delay is even further exacerbated. As one welfare officer observed:

*But if they don't have any money or they're in transit, they're moving from jail to jail, access to those numbers becomes delayed. So for instance if an inmate's at the MRRC, gets classified to another centre and he has an ongoing legal issue, by the time he gets to another centre, it takes another few days to link up. And if he's got a pending court case coming up and he's quite anxious about it and wants to speak to somebody it becomes difficult.*

— **DCS welfare officer, urban prison**

Movement from one prison to another can also slow down inmates receiving post, including letters from their lawyer or other correspondence relating to legal matters. This is illustrated by the following quote:

*And again, whilst you keep moving them their mail is slow because it comes to the centre where you were, then gets transferred to the centre where you're going, and if you get moved again it could then bounce on to somewhere else.*

— **DCS welfare officer, urban prison**

The movement of prisoners around the system also reportedly makes it difficult for their solicitor to visit them in prison, especially as inmates often receive only short notice of a transfer:

*They're constantly moving around a lot of them. And that makes it hard for them to contact people. They might contact their legal representative [who says], 'Okay, I'm going to come out and visit you on Thursday.' And they may be moved on Wednesday.*

— **Custodial officer, urban prison**

In some cases, inmates reported not seeing their lawyer in person until they arrived at court for a hearing because they had moved away from where their representative could visit them:

*Coming from the [South] coast, getting legal wizards is difficult at the best of times. Because it's a long way to travel and they're busy people and*

*everything. So usually, if I'm appearing in court on the [South] coast, I don't get to see the solicitor until I'm actually at the court house.*

— **Langdon, male sentenced inmate, maximum security,  
35+ years, Aboriginal, urban prison**

A study conducted by the Scottish Executive (see Chapter 2) also reported that lawyers faced problems accessing clients in prison due to incorrect information about the location of prisoners who had been moved, and difficulties in getting to prisons in isolated areas (Scottish Executive, 2000, para. 4.4).

Finally, the movement of prisoners to remote locations adds to their expenses in contacting their legal advisers. Whilst remand inmates can make calls to private or Legal Aid solicitors at DCS's expense, convicted prisoners must pay for their own calls to private lawyers and to many of the service agencies and departments:

*When I was there it worked very good actually, but soon after I got moved to X [jail], where it was a little bit further away from [the] Sydney centre. Well it meant every time I talked to my lawyer, it was a little bit more expensive.*

— **Carlos, male sentenced prisoner on protection,  
35+ years, NESB, rural prison**

Given the discussion in the previous chapter about the financial difficulties commonly experienced by inmates, these circumstances may present a very real barrier for inmates in obtaining legal assistance (see Chapter 6).

### ***Transit from prison to court***

A second facet of inmate movement is the travel from jail to court. Inmates may need to attend court directly from their prison, or may be transported in a prison truck to the prison closest to the court they are going to so that they can attend court from there. Our interviewees spoke strongly about inmates' dislike for travelling conditions in the trucks:

*Because they wake, they wake you up 4.30 in the morning, put you in a cell 'til about 8.30, 9 o'clock and you go on, you get strip searched, and you go on a truck. After probably dropping off 50 other at every other court house you get to Downing Centre. And then you get to spend all day in those cells downstairs. You know by the end of the day, by the time you get back, you've done nothing all day but you're so exhausted. Extremely exhausting. When I was going to trial, I was going every single day. ... And it killed me.*

— **Tony, male sentenced prisoner, minimum security,  
24–36 years, NESB, urban prison**

*They [female inmates] actually don't want to go in the truck for like five hours, stay over at some cells in a male jail or something and then go to court.*

— **Non-custodial staff member, urban prison**

In addition to travelling in the much-maligned trucks, moving to another prison for the purposes of attending court, according to our interviewees, causes great disruption as this inmate explained:

*For an inmate to go to court from the country centre to the city centre, the first thing that happens is you pack your gear. So you're in your cell overnight with nothing, 'cause your gear's packed the night before. It goes on escort with you. You lose your job. You lose your visits. You lose your buy-up. You lose your friends. You lose your civility. And in jail, that's everything. You just lost your world. You go to this place. Your property might get lost. Invariably it does. And if it's not lost, it will go there to the next place, and they'll go, 'Oh, you can't have that. You can't have this. You can't have that.' ... 'Cause they've got different attitudes. Well, and then you have your court case, and then you come back again. Or they defer it for a month. So they put you back again. So you go through the whole thing again.*

— **Charlie, male sentenced prisoner, medium security, 35+ years, non-Aboriginal, rural prison**

A few interviewees reported instances of inmates who pleaded guilty to avoid having to travel back and forth to court for a trial. For example,

*I didn't want to go back to X [outer Sydney suburb] court [because] you had to go all the way to X [regional jail] and stay there and then get the escort court truck backwards and forwards. And I had a job down this way and I was happy and settled in where I was and I didn't particularly want to go up there just for a lousy firearm offence ... I knew it was either going to be six or twelve months in prison or a fine. So I pleaded guilty.*

— **Ricky, male sentenced inmate, maximum security, 25–34 years, non-Aboriginal, urban prison**

*I even gone to say court fronting on a blue, and although I wasn't guilty because of the stress and going and coming all the time and being thrown around and getting out of bed at 4.00 in the morning to get to court and thrown in the back of a prison van and treated like a piece of crap, you know, I just said guilty to get it over with.*

— **Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

Accordingly, when attending court is deemed to be so arduous that some inmates appear to actively avoid or minimise the amount of time they spend in transit, this affects their effective participation in the criminal legal process and, at times, their legal outcomes.

### ***Reduction in movement through the use of AVL***

Several interviewees suggested that AVL may be an effective way of addressing the impact of court attendance and transfers between prisons. The Legal Aid Commission uses audio visual conferencing to communicate with clients. In 2004/2005, 15 Legal Aid offices had audio visual facilities and AVL was used 3 691 times to communicate with clients (Legal Aid NSW, 2006c, p. 43). One DCS worker we interviewed argued that:

*If someone from Wollongong has got a client at the MRRC, it will definitely be a lot easier to have it by video conference than to come personally to see one client. It will take probably half a day for the lawyer to come over just to see his client ... instead of spending half a day for one client, the lawyer, if he's got one at Parklea, MRRC, or one at Bathurst, has the possibility in that, within a matter of minutes [he's] conversing with all three clients.*

— **DCS policy officer, head office**

A number of interviewees also suggested that inmates preferred using AVL instead of having to travel long distances to attend court.<sup>52</sup> This is typified by the following quote from an inmate:

*I've heard from other inmates and they reckon it's a great idea. It saves having to go all the way to the major centres for a court case when you can just get on the video link. So their lives are not uprooted.*

— **Charlie, male sentenced prisoner, medium security,  
35+ years, non-Aboriginal, rural prison**

Some concerns raised in this study about the use of AVL are discussed in Chapter 6. However, many inmates commented that the system was preferable to travelling in the prison trucks or having to transfer to another prison to attend court — to the extent that some inmates reported pleading guilty just to avoid being moved. In these circumstances court appearances through AVL would give inmates a better chance at participating in the legal process without significant disruption.

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<sup>52</sup> Please see Chapter 5 for discussion on the use of AVL.

## Lockdown

A final systemic process that impacted on inmates' access to legal information and assistance according to our research was lockdown. Lockdown was discussed earlier in this chapter as a result of staff shortages. However, lockdown is also part of the daily routine of prisons and consequently its impact can be independent of any staffing problems.

The hours prisoners are allowed out of their cells vary from prison to prison, and between parts of prisons, depending upon the classification of the prison or wing. For example, at one maximum security prison inmates are let out of their cells at 8.30am, returning for an hour between midday and 1pm. They are then let out again until 3.30pm, at which time they are locked in their cells for the night (DCS welfare officers, urban prison). This is a fairly standard regime for a maximum security facility. The number of hours spent outside of a cell can be significantly less for those in protective or segregated custody, who remain in their cells other than when allowed out for short periods of exercise or for legal visits (NSW DCS, 2005a, p. 14). The actual numbers of hours inmates with different prisoner classifications spend out of cells are detailed in Chapter 2. Out-of-cell time has declined in NSW since 2000/01, and NSW has the lowest average number of out-of-cells hours for both 'open' and 'secure' custody in the country (SCRGSP, 2007, Table 7A.18). Further, the average number of out-of-cell hours for some inmates is lower than it was at the time of the Nagle report (Nagle, 1978, p. 498). The effect of routine lockdown on legal visits was described by one lawyer:

*I mean the frustration for me is that a lot of the prisons lock down at lunch time ... And it means that I can't see anybody, so I sit there and twiddle my thumbs.*

— Legal Aid solicitor

It was also apparent from our interviews that a disparity exists between the daytime schedule of solicitors and the times that inmates are allowed out of their cell, thereby compromising inmates' capacity to contact their lawyers. In short, lawyers are often at court throughout the period the inmate can make calls. By the time most solicitors are back in their offices and able to converse with clients, the inmates are locked back in their cells where there is no access to telephones:

*Our inmates are locked in at 3.30pm. There is no solicitor who is out of court before 3.30pm. So they have no access to them even if the number is on their phone account.*

— **DCS welfare officers, urban prison**

In lower security correctional centres, inmates are allowed out of their cells for longer periods of time, increasing the likelihood of contacting their legal representative:

*'Cause the phones [are] on 'til ten o'clock at night. And you'd always contact them, say 5.00pm, when they're back at the office, and always get a hold of them.*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

Lockdowns may also intrude upon available time for legal visits or legal advice sessions:

*Times when solicitors can actually come and visit ... say they want to see you at 11.30am. Well, at 11.30am we're locked into our cells until 12.30pm, right. So, that cuts out the time that they can spend with their clients.*

— **Langdon, male sentenced inmate, maximum security, 35+ years, Aboriginal, urban prison**

Solicitors who visit several inmates reported frustration at having to wait for two hours during lockdown in the middle of the day:

*With the hospital at X [jail] the muster is from 11.30am–1.30pm ... Which is really a big part of the day. So if you are not finished you are going to have to come back and you wait two hours in a place where there is nothing around. You can't take that much time out of your day. It's very frustrating.*

— **Solicitor, IDRS**

The need for legal systems to coordinate with DCS was further demonstrated in one example, where a court wanted to arrange a family mediation by telephone conference with an inmate in prison. As the welfare officer described:

*They'll ring up and say, we want a conference with this inmate on the telephone, at this time ... They don't realise we have lock-in times, when the inmates are actually not available.*

— **DCS welfare officers, urban prison**

As in the previous section on transit to court, DCS workers and legal representatives suggested that the use of AVL could address some of the issues facing lawyers trying to telephone or visit their clients during prison hours:

*If you try and make phone contact ... you have to do it through welfare or the area manager and 9 times out of 10 it just doesn't happen, it's too awkward. But, with the AVL bookings it is a formal system where there is a booking on Wednesday at 10.00am for an AVL from Goulburn.*

— **Legal Aid solicitor**

Clearly, as the data above shows, communication with external providers of legal services can be disrupted by lockdowns. Within the prison, lockdowns can also hinder use of those internal systems that support inmates' capacity to access justice such as the telephone system or the prison library. This was acknowledged in our study by stakeholders and inmates alike:

*And obviously when they're locked down they don't have access to phone calls or obtaining information.*

— **Custodial officer, urban prison**

*Because ... we might have had lock down for three days in a row or something and I've got my books full, and everyone's just screaming for phone calls ...*

— **Welfare officer, urban prison**

In summary, there is often a discrepancy between prison operating hours (that is, when it is not in lockdown) and the working hours adopted by external agencies such as legal services and courts. Given their busy schedules, these agencies, in particular lawyers, have difficulties fitting in with prison routines and lockdowns. Similarly, inmates have difficulties fitting in with the work schedules of lawyers who are often in court during the day at the times that inmates have access to telephones. Further, lockdowns may interfere with inmates' use of internal resources such as the library to help them resolve their legal needs. AVL was again put forward as a means of more efficiently delivering legal services in the challenging context of prison strictures such as a lockdown. Moreover, because inmates are assembled prior to the videolink going live, inmates may get more time with their adviser rather than the latter having to wait for the former to be brought into the a visiting area.

## Conclusion

Chapter 1 argued that at law, prisoners are not denied access to justice. Further, through the values and principles that guide the department, DCS is in fact committed to supporting prisoners' access to legal resources and assistance. Our research has identified several examples within the formal custodial setting



of where this has been achieved. For example, DCS has processes in place to take inmates to court for their criminal matter and provides accommodation and access for visits by lawyers. However, our analysis has identified a number of features of the formal systemic environment that disrupt or impede the ability of inmates to address their legal needs.

Firstly, it appears that resources in the form of staff and facilities that support access to legal information and assistance often fall short of the demands placed upon them. In some cases this seemed to be a matter of pure numbers (e.g. only one lawyer for a large number of inmates) and in other cases, there was competition for resources in a system where a number of conflicting priorities operated (e.g. DCS officers are stripped from tasks that underpin access to legal assistance to supply security roles and assistance with criminal matters is more readily accessible than assistance with civil law matters). For inmates, these barriers may mean that they do not have the best chance to receive and utilise timely advice concerning their legal matters.

Secondly, some processes operating in this systemic environment may not be optimal in terms of inmates' capacity to meet their legal needs. For example, sometimes there appeared to be conflict between processes emanating from one part of the prison system (e.g. classification, segregation and lockdown) with those processes geared towards helping inmates obtain assistance with their legal problems (e.g. use of telephones, organising legal visits and using the prison library) resulting in delay or prevention of access to legal assistance. Consequently, whilst there are systems in place to assist inmates with their legal needs, practically there are certain groups or times that that access cannot be exploited. As with the allocation of resources, there appeared to be an element of prioritising those processes that ensured the security aspects of inmate detention over those which support welfare needs, including legal needs. Unfortunately, restrictions in access to legal help sometimes occurred at crucial junctures in an inmate's course of action, such as when they first come into custody.

Thirdly, from the data presented here, there also appeared to be tensions between the procedures of external agencies (e.g. solicitors, barristers and courts) and prison routines (e.g. movement of prisoners to other prisons, transit to court and out-of-cell hours) that rendered co-ordination of tasks aimed at resolving legal issues such as telephone calls, court appearances and legal visits difficult or even impossible. Inmates described not being able to be in direct contact with their legal advisers because the times they were out of their cells clashed

with the times their lawyers could answer telephone calls or be present at the prison. Further, the telephone system designed for inmate use is unidirectional so that lawyers cannot return inmates' calls or easily leave messages. If direct contact between an inmate and a lawyer was made, the conversation may be curtailed because of time restrictions on inmate calls and/or lack of privacy. The AVL system was forwarded by a number of interviewees as a way to improve contact between lawyers and their clients/inmates with the court system, although as noted in Chapter 6 this system is not suitable for all inmates. Other initiatives, such as the recent implementation of a Centrelink outreach service, were also suggested as ways of ameliorating these tensions.

In our discussion of the systemic environment, reference has inevitably been made to players within these systems. Indeed, we have not just spoken about lawyers as key providers of legal help, but have noted how shortages of custodial staff or welfare officers can also affect prisoners' access to justice. This leads us to a further area of analysis and the next chapter of this report: namely the pathways used or the intermediaries that inmates depend upon to access legal assistance and to participate in legal processes. As will be discussed in Chapter 8, prisoners' dependence on intermediaries arise from a number of factors, including the constraints described in this chapter that are imposed by the systems within which inmates must live and function.

# 8 Pathways and Intermediaries

As detailed in Chapters 6 and 7, inmates' capacity to access justice is affected not only by their own personal resources and histories but also by the systemic environment that governs inmates' daily lives and the generation and resolution of their legal needs. A third factor which our analysis identified as affecting inmates' access to legal help, is the *route* that inmates must take to secure this help. In the absence of an ability to act directly, inmates rely to a high degree on other people either to act on their behalf or to be a relay point in the process of preventing, identifying or addressing a legal problem. In other words, many of the processes that constitute the resolution of legal issues for inmates are mediated.<sup>53</sup> Our analysis revealed that there are a number of features of intermediaries and mediated processes that affect inmates' ability to resolve their legal needs. The following chapter will examine the role of intermediaries in inmates' pathways to legal assistance and identify the features which give rise to the barriers which impede their access to justice.

## Why are intermediaries necessary?

According to the data we collected for this study, there are three main reasons why many processes that, in other circumstances would not require intermediaries, do in the case of prisoners. The first and most obvious reason is the very nature of imprisonment. Prison, by definition, physically prevents the person from freely accessing the world outside the prison precinct. Consequently, inmates cannot autonomously, for example, retrieve their property from their leased house, visit a lawyer, or go into a Centrelink office.

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<sup>53</sup> Please note that the word 'mediated' is used in this report to mean the looping of a process through at least one other person as opposed to the strict legal sense of an official mediation process.

Restrictions also exist on movement within prisons whereby certain inmates may not have direct access to particular areas (such as the prison library) or may do so only at certain times. Accordingly, in these cases, an intermediary is used simply because the inmate cannot physically be present.

Secondly, prison inmates may also need to go through a third party because it is part of a procedure set up by an agency, most commonly DCS. For example, as outlined earlier in Chapter 5, the procedure for having a legal visit with the PLS visiting legal advice service requires that a DCS officer place the inmate's name (at the inmate's request) in a book. The inmate is then obliged to use an intermediary to take one step closer to obtaining legal advice because that is how that particular process is structured within the prison setting.

Thirdly, prison inmates may depend on someone else to carry out tasks related to their legal needs because they lack, or feel they lack, the requisite skill(s) themselves. As demonstrated by the list of legal issues faced by inmates given in Chapter 4, prisoners can have substantial and complex legal problems so that understanding the documents, processes and consequences associated with their legal matters is not always straightforward. Chapter 6 also identified that prisoners' ability to understand legal and administrative documents and processes may be compromised by cognitive impairment, poor language proficiency, limited education and/or illiteracy. Further, legal knowledge is highly specialised and complex and even people without a definable disability (but who are not legally trained) may have difficulty fully comprehending this type of information (John Howard, *Society of Canada*, 1996, Part II). Consequently, inmates may approach their peers, their lawyer, correctional officers, or other non-legally trained staff to assist them. Accordingly, intermediaries may become a necessary part of inmates' attempts to address their legal issues, because legal processes and documents may be beyond (for whatever reason) their own comprehension.

## Who are intermediaries and what do they do?

The following quotes give an indication of the range of people who function as intermediaries and the tasks they perform in assisting inmates with their legal issues:

## 1. Custodial officers:

*Inmates may come [to you and] see the psychologist or psychiatrist, because many a times, the court wishes to get a report from these professionals. And then the inmates don't know who to turn to so they come to us and then we then steer them in the right direction. We actually make phone calls to our psychologist, say, 'Such and such needs a report for court, how can he go about it?' And then they then have an interview with the person and take it from there. So many times we are the mediators in between, before they go on to the professionals.*

— **Custodial officer, urban prison**

## 2. Welfare officers:

*So I spend a great deal of time contacting solicitors and saying, 'What's happening?', 'These are the concerns that the inmates have, these are the questions that the inmate has and when are you coming to see them?' You are very much acting as that middle person.*

— **DCS welfare officers, urban prison**

## 3. Library/education staff:

*[SO, WE'VE GOT AN INMATE THAT'S IN SAY, BATHURST, WHO HAS A LEGAL PROBLEM. WHAT DO THEY DO? HOW DOES THE LIBRARY ASSIST THEM?]*

*Well, they would talk to, generally the education staff. The education staff would ask what the query was. They would go to the intranet site, click on Forms. Fill out the form for the person. That would then go through as an email to MRRC. The people at MRRC look at it. Produce whatever information it is they have requested and depending on the urgency and what it is, they would either fax it or post it to the education staff and they would give it to the inmate. So, it is mediated through staff.*

— **DCS library staff**

## 4. Inmate peers:

*But you do hear a lot of talk about cases, because women, inmates in general, can be so confused and overwrought with the situation that they want advice. 'Can you please read my brief, I don't know what the hell it says, where do I go from here?'*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

5. Friends:

*I rang the friend of the family. Yeah and ... he got in touch with that lawyer and the lawyer got in touch with Legal Aid and ... so on, you know. And I got things moving.*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

The quotes above demonstrate who, according to our interviewees perform the role of intermediary. Intermediaries along the pathways to legal assistance could be broadly classified into two groups: professional and personal. The former refers to people who, as part of their job, act as intermediaries for inmates. Examples include DCS officers, prison chaplains, parole officers or workers in government agencies. Note that ‘professional’ here refers merely to the fact that they become intermediaries for inmates through their profession not as an indicator of legal expertise. The second group, on the other hand, become intermediaries through personal contact only; essentially friends, family or inmate peers. Details of how both of these groups function in this role are discussed below.

### **Professional intermediaries**

According to our data, many people who come into contact with inmates and ex-inmates through their jobs perform an intermediary role in inmates’ pursuit of legal assistance. Some or all of the tasks they perform as an intermediary may or may not be a part of their official role. ‘Professional’ intermediaries can be further divided into DCS custodial staff, DCS non-custodial staff and non-DCS workers located either in prison or off-site.

#### ***DCS custodial staff***

Custodial staff who act as intermediaries include Correctional Officers, Case Officers, Wing Officers and Area Managers. This distinguishes them from non-custodial staff (discussed in greater detail below), which are not responsible for the security of the prison.<sup>54</sup> Staff in these positions have varying degrees of seniority and contact with inmates (for example, the area manager has an office outside the wing but will still have in-person contact with inmates whereas wing officers have continuous contacts with inmates in their wing). The current position description for a correctional officer indicates that all have

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<sup>54</sup> Although non-custodial staff are not responsible for managing the security of the prison they are required to prioritise it when their work and security conflict. This theme is further elaborated in Chapter 7.

a common responsibility for the supervision, security and safety of inmates and staff (NSW DCS, 2007). Officers may also be involved in inmate ‘case management’ (see Glossary for definition and ‘Prison staffing’ in Chapter 2).

Although assisting prisoners with legal problems is not a specifically designated task of custodial officers, it became clear in our interviews that these workers performed many functions along inmates’ pathways to legal assistance. According to our interviewees, the types of tasks undertaken by custodial staff to facilitate legal assistance included: processing mail (including legal mail); contacting lawyers to be placed onto inmates’ phone cards; writing inmates’ names in the Legal Aid book; supplying application forms for Legal Aid; paging inmates to Legal Aid appointments; arranging telephone calls to inmates’ lawyers when phone cards are not yet operational; giving inmates information about when they are due in court; retrieving legal paperwork from property storage; supplying bail and other application forms; making bail calls;<sup>55</sup> making referrals to other DCS staff (such as parole and welfare) regarding legal problems; assisting inmates in filling out legal and administrative forms; assisting inmates to understand legal documents or orders; checking for outstanding warrants; and documenting and investigating complaints. This rather extensive list demonstrates that custodial staff are integral to the pathways inmates use to pursue criminal, civil and family law matters.

The degree to which any one role or individual provides these types of assistance varies across people and correctional centres. However, as the following quotes illustrate, they are undoubtedly part of the day-to-day undertakings of custodial staff.

*... if they wish to lodge an appeal and they get the form, some of them have difficulty comprehending the forms ... I suppose they may get a little bit daunted that they have to fill out this stuff. But usually they only have to fill certain bits and pieces, you know. So I can guide them through that, you know, filling out the form.*

— **Custodial officer, urban prison**

*You might need paperwork for an appeal. Right, you have to contact Records and get the appropriate one down. You might need to make a Legal Aid appointment for them, which is made up in Education, which is just a*

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<sup>55</sup> A bail call is a telephone call made to a person nominated by the inmate who may be able to post bail on the inmate’s behalf.

*phone call. They might need to see Parole. They can't go up if they are on remand or high protection. The Parole has to come down. They might need some paperwork out of their property, which is sealed away. And things like that. What else? Make appointments for Parole to interview them. Because Probation and Parole has a lot with sentencing and what classification they're going to be if they get sentenced. Sometimes they don't even know when they're going back to court. Just might tell them it's a week from today or I don't know, it's not on the computer.*

— **Custodial manager, rural prison**

### ***DCS non-custodial staff***

The second group of 'professional' intermediaries are those DCS workers who do not have custodial duties. This would include: welfare officers, health and allied health professionals, prison reception and screening staff, probation and parole officers, education staff, library staff, Throughcare specialists, and Indigenous support officers.

As with the custodial staff, non-custodial DCS staff perform a range of tasks that make them intermediaries for inmates seeking legal assistance. Indeed it appeared (as will be discussed in detail later in this chapter) that there was a significant degree of overlap in the tasks performed by this group with those performed by custodial officers, including assisting inmates with forms and understanding legal documents and processes, and facilitating telephone calls with lawyers. These workers, however, and especially welfare officers, also performed a range of other 'intermediary' tasks including: liaising between the inmate and government departments such as DOH, DOCS, CSA, Centrelink, SDRO, DIAC and non-government organisations such as the RSPCA, crisis accommodation services, and interpreter services on matters associated with their legal issues. Librarians also process inmates' legal information requests (see Chapter 5), which are often related to the relevant legislation and case law.

Again, the degree to which any one role or individual provides these types of assistance varies across people and correctional centres. As mentioned earlier, one prison in our sample did not have a dedicated welfare position – instead the role was assigned to custodial officers. However, the breadth and frequency with which non-custodial staff in other jails deal with inmates' legal issues is apparent in the following quotes:

*So the best way to describe the welfare [officer] position I think, is [that] it's an advocate role and a link between inside the jail and outside the jail.*



*When I say it's an advocacy role, you literally are advocating for them on behalf of everything. You might advocate with the officers, to get something done. You are advocating with the agencies, whether it be government or non-government, with their families, with the system.*

— **DCS welfare officer, urban prison**

*We don't give advice. We only give information. That's a very clear distinction that we have to make in any sort of legal library, is that you do not give advice. You simply provide the information and then they are to take that and speak to their legal advisor.*

— **DCS library staff**

*... well I deal with probationers and with parolees ... I interview them initially and explain their bond conditions or their parole conditions to them and then talk about their issues, whatever issues they're facing, especially those that contribute to their offending behaviour. And we try and address those issues by sending them off to relevant services, whatever services are around. So, yeah, I just sort of gather information and then pass people on.*

— **Probation and parole officer, urban area**

It is interesting to note that in some of these excerpts staff members downplay their role in terms of inmates' legal needs. However, it is also apparent from these quotes that they are an important link in the chain and if, for no other reason than this, they constitute part of the pathway to legal assistance.

### ***Non-DCS staff***

Many of the professionals who perform intermediate roles helping inmates address their legal needs, were not directly employed by DCS, but were from other government departments or non-government agencies. Some are situated on-site at the prison for at least part of the time (such as chaplains and official visitors) and others are located elsewhere. The government departments from which inmates obtain assistance with their legal problems include DOH, DOCS, CSA, Centrelink and SDRO. Examples of the non-government agencies include chaplains, Prisoners Aid Association, CRC, Shine for Kids, homelessness and other welfare services.

Our interviews indicated that non-DCS staff also may facilitate calls that inmates cannot make with their own phone cards and help with form completion. Other intermediary tasks associated with inmates' legal needs performed by non-DCS staff described by our interviewees include: collecting

and storing personal belongings from rental accommodation, conducting financial transactions on behalf of inmates, helping parolees meet their parole obligations, supporting inmates at hearings, advocating on behalf of inmates with officers, putting ex-inmates in contact with legal services, supporting access to children, and writing letters in support of parole applications. The following excerpts again reflect the wide range of activities covered by this group of intermediaries:

*They haven't been able to go back and get their property, you know, who's got their keys? Where's their ID? ... The Centrelink payment's just about due and it's run out... So I know at times the chaplain down there ... we try and leave him with [protection wing] but we'd be in and out there during the week. He's often going to the officers and saying, 'Well look, this fellow needs this fixed up.' and trying to get the officers to do it.*

— **Chaplain, correctional centre**

*Prisoners Aid has a couple of roles with inmates. Firstly, we help out people that are in custody. Which is either collecting or storing their property whether that is from police or hostels or private rental premises. And we also help inmates out with financial transactions like when they first come in. The jail have got money in a Commonwealth account or something and we transfer their prison cash to use for buy-ups and things such as that. We also do emergency financial assistance to ex-offenders and families of inmates.*

— **Prisoners Aid Association**

*And I know it's not law directly, but it's the same with Probation and Parole when we write reports for people for their parole. I always send a copy to the parole board and the parole officer, so often they will look at that and see that the person has got all the supports in place and write a more favourable report. So it can have a direct impact on whether they do get their parole or not.*

— **Staff member, CRC**

## **Personal intermediaries**

Personal intermediaries form the other major cluster of people who mediate between inmates and their attempts to address their legal needs. Two major sub-groups comprise the personal intermediaries group, namely: other inmates, friends or family. Although clearly under no official obligation to assist inmates, these people emerged as significant participants in inmates' pathways to legal assistance.

### ***Other inmates***

Despite being in the same environment and subject to the same strictures as inmates needing help, inmate peers were cited by our interviewees as frequently used means of reaching or obtaining assistance with legal issues. In general this took the form of advice and information. Inmates sought information, advice and assistance from other inmates about: sentencing, prison processes, appeals, lawyers, government processes, court processes, reading legal documents, writing letters, and assisting with library services. A prison may also have an Inmate Development Committee (IDC) comprised of inmate delegates who advocate on behalf of inmates within the prison on a range of matters which may include internal administrative issues.<sup>56</sup> The following quotes are only a small sample of instances inmates recounted in which they had sought the assistance of their fellow inmates:

*Oh, just, you know, talking to other crims, their sentences, you know 'cause everyone says how long you doing and that. You find out whether they got Legal Aid and, you know, people have stories and everything of how they've been shafted, this happened, that happened.*

— **Hugh, male sentenced prisoner on protection, 25–34 years, non-Aboriginal, rural prison**

*[WHERE DO YOU GET YOUR LEGAL KNOWLEDGE FROM?]*

*Sometimes from other inmates ... there's a group of us that are always in and out and we look at other cases, other girls that have gotten sentenced you know. Like for my crime in particular I looked at other girls that are charged with it and I [ask], 'How did you go about it?'*

— **Liz, female remandee, maximum security, 25–34 years, Aboriginal, urban prison**

*Well say traffic offences, [not sure I know] about traffic offences, so you can just say to someone, 'You ever had a traffic ticket?' They say 'Yeah.' And then you can discuss that. See in jail, it's funny, 'cause in jail ... you sort of covered everything 'cause everyone's in there for everything.*

— **Calvin, male parolee, 35+ years, non-Aboriginal, rural area**

It appears that inmates use each other to a significant degree when trying to get information about how to go about a legal process, what they may expect from it, or how to utilise the facilities and procedures of the prison when

<sup>56</sup> See the Glossary for a description of the Inmate Development Committees.

addressing their legal needs. Generally speaking, other inmates are a plentiful human resource. They are often willing and available to help another inmate with their legal issues.

### ***Friends and family***

A final group of intermediaries sourced through personal connections were friends and family. In obvious contrast to inmate peers, these people usually acted as a go-between the outside world and the inmates. Often inmates would receive advice, information or direct assistance from a friend or family member who had professional knowledge on a certain issue but who was assisting in an unofficial capacity. Friends and families acted as intermediaries on inmates' legal issues through: finding, securing, contacting and sometimes paying lawyers; undertaking legal transactions such as signing leases, continuing businesses, and paying outstanding bills or fines; acting under a power of attorney; contacting agencies to cancel or suspend services; and looking after children and pets. The following quotes demonstrate the range of tasks family and friends took on, on behalf of inmates.

*[HOW DID YOU GET THAT [POWER OF ATTORNEY]]?*

*I just send a friend of mine to go to a post office and buy it, costs \$18. And then she sent it in Express Post from the post office.*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban prison**

*I'm ringing the wife who has to ring the bloke at Canberra or Sydney wherever he is and say look me husband is trying to get hold of you.*

— **Matthew, male parolee, 24–36 years, non-Aboriginal, rural area**

*... what I did was I talked to a friend of mine who I went to school with years ago. He works for the RTA ... And he came in for NAIDOC Day last year ... Yeah, I chatted with him, and that's how I got the information ... He just said, 'Look, pay your fine ... and you sit for the written test again.' And I go on a probationary licence for 12 months.*

— **Dean, male sentenced prisoner on protection, 35+ years, Aboriginal, rural prison**

In summary, inmates often use DCS and non-DC staff, fellow inmates and their friends and family for information and errands associated with their legal issues. Imprisonment, administrative procedures and personal skill sets may compel an inmate to use an intermediary along the pathway to legal assistance

in circumstances where they would otherwise have relied upon themselves. Although this meant that inmates were enabled to address their legal issues due to the assistance provided by these people, the use of intermediaries brought with it a range of implications that sometimes hindered their access to justice from the prison setting. The remainder of this chapter will discuss these issues in detail.

## How do intermediaries affect inmates addressing legal needs?

There was no doubt that having somebody to act on a prisoner's behalf, especially with tasks that occur outside of prison, was greatly valued by the inmates. The following quote is typical of how 'lucky' people felt to have others to call upon:

*I mean he had been in jail himself. So he knows what it is like and he knew what to do. I was lucky in that sense that he took care of everything ... that would have been extra stress for me if we didn't have that communication every weekend. He was there from the word go.*

— **Stephanie, female sentenced inmate, maximum security, 25–34 years, Aboriginal, urban prison**

Yet there were also instances where the use of an intermediary gave rise to barriers to obtaining legal assistance. Despite the variation in type and complexity of these mediated pathways and the range of people that acted as intermediaries (as demonstrated by the preceding discussion), according to our analysis the negative impacts of mediated pathways on inmates' access to justice had a number of common features. These could be summarised as:

- ◆ difficulties identifying appropriate intermediaries and pathways to legal assistance
- ◆ scope for discretion as to whether, and to what extent, assistance is given;
- ◆ delay involved in using intermediaries
- ◆ risks associated with being dependent on a third party to obtain assistance with a legal problem.

Each of these aspects of the use of intermediaries along the pathways is discussed in turn below.

## **Identification of appropriate intermediaries and pathways to legal assistance**

As the observations below indicate, one of the first issues confronting inmates when needing legal information and advice was how, once in prison, they were to obtain it. It seems that although it may be clear to the inmate that they need to go through a third party, there appeared to be a significant degree of confusion about who the correct third party should be. The following were typical descriptions of the difficulties inmates experienced in pursuing legal issues:

*... because you're not at liberty, the process is laborious, and the information is not available to you as to how to go about it in the first place. So a lot of inmates are just in the dark as to what their rights, obligations and responsibilities are.*

— **Aaron, male sentenced prisoner, minimum security,  
35+ years, non-Aboriginal, urban prison**

*[HAVE YOU SOUGHT ANY ADVICE ABOUT THOSE DEBTS?]*

*No, 'cause I haven't got a clue who to call or what to do, all that sort of stuff. I mean, they don't tell you anything in this place. Just, what things you can access or, you know, how you go about doing things.*

— **Jane, female remandee, minimum security,  
35+ years, non-Aboriginal, urban prison**

Clearly, for Jane, the lack of information about who she needed to contact in order to deal with her debts meant she did not pursue her debt matters at all.

In general, however, there were two major elements which contributed to difficulties in identifying appropriate intermediaries: lack of information about pathways to legal assistance and a fragmentation of responsibility.

### ***Lack of information about pathways to legal assistance***

The first issue that seemed to emerge from the talk of people's confusion about where they should go for help is a claim of a lack of information about pathways to legal assistance. From our interviews with DCS staff, it does appear that some formal opportunities exist for inmates, especially those new to a facility, to find out where they may go for assistance. These include attending an induction process and being given a copy of the *Inmate Handbook*, a DCS publication.

*And the induction is something different again; it's not all one thing. Induction is the provision of information that people are required to have under legislation. So things about the rules of the centre ... so we have things*

*like inmate handbooks. We have a state-wide handbook ... they should all have a local handbook.*

— **Non-custodial staff manager, urban prison**

However, our interviewees indicated that, in practice, there was some variability as to whether prisoners could capitalise on those particular pathways to legal assistance. For example, a DCS staff member described a breakdown of the induction process at one prison:

*[The] Intensive Management Unit; That used to be where all our new receptions were and then they went down to the 'M' wing. There they had a talk ... I think it was three days a week, Monday, Wednesday and Fridays. The officers had their talk with them when they first came in; tell them exactly what to do, how the right wing works. They'd run a video 'I'm in Jail Now', that kind of thing ... [Now] the video thing doesn't work. We've got a new video which apparently is somewhere. We don't know what happened to it. So it hasn't run since the last four months. So the inmates don't get to watch the video. We tried to do the Offender Services and Programs talks. It was going for a while and then it got to the stage where I was just going down or somebody else was just going down ... The officers were there all the time [but] they never, ever did their talk, which they should do to every inmate that first comes in, but they don't. The Governor's aware of it and [she/he] is trying to get something in place to get it back. You know, because the inmates knew what to expect. These guys don't know anything now.*

— **Non-custodial staff member, urban prison**

Custodial officers from two different prisons made the following observations about the *Inmate Handbook*:

*Some of [the information in the handbook] doesn't apply to [this prison] ... I say, don't read that then it's outdated. Which it is. There's a lot of things like that in the book that just doesn't apply to us.*

— **Custodial officer, rural prison**

*... we should have more information booklets given out. Because I think it's a requirement that inmates are given access to this, but I've never seen it actually done because I don't suppose people have been asking for them, but ...*

*[WHAT SORT OF INFORMATION HAVE YOU GOT IN MIND THERE?]*

*About what facilities are available inside the jail, for what reasons. If they ask for it, they get told, but if they don't ask for it, well who cares, nobody bothers.*

— **Custodial officer, urban prison**

Accordingly, the inconsistency with which information is available on pathways to legal assistance and the variability between prisons in pathways themselves may hamper inmates' efforts to address their legal issues. Although there are some means by which inmates may learn about pathways to assistance, those mechanisms do not always function effectively to enable the new inmate to know who to go to with a legal problem. Previous experience in the corrections system may, however, ameliorate the lack of formal mechanisms for imparting information (as discussed further in Chapter 6). However, inmates are often moved from correctional centre to correctional centre, even during times when they are trying to address the criminal issue for which they are incarcerated, as Chapter 7 described. Consequently, local variations in terms of administrative procedures and pathways to assistance may present even experienced inmates with problems in the absence of formally available guidelines.

### ***Fragmentation of responsibility***

Beyond the provision of formal procedural information about how to gain assistance with a legal issue, it appears that there are other practices that serve to confuse the pathways to legal information and advice. Note that in most cases the first link in the chain to reaching legal advice, information or participating in a legal process usually occurs within the prison, consequently much of the following discussion centres on processes occurring there. However, there were also examples of this phenomenon in other parts of the justice system that affect inmates' ability to satisfy their legal needs. These will be included where appropriate.

In addition to the dearth of formal information described above, the ability of inmates to identify an appropriate pathway or intermediary seemed to be compromised by an apparent fragmentation of responsibility as to who may be approached for assistance with a legal problem. Note the assistance sought at this stage was usually not legal advice as such, but more assistance with a referral, obtaining or lodging a form or making a telephone call. However, the importance of this contact as a first step was crucial to resolving legal issues.

### **No single designated contact**

Fragmentation of responsibility was generated through a number of practices. Firstly, inmates could (and did) approach any number of people given a legal problem. That is, it seems in many instances there was no central or set member of staff who was approached for legal assistance, resulting in inmates approaching a range of people for assistance:



*I find, yes, the officers are the first stop. Inmates know enough to know which officer knows. So they might go through three officers and go for one that actually has the information.*

*[HOW DO THEY KNOW?]*

*Experience.*

— **Custodial manager, rural prison**

*With Legal Aid, when we talked about the referrals for them, those come from wing officers, welfare officers, other staff members. So managing it is not down to one discipline. So it's harder to then pass on to somebody else.*

— **DCS welfare officer, urban prison**

Multiple entry points to obtaining assistance for legal problems and their resolution among a number of people was not confined to DCS. In the following excerpt, an DCS staff member talks about the confusion around getting legal advice from the ALS.

*Well you've got the ALS; they also cover the family prisoner support people. Well they're actually filling in as field officers, legal field officers. And basically, it gets confusing for the girls as to why these, these people are coming in, whether or not they're there to, to sit there and have a chat or whether they're there for legal matters.*

— **DCS client services officer, head office**

On the one hand the practice of having no one central contact point could be seen as providing a range of opportunities for the inmate to commence dealing with their legal issues. On the other hand, it can obscure responsibility and/or result in the inmate taking a scattergun approach, whereby the services of several people are used on the one problem. As one interviewee explains:

*And I mean inmates will do it. They'll go to you, and they'll come to me and they'll go to that chaplain, they'll go to the Throughcare worker, and we all find we're running around for this fellow. So it, it gets a bit messy.*

— **Chaplain, correctional centre**

Later, she attributes this confusion to the lack of a designated welfare position at this particular centre:

*I still think that must be a drawback at [present jail], not having a clearly defined welfare [position]. 'Cause I think at times, everybody's been dabbling when it needn't be.*

— **Chaplain, correctional centre**

Accordingly, it would seem that there are multiple pathways and intermediaries who may assist an inmate with a legal problem. The appropriate pathway, however, is not always immediately apparent, with the inmate pursuing several pathways (some of which may be inappropriate) in the hope that one route proves fruitful.

### **Sharing of tasks**

Fragmentation of responsibility and the resulting uncertainty about who is the best intermediary may be further reinforced when tasks assigned to one group are taken on by another group, in the interests of helping the inmate. The following quotes illustrate the circumstances in which our interviewees witnessed such practices:

*... Nine out of ten bail calls I do, because it's not worth arguing with the officers to get them to do the bail calls because they say, 'I don't have enough time'. And I say, 'Make the time because that person can be out in a couple of hours'. So you know, if they come to me for bail I say, 'It's not my job but I'll do it for you this time'.*

— **Non-custodial staff member, urban prison**

*And I mean, we're not supposed to sort out money for Centrelink debts either, but you know that there's nobody else to do it. You know that the client is in jail and has no capacity to do it from within jail. But if somebody doesn't do it you know there's just going to be a worse mess at the end. So, I think you do whatever you can to fix it.*

— **Worker, CJSN**

As may be seen by the quotes above, there are a number of examples whereby, to assist inmates with their legal issues, an informal system compensates for breakdowns in the formal system. An unintended consequence in the quest to ensure that inmates receive the help they need when they need it, however, is that the delineation of responsibility between stakeholders for particular tasks becomes blurred.

Lines of responsibility were further obscured by reluctance by some inmates to approach custodial officers for assistance where they are the designated contact. Accordingly in situations where custodial officers were the formal designated contact to initiate assistance with a legal issue, some inmates were still inclined to use other pathways:

*I think the tasks these people do are different because of the way the inmate looks at [them]. They can look at me and I'll do this thing for them. But they can look at Sister 'X'; she's doing the exact same thing but the inmate feels better in himself that it's the nun doing it and not the screws. I think a lot of it, we could do the same job, it's just the inmates benefit, and they feel better that this other person's doing it.*

— **Custodial officer, rural prison**

The challenge to prison culture of approaching an officer for assistance (as discussed in detail in Chapter 9) further undermined consistency for pathways to assistance with legal problems. Although not inevitable, in practice, there is evidence that tasks that might otherwise routinely and reliably be conducted through custodial officers would again be re-routed through other staff, again fragments responsibility. Consequently, out of a range of motivating factors, the sharing of tasks that have been designated to one staff function leads to confusion about the most appropriate pathway to legal help.

### **Variable knowledge among staff**

The final theme that emerged when we investigated the mechanisms that contributed to the fragmentation of responsibility among interviewees was the variable knowledge among DCS staff about pathways to legal assistance. In addition to welfare staff, custodial officers were often asked for assistance with legal problems. However, the variation in confidence in dealing with these requests is apparent from the following excerpts:

*'Oh yeah, I need Legal Aid.', 'Have you got somebody?' 'No.' 'Alright, I'll make an appointment for you, stay here.' ... So then an appointment has been made in his presence. ... Now some of them do come with in-depth questions, which I don't even attempt to answer. Because, here again, it's not my area of expertise, I will end up giving some wrong information. You know, and if something went wrong, I'd hate to be feeling bad because I gave him the wrong information. So yeah, it's basically just channelling people to the appropriate areas as a wing officer that's what I do.*

— **Custodial officer, urban prison**

*[IF SOMEONE HAS A LEGAL ISSUE, WHERE ARE YOUR REFERRAL POINTS?]*

*Well if it's an Aboriginal inmate with family problems I'll refer him to 'X' ... the [Indigenous support officer]. And she can generally refer them to other people that they need. She has the training and the knowledge in that area*

*for the legal side of it. If it's other inmates, I can refer them to any number of counsellors that we've got here. They've got a lot more access to people in education [who] know the legal side of it. So they could do their referrals from there. But I couldn't refer anyone. I wouldn't know how.*

— **Custodial officer, rural prison**

Not surprisingly, inmates were aware of a certain degree of variability in the help they could obtain from prison staff:

*Knowing about your case and you want to go and see the area manager and find out what's going on. It's hard to see them. And if you've got sentenced and they've stuffed up, you don't know, you know. Sometimes we don't understand the judges what they say. We come back and ask our officers. Some can't help us, some can help us.*

— **Wahib, male remandee, minimum security, 25–34 years, NESB, urban prison**

*... like you'd go up and see the Welfare and that and they'd help you, 'cause it's their job to help you. But other than that the officers aren't very supportive. You know, they don't have much advice 'cause they don't know what goes on.*

— **Gary, male parolee, 25–34 years, Aboriginal, rural area**

In many cases, it was not for want of knowing:

*But sometimes I do wish I had some knowledge to be able to answer them. You know, some knowledge with some confidence to be able to give them a response rather than, you know, 'Go and see Welfare, speak to your solicitor, I'm only a wing officer.'*

— **Custodial officer, urban prison**

It seems that DCS staff do not receive training as to how to aid inmates with their legal problems.<sup>57</sup> What officers do know, it seems, is gleaned from experience. As one officer explained:

*[IN TERMS OF PEOPLE BEING DIRECTED AROUND, FOR LEGAL ASSISTANCE AND SO ON, IS THAT A RECOGNISED PART OF YOUR ROLE?]*

*No ... I think it's just our role in general is ... if someone asks you a question ... you help. But I don't think it's part of your role to do this, this and this. No,*

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<sup>57</sup> This is not to suggest that DCS staff, or any non-legally trained staff, should be expected to provide legal advice to inmates. Rather, stakeholders seemed to be interested in having more knowledge about where to refer prisoners on to.

*it's not. It's just a general part of your job. It's not a particular requirement or anything. It's just an informal part of our job ... Because I mean if we're a face here and they need to know something, they've got to ask us; we're the only ones there. Oh well if they see a welfare officer they'd probably ask them. But if we're the only ones here of course they're going to ask us. And all my knowledge about what goes on is stuff that I've just learnt while I've been here. You know, and I've been here for nine years, so ... It's just stuff that I've picked up along the way. It's not, I don't get told any of this stuff. And I've had no experience with the legal system myself. So ... you know, it's all just stuff that I've picked up.*

— **Custodial officer, urban prison**

As a consequence custodial officers may be hesitant about providing guidance to an inmate. In preference, as alluded to above, they tended to refer people to welfare. However, welfare officers highlighted how the knowledge they use to assist prison inmates with legal problems is also often dependent on their own backgrounds and expertise, which varies from officer to officer:

*One thing with Welfare as a discipline is that you have a huge range of qualifications and experience... depending upon that individual's background, level of experience [and] higher education level ... For example, X [other welfare officer] actually comes from a very legalistic background. A lot of his positions have been very legal based and he has a particular skill in Victims Compensation. So he is very knowledgeable [about] that ... So if we get someone like that, we can send them to him. But you can see, that if that inmate was in a jail where someone didn't have that knowledge or expertise, he might not get the same level of assistance he could get here.*

— **DCS welfare officer, urban prison**

Custodial officers and welfare staff were not the only roles where the level or type of assistance they could offer varied. A couple of interviewees also made reference to variability in assistance available in the prison library depending on the person (who may be staff or an inmate clerk) occupying the role.

*... X [jail] was great. You could actually go into the library there, talk to the law clerk, tell him your problem. He would have it for you, he'd get the stuff to work and actually help you with it, and help you understand. And then actually be able to give you time to contact the lawyers who would actually ... have some expertise in that area and or [be] willing to help you. Doesn't happen here. You feel like you're in the wilderness.*

— **Charlie, male sentenced prisoner, medium security,  
35+ years, non-Aboriginal, rural prison**

*When I came, there had been various correctional centres that had developed a little collection because somebody was interested in it at the time. So they would have some books or some of them would have various law CDs. But basically they weren't being used because that person had moved on. That person didn't know how to use them. They were sitting on the shelf. They weren't updated.*

— DCS library staff

Accordingly, the actual assistance with legal issues available through two main intermediaries groups, custodial and non-custodial DCS staff, varied with knowledge each individual officer possessed. Further, although legal information was a major area for which inmates wished to access the library, staff may or may not be in a position to assist. DCS personnel do not, according to our interviewees, receive any formal training on how to help inmates obtain *legal* information and assistance and therefore relied on the knowledge they gathered through the years they had spent at their job.<sup>58</sup> From these data, the impact of variability concerning the knowledge of people who may provide assistance to inmates was two-fold:

1. where there is a lack of knowledge, this acts as a barrier because inmates are dependent upon DCS staff and others in order to address their legal issues, and in some cases only do so by finding out the next step through these intermediaries. Therefore if the intermediary does not know, the inmate cannot progress their issue
2. because of differences in knowledge and experience, the pathway to assistance becomes unclear and/or less reliable. That is, prison inmates may have difficulty in identifying the correct person to act as an intermediary because people performing the same role (e.g. custodial officers and welfare officers) may in one case have knowledge about how to follow up a legal issue, but in another they do not know the requisite information.

### ***Summary***

Consequently, one of the barriers that inmates encounter in getting legal information and advice and participating in legal processes is the fact that they need to find the right intermediary, but there can be substantial confusion about where to go. The confusion seems to have a number of contributory

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<sup>58</sup> Since our field work, some training has been provided to relevant staff and inmate clerks on the provision of LIAC information. See Chapter 10 for more information.

factors, namely occasional breakdowns in formal sources of information such as induction videos and the provision of the *Inmate Handbook*, the informal division of labour in principle and in practice among DCS staff and other non-DCS workers, and the variability in knowledge among those who can potentially assist. Thus, for an inmate unaccustomed to prison processes or the processes of a particular prison, knowing where to start in addressing an issue with legal implications may be unclear, inefficient and involve many dead ends.

However, even for the experienced prisoner, knowing how to obtain legal information or assistance may be compromised because there is inconsistency in how much help stakeholders can provide and who provides it: that is, the pathways may vary from prison to prison, wing to wing and day to day as knowledge and informal agreements shift with the different personnel. Yet prison necessitates that inmates go through intermediaries rather than act on their own behalf. As a consequence, they may waste systemic resources by approaching several people in the hope that one may produce the desired result, waste their own time heading down the wrong path or abandon the pursuit altogether because they simply do not know where to go to next.

### **Scope for discretion with assistance**

A second feature of mediated pathways that functions as a barrier for inmates trying to obtain assistance with a legal problem concerned an apparent inconsistency and/or unreliability in the provision of help. The first section of this chapter clearly demonstrated that many people were extremely helpful in their roles as intermediaries, often going beyond the duties of their role to assist inmates with their legal needs. However, it was also apparent in our interviews that assistance was often characterised as discretionary. In some cases, it appeared that the inmate was at the mercy of other peoples' willingness to carry out a task or pass on a message. The first examples illustrate this in relation to custodial officers:

*The rule here is you're not obligated to do too much but we try and facilitate it ... I'm not obligated to chase his lawyer. I'm not obligated to put him in contact. I'm not obligated to chase his paperwork. But we try and do it, all right? There are limitations; I mean you can't spend all day every day on them.*

— Custodial manager, rural prison

*I don't really think that it's deliberate but I do think you're at the mercy of officers; some are very conscientious and really do it really well. Others couldn't care less and I think there's a bit of that.*

— **Chaplain, correctional centre**

The next comment came from a legal service provider and suggests how prison staff are perceived to directly affect the flow of work to legal service providers:

*I think it really depends on how much the prisons are prepared to help you ... [prison] is really good, [another prison] is exceptional, the staff there. And depending on how the staff, the program services or the [DCS] view you, your service or their place in the world, certainly impacts on how many clients you get and how easy that process is.*

— **Legal Aid solicitor**

The following comments from inmates illustrate the sometimes unpredictable nature of assistance:

*[GETTING ACCESS TO A LEGAL ADVISER]*

*If they want to ring them they'll ring them. If they don't, they'll tell you, 'Yeah, couple of days, we can do it in a couple of days.'*

— **James, male sentenced inmate, minimum security, 24–36 years, Aboriginal, urban prison**

*Access to phone was denied me ... I'm not being vindictive and I'm a fairly objective human being, and I realized my particular instance, it was unique in a sense, but I found that your rights as a prisoner depended on the mood of the person working his shift as a corrective services officer in your pod. It all had to do with your rapport with that, those particular people.*

— **Ryan, male parolee, 35+ years, non-Aboriginal, rural area**

According to a contemporaneous position description, custodial officers' key accountabilities include '*... a range of duties that provide for the safety, security, welfare and rehabilitation of inmates in accordance with Departmental standards of development and confinement*' (NSW DCS, 2007) and therefore assistance with legal problems could be interpreted as falling under this general requirement. However, the quotes given above suggest that beyond a general responsibility to assist inmates to facilitate their needs, there appears to be some scope for discretion in providing assistance.



Although many of the comments made by the interviewees in this study on this theme related to correctional officers (if for no other reason than they generally are the most convenient and likely person for inmates to approach in the first instance) the matter of the scope for discretion was not isolated to them alone. The following quote describe this issue in relation to an external agency:

*Look, I think a lot depends on your DOCS worker, I've decided. Because I've had another fellow who, his DOCS worker seems to be wonderful and they facilitate even trying to bring his child to X [prison]. I had, he's out now, another fellow who drove all the way from Sydney with the children ... But anyway, they brought the child to see him. Then you have the other side where they can be really difficult.*

— Chaplain, correctional centre

Hence, there was a feeling among our interviewees that, deliberate or not, assistance with legal issues was an area within which intermediaries had an element of discretion. Although the parameters of such a discretion varied from situation to situation, the concept had considerable resonance among the interviewees.

### **Summary**

Our data indicates that inmates commonly depend upon non-legally trained intermediaries to provide or link inmates with assistance with their legal issues. DCS and non-DCS workers, friends and family, and other inmates, were more often than not part of the pathways inmates took to access legal information, obtain legal advice and representation and participate in legal processes. However, there was evidence that inmates' success in pursuing legal issues though such channels pivoted on the disposition of the person acting as the intermediary. The impact of this dependence was, firstly, the inmate did not always feel they received the assistance they sought; secondly, it engendered scepticism about whether assistance would be forthcoming, particularly from custodial staff; and thirdly, contributed to the fragmentation of assistance with legal problems (discussed in the detail in the previous section). Whilst it is clear that many intermediaries provide the best help they can despite the constraints of multiple obligations and tasks, the scope for discretion in providing assistance with legal issues means that such pathways in practice are less reliable.

## Delay involved in using intermediaries

Delay was another feature of inmates' dependence on intermediaries to access legal help. Many inmates and stakeholders described how the need to go through one or more intermediaries to reach legal help usually significantly prolonged the process. The following quotes illustrate this view.

*[DID YOU HAVE ANY PROBLEMS GOING THROUGH YOUR EX AT ALL, IN TERMS OF GETTING THE INFORMATION?]*

*Oh, it's like, you know, months, months later.*

*[AND WHY WAS THAT?]*

*It's because, by the time she drops it in and ... they go through; by the time it gets to me it is three weeks you know, four weeks.*

— **Abdul, male sentenced prisoner, minimum security,  
25–34 years, NESB, urban prison**

*The Legal Aid people they'll get a secretary who'll say they will call. If they can't call back here obviously they will write to you or ... once again it's late, they don't know where their cases are.*

— **Leroy, male remandee, medium security,  
35+ years, Aboriginal, urban prison**

Many interviewees gave examples of the delays that occurred when going through the welfare pathway in particular. The comments were not critical of welfare officers as such, but noted the prolonging of processes when using this particular pathway:

*I mean they've only got a limited number of phone calls they can make on their phone cards. If they want to do it through Welfare, they've got to get on the list and there's probably not enough welfare officers to deal with all the stuff that comes from inmates so that normally entails a fair bit of a wait to see a welfare officer and get something done. And just because you get to see them and the phone call is made, doesn't mean you get to speak to the person that you needed to speak with. So you've got to rely on people getting back [to you] and it all gets very convoluted. And obviously people get fairly frustrated with that, quite reasonably. And things that, maybe shouldn't take too long, end up taking a hell of a long time. So I think the ability to directly access who they need to speak to is a big problem.*

— **Prisoners Aid Association**

*If an inmate comes to me with a query and I can't answer that question, I need to contact certain people. Many a times we can't because they are either not*

*in jail at that particular time, they are visiting somebody else, or they say, 'Fill in the form, fill in the referral form.' You fill in the referral form, it goes in the box, the inmate is then left in limbo. ... Generally Welfare, they empty those boxes every day. But then they might not get the result of those queries for the inmate. And the inmate then comes the next day and says, 'Chief, what about this thing, what about that thing?' 'Oh, no, the Welfare has taken it.' 'They haven't contacted me Chief.' I know they're probably busy, they're probably doing this and that and that, so it's the, the link between all the different sections that, it just takes time for it to come back to the inmate. And they are the ones, you know, waiting to know what's happening with them.*

— **Custodial officer, urban prison**

Given many comments similar to those given above, there seemed to be consensus that although welfare officers were helpful as intermediaries, it was a route that inevitably entailed delays. However, delays also occurred when other intermediaries were used. For example, library workers described the delay they were part of because of a lack of direct contact with inmates making requests:

*Some of the things they want to know ... see this is from outside, from another jail, I don't get to talk to them. If it's something a bit 'way out' and they're here, I can call them up to the library and have a chat to them. And sometimes it's nothing ... to do with what they've written down.*

*[BUT IF THEY'RE FROM ELSEWHERE?]*

*I have to work with the education officers, and I ring them and then they have a chat to them, so it's all a bit long winded.*

— **DCS library staff**

A lawyer describes a similar problem when an inmate requests pro bono assistance:

*Another factor contributing to a delay in getting pro bono assistance is poor literacy. A request for assistance may come which does not contain enough information or any evidence to support an appeal, or is indecipherable. We then have to contact the inmate by phone [through the welfare office] or by letter to get more information. This all takes time.*

— **Community Referral Service, NSW Law Society**

Here we see an interaction between an inmate's capacity in terms of skills in written language and the use of intermediaries. In this case, if a request is poorly expressed, as it may often be given the level of prisoners' communication

skills (as described in Chapter 6), the relay network required to clarify the request can result in significant delays occurring in securing legal assistance.

In terms of impact, delays associated with the use of intermediaries may discourage some inmates from carrying out a task in relation to a legal problem.

*A lot of them don't like to leave the unit [to see a lawyer]. It's very hard for them to leave the unit. If they leave the Unit they have to have a reason. And they've got to explain that reason to at least four people. And any one of those four people could knock them back to get to Education. It makes it a long drawn-out process. It makes them very uncomfortable and they get annoyed. So rather than go through that, they just won't bother.*

— **Custodial officer, rural prison**

The above example demonstrates that even the simplest of activities may need to be facilitated by others. However, there was a sense expressed by some respondents that inmates' own expectations may exaggerate the feeling of delay:

*From their point of view it's always urgent. Even a pillow is urgent, you know what I mean. So, it's always urgent. And they want a result yesterday, you know, as quick as, you know. It's always important for them, it's always important.*

— **Custodial officer, urban prison**

*... I suppose they think it's supply and demand outside. ... But sometimes we sort of say to them, 'We have to make an appointment to go and see our solicitor and it might be two or three days, it might be a week before we can get in to see him.' And they sort of look at you, and you say, 'Yeah, that's how it really is outside.'*

— **Official Visitor, rural prison**

A custodial manager further comments that, in the case of inmates, the stakes are somewhat higher when the object of a process is to get out of jail:

*... it's not a good system but that's the way it is. But that's part of the jail. Probably nobody's fault from the outside. I know sometimes I want to see my lawyer on the outside; I've got to wait a week. It's just the way it is. But then I'm not locked up trying to get out.*

— **Custodial manager, rural prison**

However, the impact of the delays may amount to more than stress and anxiety; it may mean missing out on an opportunity to address a legal issue:

*An example is if you needed to contact...the courts...to make applications in relation to appearances or that sort of thing ... [through] ... Corrective Services. The process that is put in place for you to deal with it is slow and laborious, and quite often inmates will end up having failed to appear on their record because of a lack of response from Corrective Services.*

— **Aaron, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, urban prison**

*They say, 'Oh, the Legal Aid comes in once a week, wait until you see that.' ... But you know what I mean, blokes go to court within that week.*

— **Neal, male remandee, minimum security, 25–34 years, non-Aboriginal, urban prison**

*X [jail] [is] very ordinary when it comes to law books. MRRC, I went in there, they have quite a lot, so I asked about it here, they advised me that I had to fill out the form, it would get faxed off to MRRC, they would do the research if they have appropriate books. That was last Monday that I put in the request.*

*[SO YOU PUT IN THE REQUEST AND YOU'RE STILL WAITING?]*

*And I'm out of here when I need to go to court.*

— **Justin, male remandee, minimum security, 25–34 years, non-Aboriginal, urban prison**

In summary, intermediaries are an integral part of inmates' attempts to obtain legal information, representation and participate in legal processes. However, the conditional nature of the mediated pathways inmates use to address their legal issues often delays resolution which may in turn compromise the outcome. Further, delay was exacerbated the more a process was mediated. This could happen serially as different people cycled through the same relay point (e.g. when an inmate has gone through several different people to initiate a process) or sequentially, where one process involves several different relay points. Moreover, sometimes the delays may mean that a legal matter goes beyond the time limit for action or that preparation for a legal process is significantly compromised. Although there may be systemic reasons for a process to take the time that it does (see, for example, 'DCS facilities' in Chapter 7), and there's a suggestion that inmates expectations may exaggerate the perception of delays, the outcome for an inmate is that a pathway taken inside prison is likely to be a much lengthier road to legal assistance than it would be outside of prison.

## **Dependence and intermediaries**

A final aspect concerning the use of intermediaries to assist with legal issues is the dependent relationship this generates between the inmate and the other person. Because inmates are often forced to use intermediaries, and the tasks performed by them are essential to accessing justice, the inmate's legal fate consequently often lies beyond their direct control:

*[AND YOUR ARRANGEMENT WITH YOUR DE FACTO ... THERE'S NO LEGAL ISSUES THERE, [AROUND] SHARED PROPERTY SOMEWHERE OR SHARED CAR OR SHARED LEASES ON TVS OR ANYTHING LIKE THAT?]*

*No, not that I'm aware of anyway. Probably, she might be using my name ... I wouldn't have a clue.*

— **Mark, male remandee, medium security, 25–34 years, non-Aboriginal, urban prison**

## ***Exploitation***

In this study, instances where the power conferred upon an intermediary has led to exploitation creating a barrier to justice, were raised mainly in relation to personal intermediaries: that is, with other inmates, family and friends. Tasks taken on by these intermediaries are, as demonstrated in the introductory section of this chapter, quite different from each other. Consequently, the form that the misuse of power as an intermediary took, according to our interviewees, was also different.

## **Assistance from other inmates**

Inmates who cannot read or understand documents or processes either remain uninformed or must ask someone else to assist them. Given their segregation from the outside world, the most readily available sources of assistance are custodial staff, welfare or other civilian staff or other inmates. As discussed earlier in this chapter, inmates often relied on their peers to assist them and valued the help they received.

However, they were also aware of an inherent risk in disclosure for the inmate seeking assistance, in particular with sensitive material relating to a pending criminal case:

*... unfortunately there is a real atmosphere within correctional centres where, whether it be with your pending legal cases, something that you brought in from outside, or something that occurs within the centre, it can be unwise to*

*... speak about it. Because a lot can get lost, or added on, in the transference of information. And that can have an impact on the case.*

— **Noeline, female sentenced prisoner, age unknown, non-Aboriginal, urban prison**

*Don't tell too many crims about your case, 'cause so many crims will, you know, try to get brownie points or try to get out early by giving evidence against this person if they say too much to them, you know.*

— **Mike, male sentenced prisoner, minimum security, 35+ years, non-Aboriginal, rural prison**

In the next example, a non-DCS worker describes a situation where the inmate intermediary directly used the help they provided as leverage over the inmate who requested assistance:

*Like I've got an example that's happening now, and well one fellow you know, he helped him out and that but then it was, well you know, 'I need two packets of cigarettes' or you know, 'I'll have', he needed an address or phone number or something of outside family. And so it's just that difficulty you know of ... a vulnerable inmate being taken advantage of by another fellow just when they are ... trying to get a bit of legal advice.*

— **Chaplain, correctional centre**

The following excerpt from an interview with the Centrelink Prison Servicing Unit relates how procedures governing inmates' applications for post-release crisis payment were modified after concerns arose over the potential for confidentiality breaches when inmates helped each other to complete benefit forms:

*So they're going to get another inmate to fill out their form, which is super dodgy, in terms of confidentiality, security, privacy and stuff. So ... we thought the one-on-one intensive stuff [would be the best approach]. So, as it's developed, we found that early engagement/early intervention inside has made such a difference and it's so reassuring.*

— **Manager, Centrelink**

In this case, instead of leaving forms for inmates to complete themselves, Centrelink now attends the prison and gathers the required information from inmates directly so that the need for inmates to disclose sensitive information to their peers is avoided.

Consequently, whilst fellow inmates may provide an important stepping stone in the pathway to legal assistance, certain vulnerability can occur (e.g. when another inmate has access to information about the prisoner's offences,

which can then be used to gain an unfair advantage). In an environment where information about other people is a valuable commodity, disclosure of sensitive legal information to intermediaries may be a risk to inmates' ability to access justice.

### **Assistance from friends and family**

The introduction to this chapter demonstrated the frequency with which family and friends performed crucial tasks for inmates as they pursued legal assistance. There is no doubt that family support was a resource that was heavily relied upon and missed when no longer available. However, our interviewees also gave a number of examples where these personal intermediaries had taken advantage of the position inmates had entrusted to them in dealing with their legal issues or potential legal issues. In the first examples, this breach of trust occurred in the area of money:

*Like, 'I'll sell these things and I'll keep the money for you when you get out'. There's some, but the inmate knows that the sister has had an overseas trip, and added an extension to the house ... so there's some doubt that that money is actually being quarantined.*

— **Legal Aid solicitor**

*He went into jail, he's got a \$7 000 disability support pension debt because the pension didn't stop being paid when he went into jail. It was his step-father, who, because the step-father had managed his affairs before [he] had access to his account and was withdrawing the money.*

— **Caseworkers, Welfare Rights Centre**

In the above examples, family members were asked to take care of the inmates' money which was then used by the intermediary themselves. The following examples show that further debt was also incurred because of bills that the inmate had requested to be paid remained unpaid:

*I know from when I used to work at Energy and Water Ombudsman NSW... dealing with prisoners who had left their homes in the hands of their friends to look after who then ran up a giant electricity bill and they're the ones having to deal with the debt.*

— **Policy officer, HPLS**

*Once I went in; I had trusted my neighbour. He was supposed to pay my telephone bill. I left him my keycard, silly me, and he ended up spending all the money then never paid nothing.*

— **Alex, male parolee, 35+ years, non-Aboriginal, urban area**



Malcolm describes how his property fell victim to the friends he had entrusted it to:

*Although when all your friends pack all your stuff away in storage and you come out and half of it is missing, it's a bit disappointing.*

*[AND THAT WAS YOUR EXPERIENCE?]*

*Yeah. All your personal stuff, people just help themselves to it. Oh, he won't notice this. He won't notice that.*

— **Malcolm, male parolee, 35+ years, non-Aboriginal, urban area**

Whilst financial exploitation of inmates is an obvious vulnerability when inmates get family and friends to act on their behalf, the following examples indicate that the dependence of inmates on their intermediaries could entail other risks. In one example, an inmate's family, with apparently good intentions, were filtering information about his business so he was not fully aware of its status:

*They're short on money, they won't tell me. They need money, they won't tell me. Just won't tell me nothing. All they'll come back is with an answer of, everything is okay. Just so it doesn't hurt me in here. It does hurt me. I know nothing. I can feel it. I know everything is going bad outside, but they won't tell me, you know ... they [say] 'Oh no, everything is good.' and I know it's not. I know they're doing it hard. They're doing it very hard.*

— **Wahib, male remandee, minimum security, 25–34 years, NESB, urban prison**

A final example from LawAccess concerns situations where an intermediary may ring the organisation on behalf of an inmate. The excerpt demonstrates the concerns already expressed earlier about the potential for a third party to exploit the information disclosed, but additionally highlights the risk that a third party may not accurately relay the information back to the inmate:

*... the exception is that we don't give advice to third parties unless it's clearly in the interests of the third party. So our lawyers are quite aware of ... can I or should I be giving legal advice to this person or information to this person when actually, they are calling on behalf of somebody else. Now if it was a prisoner, obviously we would make that exception, because for obvious reasons. Of course [we try] to assess whether in fact they were calling and they had the best interests of the prisoner or the other person. Because sometimes there's that issue about conflict of interest, so we have to be quite careful about who [gets given the information]. But I mean also there's the*

*risk associated with that information of asking relayed back to the person, and the risk of it not being relayed accurately.*

— **LawAccess**

Friends and family acting as intermediaries are crucial in assisting inmates to address their legal issues outside prison. However, as illustrated above, inmates can be vulnerable to intermediaries taking advantage of the inmate's dependence upon them. This in turn may result in existing legal problems being either exacerbated or remaining unaddressed, or in some cases, additional legal issues being generated.

### ***Quality of information***

Another risk inherent in a relationship where an inmate is dependent upon an intermediary to get information or advice, relates to the quality of the advice or information relayed by this intermediary. This was clearly illustrated in the dependent relationship of some inmates on other inmates with regards to legal information and advice. Although not a formal pathway, many inmates, as mentioned previously, consult each other to obtain legal information. As indicated in Chapter 6, some inmates have extensive knowledge of criminal law processes. However, according to our interviewees, the risk is that the quality of the information is questionable:

*Yeah, that's quite a good option. People who have been in before, who've gone through the same thing or similar things, or people who have been sentenced [for] a similar charge, it really helps ... That it's just as good or better than your lawyer's advice ... Provided they don't add anything on top. Meaning, like telling you bullshit.*

— **Binh, male remandee, maximum security, 35+ years, NESB, urban prison**

*They do talk. There's a lot of guys who've done a lot of time. Have been up to the Parole Board. Been talking to solicitors, or whoever, back and forwards over a number of years. And they form their own opinion on what's right and what's wrong. So yeah, there's a lot of that misinformation. So-called 'legal experts' inside. And it doesn't help when we've got a young fellow trying to get him out on parole.*

— **Probation and parole officer, rural area**

One inmate who works in the library was acutely aware of the potential gaps in his knowledge to assist other inmates to fill out requests and/or get appropriate legal information:

*I have to fill out a request for them ... mostly like comparative sentencing ... I don't know what I could be offering them. I say, 'What would you like, comparative sentencing or more information about what your charge is?' Maybe there is a whole range of things, no doubt, there are things we could be offering them and I am not even aware of it.*

— **Leroy, male remandee, medium security,  
35+ years, Aboriginal, urban prison**

One inmate even felt that the quality of information he received through his official interpreter was not the same standard as having the information first hand:

*I got interpreter, but interpreter is not exactly what they say it just like you. Because in some way the interpreter they change and ... the answers come weak ...*

— **Pedro, male sentenced inmate, minimum security,  
35+ years, NESB, urban prison**

Consequently, the issue of quality of information as obtained through inmates and other intermediaries is both a matter for debate and concern. Many inmates felt that the experience and knowledge gained by their peers was useful in a wide range of contexts: finding a lawyer, deciding whether to appeal a sentence, deciphering legal forms or just gaining more information on a particular legal topic. Others felt that this information may be misinformed, biased or simply incorrect as (most) inmates have no formal legal training. Ultimately, the legitimacy of either of these assertions, of course, is not possible to test here. However, what is clear is that inmates often seek legal information and consider it necessary for conducting their matters and life inside.

But whilst there may be more apparently reliable sources of legal information than other inmates such as lawyers and library materials, access to these sources is, as argued previously, limited. By contrast, inmates with, at the very least their own experience at the hands of the criminal law, are readily available. It would appear perhaps that there is a continuum for access to legal information whereby availability and quality are inversely related – the most reliable sources of information are the hardest to access whilst the sources most readily available are questionable in terms of accuracy. Such a situation affords an opportunity whereby improvement of either access or quality should increase inmates' chances of obtaining legal information. This theme will be further explored in Chapter 10.

### ***Summary***

Having a third person act on an inmate's behalf, it appears, is a double-edged sword. On the one hand, they may advance immeasurably an inmate's progression towards the resolution of a legal problem. Without their help the matter may not have progressed at all. Clearly, as an informal source, personal intermediaries can readily fulfil a need which might otherwise remain unmet, when formal pathways prove problematic.

On the other hand, the dependent relationship that may be created by such assistance also carries the risk that the person will not perform the requested task, or worse, generate further problems for the inmate. In our interviews, examples were given of personal intermediaries having taken money, property and information and used them for their own gain. The lack of personal autonomy associated with imprisonment consequently may not only impede inmates' access to justice but may also create further legal problems. Additionally, concerns were raised in our interviews that depending upon the knowledge and advice of other inmates, prisoners may risk being poorly informed and/or will have expectations (based on the advising inmate's experience) that cannot be met.

## Conclusion

It would seem that intermediaries are currently a necessary part of prisoners' ability to obtain legal advice and information and to help them participate in legal processes. This may be because the administrative procedure requires it, inmates are too isolated from the community to act independently, or the inmate feels they do not have the necessary skills to carry out a particular task, such as reading a legal document. Intermediaries may provide access to legal information, facilitate administrative processes, provide practical assistance or advocate on the person's behalf; all important aspects in addressing legal needs. However, as this chapter has argued, the dependence of inmates upon intermediaries also entails the risk of disruption to the process or for the task to occur at all.

There are a number of features of practices involving intermediaries that seem to govern their ability to facilitate an inmate's access to justice or act as a barrier. Firstly, the degree to which there is clarity about the pathways for pursuing certain matters. Although there appeared to be numerous professional intermediaries prepared to assist with tasks associated with a legal problem, inmates often expressed confusion about who was the best

person to approach, particularly in the first instance, with many efforts resulting in a 'dead end'. Uncertainty was generated by a number of practices that fragmented and obscured the pathways to assistance with legal problems: lack of formal information detailing appropriate contacts; several different staff groups covering the same task, tasks designated to one group being taken up by another; and, different people within the one occupational group having varying degrees of knowledge and capacity to assist. Inmates sometimes responded to this uncertainty either by giving up the pursuit or approaching several intermediaries for the same issue simultaneously, thereby doubling up on the use of resources, and further entrenching a lack of definition concerning responsibility.

Secondly, a major issue that arose particularly in relation to custodial staff was the scope for discretion in providing assistance with legal issues. Rather than assistance to inmates always being consistent and related to need, at times it appeared to be dependent on the mood or disposition of the intermediary. This further reinforced the lack of clarity around appropriate contact points, as sometimes a staff member occupying a certain position was helpful yet another in the same position was not.

Thirdly, processes which depend on intermediaries can also delay help to a degree where opportunities for accessing justice may simply lapse. Many interviewees described apparently cumbersome processes to achieve relatively simple tasks. As a consequence, inmates would in some cases abandon help seeking because they felt it would take too long. In other cases, inmates missed an opportunity to address a legal issue or prepare effectively for a hearing. As the contingencies increased with every pair of hands a matter passed through, so did the opportunity for a breakdown or a delay to occur.

The final factor that affected the utility of intermediaries was the potential for inmates to either be exploited or unintentionally misled or misinformed, by being given incorrect or incomplete information. A sub-theme of exploitation was mainly raised as an issue where personal, as opposed to professional, intermediaries were used. For example, whilst there was no doubt that inmate peers were an easily accessible and many times preferable source of assistance with legal problems, the sensitive nature of the matters for which help was sought could sometimes place an inmate at risk of privacy breaches. In other cases, inmates were misinformed, lost money, property or had debts incurred in their name.

Consequently, whilst intermediaries perform many important tasks for inmates and sometimes provide the only means by which they can progress their legal problems, they also can be a barrier to inmates accessing justice. In some cases, the problems arising are at least in part a function of informal processes compensating for an absence or failure of more formal systems. The enforced reliance upon intermediaries by the very nature of imprisonment and/or the bureaucratic processes that govern the resolution of legal issues, places the inmate at risk of not resolving issues or feeling dissatisfied with the outcome.

# 9 Prison Culture

Chapters 6–8 have examined how the basic capacity of inmates, the broader formal systemic environment and people who populate inmates' pathways to legal assistance affect inmates' access to justice. A final theme that emerged from our analysis was the impact of prison culture, or subculture, on addressing legal needs in prison. The following chapter will discuss the features of the subculture we believe was operating in the prisons sampled as it is relevant to inmates' access to justice. We argue that prison subculture, as a means by which social relations are shaped and understood in prison, has powerful repercussions for inmates' capacity and willingness to access justice. Practices such as the stigmatisation of inmates who report assaults and resist going onto protection are at once generated by the prison subculture and maintain it. As such, how and whether inmates may obtain assistance with their legal problems often is, at least in part, made with reference to the common understandings of what it is to be an inmate. Further, cultural effects appear to operate over and above the more functional issues of resources, access to assistance with legal problems and personal capacity.

## Prison culture in this analysis

The culture of prisons has been the subject of academic inquiry from a diverse range of methodological and theoretical perspectives. Unfortunately, a review of this large and interesting body of work is not possible here. However, it is important to at least note the perspective from which the current discussion emerges: we have taken the view that, at the broadest level, there exists a dynamic, yet recognisable set of shared understandings that underpin social relations in prisons. These are not identical from prison to prison nor within the one prison over time. However, we have identified what we believe to be

some common themes across the institutions we visited, themes that appear relevant to an analysis of prisoners' access to justice.

The particular facet of prison life that we are trying to convey in this chapter is how social relations in prison affect the way that inmates address their legal needs and gain access to justice. Our analysis indicates that the pursuit of legal assistance was affected not only by the more tangible aspects of individual capacity and the systemic environment, but also the location of this pursuit in a particular *social* environment. The character of that social environment is revealed through the explanations interviewees give in describing their own and others' experience of events that have legal implications and/or how they went about seeking legal assistance. The 'truth' or otherwise of these explanations and beliefs is not the central issue. Rather, we wanted to look at the logic behind those explanations to work out what was considered possible and acceptable, or what was excluded and diminished.

From the interviews undertaken for this study, there appear to be a number of aspects of prison culture that are pertinent to a discussion of prisoners' legal needs:

- ◆ inmates are defined and define themselves as being in opposition to correctional officers and/or even the justice system itself
- ◆ violence committed against inmates is conceived as normal in the prison environment thereby affecting the way inmates respond to assault
- ◆ common notions of what a 'criminal' is and related expectations about the treatment that may be expected by others who may provide assistance
- ◆ the notion that being a compliant inmate discourages behaviours that may assist inmates to meet their legal needs.

How each of these features of prison culture are constituted by and affect inmates' ability to address their legal needs are discussed in turn below.

## Us versus them

*On the outside it's different, on the inside we're all brothers, we're all family; we're all one.*

— **Wahib, male remandee, minimum security,  
25–34 years, NESB, urban prison**



*That is another barrier. A big barrier is officer culture too. Jail culture ... you know, it's us and them. And inmates have that, officers have that, especially from the old school.*

— **Custodial officer, urban prison**

As exemplified by the quotes given above, descriptions of the relationship between inmates and custodial staff often position the two groups in opposition to one another. This conceptualisation was recognised by both inmate and stakeholder groups and all institutions in which we conducted interviews, with the exception of the female inmates. It is not clear why it was not raised in our interviews with female prisoners, as there is evidence that the division exists in female prisons from other research conducted in Australia (see Easteal, 2001).

However, among the male prisoners, the division was sometimes described among our interviewees (officers and inmates) symbolically in terms of the different coloured uniforms worn by officers (blue) and inmates (green):

*In here we don't go in bunches ... we're all wearing green, that's it, no matter what you are mate. You're not wearing blue, you're wearing green. You haven't got other colours on.*

— **Wahib, male remandee, minimum security,  
25–34 years, NESB, urban prison**

The 'oppositional code' has been noted by a number of other authors conducting research in the prison environment (see, for example, Edgar, O'Donnell & Martin 2003; Lombardo, 1985; Akerstrom, 1988; Winfree et al., 2002). Prisonisation denotes the adoption of this code as 'a set of values and norms (the inmate code) opposed to those espoused by the prison staff and administration' (Goodstein, 1979, p. 248). There is an ongoing debate in the sociological literature as to whether this culture originates in the prison environment or is imported from subcultures operating outside prison (see, for example, Goodstein, 1979; Hunt et al., 1993; Winfree et al., 2002). Certainly, as noted in Chapter 6 on prisoner capacity, inmates that we interviewed often had histories of being positioned in opposition to, or outside, the law. However, our interviews suggested that whatever the origins of the subculture, an oppositional code was evident in the prisons visited for this study. This code informed both inmate and officer behaviour in relation to addressing inmates' legal issues and was sustained in the everyday practices of inter-inmate and inmate-staff interactions (Valentine & Longstaff, 1998 and Winfree et al., 2002).

Whilst this oppositional code was evident in our study, we were also made aware that the solidarity between prisoners could, at times, be overstated:

*Yeah, they refer to you as a dog if you dob on someone you know. It's meant to be solidarity amongst the crims, but it's a load of crap.*

— **Frank, male parolee, 25–34 years, non-Aboriginal, rural area**

*... before, it was us against the screws ... how you can get around their system and you played the game. But now you can't ... so and so would just come up and bash you and stab you just for your runners, your watch, a ring, ear-ring.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

The last two quotes convey a kind of wistfulness for former times which are portrayed as a period when the division was clearer and who to trust was more certain. However, what they also suggest is that social relations are played out in practice with less unity than the rhetoric would have the observer believe. Further and more broadly, what these views show is that prison culture gives rise to a number of understandings of social relations that may contradict and compete with each other.

What follows is a discussion of how prisoners' legal need and access to justice are shaped by social relations and in particular, the oppositional code.

## **Reporting to prison authorities**

Several practices associated with inmates and their legal needs testify not only to the existence of the oppositional code but further ensure its capacity to affect inmates' legal needs in the prison environment. The following quotes are a couple among many that demonstrate how inmates police other inmates' behaviour with respect to reporting inmate-on-inmate violence to prison authorities, otherwise known as 'dogging':<sup>59</sup>

*I was quite scared and once I got to jail, I didn't want to be known as someone who's laying charges on somebody else. Because that can really get someone into trouble in jails, oh definitely.*

*[OKAY, WHY WOULD THAT BE?]*

*Oh well, the jail attitudes are you're classed as a 'dog', that's a jail term. I hate it, I despise the word. What it pretty much means is anyone who tells on somebody, in the form of going to the law or the police, who hurts somebody*

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<sup>59</sup> The term "dog" is both used as a noun (a person is 'a dog') as well as a verb ('to dog' or 'dogging' is to inform on another prisoner).

*else [or] who is doing criminal activity regardless if it involves the victim. Whatever circumstances, it's still telling on someone and that can cost your life in jail.*

— **Luke, male remandee, medium security, 25–34 years, Aboriginal, urban prison**

*... like I've been a victim of crime before, but ... you see, in jail, like if somebody run into me and I want to press charges then that's a dog, you know what I mean? And you just don't do that.*

— **Dave, male sentenced prisoner on protection, 25–34 years, Aboriginal, rural prison**

Reluctance to report an incident to authorities also seems to both predate and extend beyond inmates' prison terms to dealing with problems faced outside jail (see also Chapter 6):

*[HAVE YOU MADE A COMPLAINT ABOUT THE NOISE?]*

*No. It's a funny thing, like when you've done a fair bit of jail, you get this thing, like they call you a dog if you dob ... so I'm the same. I won't go to the cops over matters unless it's life threatening or it's with me family ... I just can't bring myself to go to the coppers.*

— **Frank, male parolee, 25–34 years, non-Aboriginal, rural area**

A couple of ex-prisoners made the explicit connection between the 'us and them' logic and receiving retribution for informing:

*It's us versus the friggin' officers and if you want to go and put another inmate in, well you're going to cop the retribution from the rest of the inmates.*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

*Reporting it to who? The Authorities? It doesn't happen, you know, just this separate entity, it's the blues versus the green ...*

*[YOU JUST DON'T DO IT?]*

*No. Not unless you want to go to [a protection prison].*

— **Malcolm, male parolee, 35+ years, non-Aboriginal, urban area**

Accordingly, reporting an incident to the officers for which another inmate is responsible, is constituted as a betrayal of all inmates in the 'us and them' subculture. Inmates violating the oppositional code in this way are punished by being stigmatised as a 'dog' (an extremely undesirable label in prison), which is reinforced by threatened, if not actual, violence.

As alluded to by our interviewee Malcolm above, because of the dangerous consequences of informing on other inmates, one solution is for the inmate to go into protective custody. In protection, inmates have a cell to themselves and only associate with other inmates on protection. However, because protective custody is understood as the refuge of people who ‘dog’ as well as those convicted of certain charges such as child sex offences, the negative characterisation is only strengthened:

*Well ... if you feel as though you're under threat you can go into protection, which is quite a nightmare. You get locked in a cell by yourself, no showers, you lose your TV, you lose everything. I don't want to do that and, as soon as you go into protection, the general feel within the jail is that you've done something really wrong, like paedophilia or something like that and you're actually then targeted more.*

— **Justin, male remandee, minimum security,  
25–34 years, non-Aboriginal, urban prison**

*And for a lot of our clients when they're on remand, the only way that they can be protected, so to speak, is to be classified in a certain way or put on protection so they're completely isolated; which does cause problems for them as well because automatically they're assumed by the other prisoners that they're paedophiles and so they then are subject to a huge backlash of abuse and those sorts of things because it's assumed that they're paedophiles.*

— **Worker, CJSN**

As the latter quote illustrates, people with an intellectual disability may be disproportionately affected because of their particular vulnerability. Protection in this reading of prisoner social relations is synonymous with being certain types of prisoners; types that can draw negative and sometimes dangerous reactions within the context of the prison. The associations of being an inmate on protection reinforce the undesirable position of the informant as well as create a deterrent for those who may consider using protective custody to avoid victimisation on any basis. Consequently, the divide between ‘us’ and ‘them’, a distinction between officer and inmate, is regulated through inter-inmate behaviour, with implications for inmates’ legal needs.

In a similar fashion, the behaviour of custodial officers could also be seen as policing the divide between inmate and officer through legal issues, as the following quotes illustrate. The first quote shows how the division may be maintained in terms of an officer’s loyalty to his peers where an inmate was being (unfairly) involved in a prison disciplinary matter:

*... with the inmates, they have their jail jobs, as every officer's got theirs. They would not go and back an inmate.*

*[RIGHT. THAT WOULDN'T HAPPEN?]*

*No, I don't think that would happen. We may say, 'Look, he's an okay fellow, he's okay on the wings', you know, and they might let him off with a caution, but at the end of the day he's still guilty.*

— **Custodial officer, urban prison**

The next quote shows how officers also may shore up the division between 'us' and 'them' in an effort to keep inmates from harm:

*If an inmate doesn't like speaking to staff, I'll generally wait until he's with his friends. And I'll talk to his friends first, and then I'll talk to him. And as he sees the other inmates talking to me because I've known them longer, they generally become free and talk up with the other inmates around. And then at a later stage I'll talk to them about something I don't want to discuss with other inmates. But usually an initial interview is while I'm walking around.*

— **Custodial officer, rural prison**

It is clear in the above quote that the officer adjusts the way he interacts with his charges with reference to the potential harm afforded by a violation of the oppositional code. Through notions of loyalty and preservation of safety, inmates and officers in our study respectively reported regulating whether they would report a problem, and how they would report these problems, to prison authorities. This in turn appeared to reinforce an oppositional code of inmate-officer relations. It is important to note, however, that by consciously modifying his behaviour, the officer was not signalling that alternative ways of behaving are not possible, but rather, that the culture makes certain behaviours more or less problematic.

### **Seeking assistance with legal problems**

From the discussion above, it is clear that informing on another inmate was considered a clear and punishable breach of a major but informal code of behaviour within the prison culture. Importantly in the context of legal assistance however, it was not only the reporting of inmate-on-inmate assault that was constituted as a betrayal of this code. It appears that the accusation of betrayal could also include speaking with officers in general.

*Like when they've [got] problems or issues and then it's difficult sometimes; you can't go to the screws because, um, they don't want to be seen as a dog or something for telling.*

— **Ricky, male sentenced inmate, maximum security, 25–34 years, non-Aboriginal, urban prison**

*Sometimes ... you've got to remember in the prison you can't be seen to favour an inmate or be with an inmate all the time because you make him a target.*

*[YOU MAKE HIM A TARGET FOR OTHER PRISONERS?]*

*Yes.*

— **Custodial manager, rural prison**

*[WHAT PROPORTION WOULD YOU SAY ARE THOSE PEOPLE THAT JUST WOULD NOT APPROACH YOU?]*

*The majority of them ... Unless they're in dire need of something they will not approach an officer. They would not like to be seen talking to an officer. They're called dogs and sometimes it can be detrimental to them.*

— **Custodial officer, urban prison**

Accordingly, being seen talking with an officer may leave inmates vulnerable to stigmatisation at the very least and, at the worst, assault. Previous research on Australian female prisoners also noted the danger of 'friendliness' with officers being misinterpreted as collusion (Easteal, 2001, p. 26). Where this attitude prevails, asking for assistance about a legal issue from a custodial officer may become problematic. One officer remarked how first time inmates may inadvertently provoke a negative reaction because they are unaware of this informal rule:

*Someone who comes in off the street has no idea what a jail's like. I used to work in a remand area. I spent quite a few years in remand. And some of the inmates that would come in off the street, they'd want to walk up to put their hands on you, shake your hands ... just be a normal person, I suppose, to another normal person. But if someone else sees that they'll think, 'Oh yeah, what's going on here?' And the other inmates don't like that, especially the ones that have been in and out of jail a hell of a long time.*

— **Custodial Officer, rural prison**

Consequently, the oppositional code of prisoner social relations renders approaching officers for assistance generally — and not just to report an assault/violation by another inmate — as a potential breach of loyalty to fellow inmates. New inmates may unwittingly violate the code and become the subject of suspicion by other inmates.

There was one final area where the motivation for not using staff for legal assistance was unclear but where there may be a cultural component operating — culture as derived through ethnicity. In some prisons, inmates are accommodated separately on the basis of cultural background:

*You got the Koori lads in one pod, you got the Asian boys in the other pod. And you got the white Australian boys in another pod. See, and that's the only way they can control us ....*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

However, ethnic backgrounds had a particular impact on access to justice as, for some groups of inmates, it appeared to influence where and how inmates sought assistance. For instance a welfare officer in one urban prison described the difficulties they had had trying to reach and support inmates from Asian backgrounds (such as Vietnamese and Cambodian):

*We do not get the Asian inmates coming to us for anything. ... We've gone to our unit in town. We've got special posters translated. We've had target days where we've said 'We'll only see inmates of Asian decent.' We've had an open door approach where we've gone 'Friday afternoons from 1pm till 3pm. You don't have to make any appointments. ... Just rock up. Come and see us.' [We] cannot access them. ... No. In the six years I've been here, I would say we've never been able to access them. They rarely put referrals in. They will rarely come and see us.*

— **Welfare officer, urban prison**

This officer went on to observe:

*Again, they might do that because culturally they want someone who they feel comfortable with so they've employed a solicitor of [a] similar [cultural] background. But then you'll still have a group of Asian decent inmates out there, who cannot afford private solicitors and who are still using the Legal Aid system that all the other inmates are using.*

— **Welfare officer, urban prison**

A custodial officer in another prison noted:

*... Well, because we have quite a few, like Vietnamese and Chinese, and they tend to go to people, solicitors that are Vietnamese or Chinese speaking solicitors.*

— **Custodial officer, urban prison**

The welfare officer quoted above emphasised it was only Asian inmates that would not access their services: inmates from all other backgrounds did seek assistance from them. However, in a rural prison, a custodial officer suggested that some of the Lebanese inmates tended to help each other out rather than come to the officers for help:

*Because they help each other out as well.*

*[YEAH, YEAH]*

*They've got a lot more resources amongst each other.*

— **Custodial officer, rural prison**

One Lebanese inmate described his reluctance to report a violent incident to an officer, because he felt he would not be believed on account of his cultural background:

*... so I kept silent about it.*

*[WHY DID YOU KEEP SILENT?]*

*Because I told you, I can't do anything. Because ... I don't think I, I'd find the ears to hear. That's what I feel. ... Maybe it's not like that. ... But that's what I think. Just the first time he [a custodial officer] said to me, 'All Muslims are dirty.'*

— **Fadi, male sentenced prisoner on protection,  
25–34 years, NESB, rural prison**

The perception of racism extended to court, as another Lebanese inmate argued:

*But, again racism is doing anything these days. Like, an Australian born Aussie turns up to court, hundred per cent, hundred per cent, he gets a better result than, than a wog,*

— **Salim, male remandee, maximum security,  
<25 years, NESB, urban prison**

Ethnicity appeared to add another layer to the complexity of cultural interaction within prisons. Among some inmates from non-English speaking backgrounds, there seem to be a tendency to seek help from 'us' rather than 'them' (a tendency it should be noted which is also apparent among some NESB communities outside of prison (unpublished data from Coumarelos, Wei & Zhou (2006)). In some cases, perceptions of racism from the mainstream culture and its institutions reinforced this separation. Consequently, in the case above, the 'us' and 'them' may not necessarily be solely role based, but may be ethnically based, although this issue needs more detailed exploration to elucidate further.



## Staff roles

Chapter 7 already discussed how security functions are privileged over other functions either between roles or even within them. This privileging of security appears to support and even fuel this informal oppositional subculture. This was illustrated in the way assistance by welfare staff compared with assistance from custodial staff was perceived by inmates according to interviewees in this study. In short, despite coming from ‘the system’, non-custodial staff were seen as more appropriate and safer options for obtaining assistance (see also Chapter 8). For example:

*Well, the roles are very different; I mean obviously their job is one of security, where our job is more in terms of assisting the inmates and trying to encourage them to attend programs and treatment. And so we're viewed by the officers as 'Care Bears' because we look into the reasons why, as opposed to let's just, let's have them locked up.*

— DCS welfare officer, urban prison

Consequently, although they could be seen as part of the prison system, these non-custodial workers seem not to carry the same associations in terms of the division of inmates and custodial staff. In one way, this further reinforces the oppositional subculture between the incarcerated and those who (literally) incarcerate them. One welfare officer saw this opposition as almost inevitable, taking into consideration the fundamental tasks undertaken by custodial officers and welfare staff:

*I'm just again generalising here, because that's what the inmates feel. That the officers don't know anything, they don't care ... they just push buttons, lock doors and do the mundane tasks. And that's the very things that keep inmates in, so there's that dislike for them anyway. And we have to be very aware of that, that we're not colluding with the inmates, because that is an integral part of being in jail as well, because the officers have to do that job. You know, they have to be officious in their duties in terms of security. Sometimes that comes across as being non-caring, being judgmental, particularly if you're a high risk offender.*

— DCS welfare officer, urban prison

There is some uncertainty whether people occupying a custodial role within the prison subculture identified in this study, can unproblematically also offer assistance to inmates. This question becomes increasingly important when the system formalises dual roles, such as when officers are also case managers.

One prison selected in the current sample had further combined the custodial and assistance functions to the point where there was no dedicated welfare function. Instead, the welfare function was supposed to be conducted by the officers located in each of the units or pods. A couple of non-custodial workers expressed certain scepticism about the workability of this arrangement.

*The idea of case management for a correctional officer is new and very foreign. They're security officers ... that's not why they joined. I've heard them say this, you know. It's not why they joined up. They find it very difficult to get involved with case management because you might be dragging a fellow to the isolation cell or the segregation unit, or whatever they happen to call it in a particular jail, and the very next day you've got to sit down and ask them how they're going with their welfare. It's a very difficult job for them to do and I'm not convinced it can work.*

— **Probation and parole unit leader, rural area**

*It's bit of a conflict really. I mean a custodial officer one moment and then there's a death in the family the next minute. Although I will have to say, the officers really, I do think they try very hard to be personable and you know, have feeling and concern for the fellows. But still there's the mentality within the inmates of, 'Oh, he's only a screw.' That's a culture that's gone on for years. So it's hard to, it's working at it, but it takes a long time to break down that culture.*

— **Chaplain, correctional centre**

However, a different opinion was held by another custodial officer, who had to perform this dual role. This officer felt that behaviour management and a welfare role could combine synergistically to the benefit of both inmate and officer:

*And we used to say, we'd crash and bash 'em one day and then we're giving them welfare calls and they're crying on our shoulders the next. It's not going to work. But it has. It has worked. I think it's changed the officers' behaviour more than it's changed the inmates.*

*[THAT'S INTERESTING. IN WHAT WAY?]*

*Well, we've had to deal with them. And if you're going to begrudge doing things for them, or if you're going to be arguing with them all the time, it makes 12 hours a hell of a long day. But if you start talking to them, finding out what they actually need and fixing their problems properly, they're not on your back all the time and there is more time to talk about sport and other things.*

— **Custodial officer, rural prison**

It would appear that there is some debate about whether dual roles for custodial officers that may blur the long held line between inmate and prison authority can function effectively to provide inmates with the assistance they require. There is no doubt, however, that such redefinitions challenge one of the major social relationships that define what it is to be an inmate. This is not to say that the roles and associated meanings are deterministic or represent the only positions that are available in the prison social order. However, the power these notions hold within prison culture does mean they at least need to be accounted for when considering how organisational functions are distributed.

### **Summary**

In summary, prisoners and custodial officers are opposites, in one cultural understanding of inmate-correctional centre staff relations. The division between these two groups is informally but intensively monitored (by both inmates and prison staff). Access to justice may be put at risk because inmates are discouraged from seeking assistance or taking action when they have been wronged (most commonly assaulted) by ‘one of us’ through the notion of ‘dogging’. Specifically, inmates who inform on fellow prisoners to an officer are stigmatised sometimes to the point that they need to go into protective custody. There also seems to be a further ethnically based cultural theme that may distance inmates from the assistance they need. Critically, even approaching custodial staff for other forms of assistance (such as seeking legal assistance) may still be viewed with suspicion by the inmates and may incur retribution for the inmate seeking such assistance. People new to the system may inadvertently transgress this rule, as they are yet to learn of the unspoken rules of social engagement in this context. Non-custodial staff may provide a safer option for inmates in terms of seeking assistance, however, it is argued in Chapter 7 that these human resources are already over-subscribed.

Our data and previous research indicate that interactions between staff and inmates are complex. The discussion in Chapter 8, in combination with the analysis here, demonstrates that roles are neither fully defined nor stable over time and place. The destabilisation of the code is not only possible but, in the experience of the inmates, already occurs. For example, developments in the role of custodial officers as case officers and or/the inclusion of welfare tasks along with custodial work presents a challenge to the oppositional subculture. On the positive side, combination of the two roles may engender a situation whereby greater order is maintained because inmates are able to have their needs met by staff who are easily accessible. On the negative

side, such a combination of roles within the one staff position may jeopardise inmate welfare, including legal issues, because of the strength of the informal oppositional code, reinforced by the privileging of security over other functions within the prison system. That is, if the only source of that support is also the source of enforcement, the question is raised as to whether welfare issues may be satisfactorily met under the present environment.

Whilst we have argued that the subculture that sets inmates in opposition to officers may hinder the provision of assistance, its destabilisation may equally leave inmates confused about how to reliably obtain help without risking their standing among the other inmates. What is clear, however, is that the allocation of tasks and roles to prison staff does not occur in a neutral or blank environment: they become part of a dynamic and powerful set of social relations which affect and are affected by those allocations.

## Violence in prison

Another aspect of prison culture that we identified as affecting inmates' access to justice is the integral part violence plays in prison life. Previous research has documented the high number of physical injuries incurred by inmates in prisons, many attributable to assault (Butler & Milner, 2003, pp. 63–66). Prisoner on prisoner assault rates (including serious assault) in 2005/06, were 15.33 per 100 prisoners (SCRGSP, 2007, Table 7A.14). This extrapolates to a rate of 15 330 per 100 000. As a point of comparison, the estimated rate of recorded criminal incidents of assault (including domestic violence related assault) in the general NSW population for 2006 was 1 072.7 per 100 000 (BOCSAR, 2008). The reported rate of assault is, at least, more than 14 times higher inside prison than in the outside community. As assaults tend to be under-reported among prison inmates and the broader population, these statistics more than likely reflect an underestimate of the true rates of assaults among these populations.

A study of prisoner drug use found that among their sample of 307 male and female prisoners drawn from 22 centres in 2003, 21.4 per cent reported being assaulted by an inmate, and 9 per cent by an officer during the prison term they were currently serving (Kevin, 2005). Further, 84.2 per cent had witnessed a fight and 36.8 per cent had witnessed greater than five fights during their sentence. In a 2002 prospective study of two NSW male prisons, one-quarter of new injury presentations during the five-month study period were attributed to assault (Butler, Kariminia, Trevaathan & Bond, 2004). The authors argue, however, that:

*It is possible that intentional injuries go undetected by injury surveillance systems such as ours in an effort by prisoners to avoid coming to the attention of the custodial authorities. Misclassification of intentional injuries as unintentional is also probable in an attempt to conceal their involvement in violence or other illegal activities and uphold the prison 'code of silence'. (Butler et al., 2004, p. 153)*

The data provided above, together with available research (Edgar et al., 2003) commentary (Brown, 1993; Barnes, 2001; Findlay, 2002) and formal inquiries (ICAC, 1993) all point to the under-reporting of assault and violence in prison. Some of the literature focuses on the protective custody policies that aim to protect prisoners who are victims of assault (Barnes, 2001; Findlay, 2002) — especially the observation that the risk of being labelled an informer deters many prisoners who are victims of assault from seeking protective custody (see Brown, 1993; ICAC, 1993). However, other literature singles out the nature of the duty of care owed by correctional authorities under statutory and common law (Barnes, 2001, see 'Responsibility for the safety of inmates') and the impact of certain DCS policies on victims' efforts to remove themselves from violence (e.g. the impact of classification rules, which can impede victims' efforts to obtain a transfer to another prison) (Findlay, 2002, pp. 119–120). Consequently, not only is the rate of violence apparently high for people in prison as far as it is able to be measured, there is also a suggestion that many incidents of intentional violence against inmates go unreported.

Consistent with the research described above, our interviewees held that assaults are not necessarily reported to prison authorities, or are reported as 'accidents'.

*I'll tell you what happened. I got assaulted, I waited five minutes for the other inmates to get back to wherever they were going so no officer would see them leaving me, and then once they left me, I went up to the officers [and said], 'I just fell over in the shower and me head is cut.'*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years,  
— NESB, urban prison**

*[SO I WOULD LIKE TO HEAR FROM YOUR POINT OF VIEW. DO YOU GET COMPLAINTS ABOUT ASSAULTS IN PRISON?]*

*Assaults, rapes. All that sort of stuff.*

*[YOU DO HEAR THOSE COMPLAINTS?]*

*Yeah, but ... They will not make an official complaint mainly because they're*

*in jail. The next thing is the ship [they are moved to another prison]. So they're not going to say anything.*

— **Official Visitor, urban prison**

As discussed in the previous section, the threat of further consequences from other inmates was enough for some people not to pursue a charge or claim. However, there were also other aspects of a subculture of violence that also impacted on prisoners' approach to addressing assault in prison as a legal issue.

### **Violence as inevitable**

Among the current sample, inmates and stakeholders agreed that violence was not uncommon, although it should be noted that again it was rarely mentioned, if at all, by the female inmates. As in the previous section, it is not clear why the men and women differed in this respect as there is evidence in other research that assaults do take place (albeit not frequently) within women's prisons (Easteal, 2001). In the male prisons we visited, violence was reportedly commonplace:

*I've been involved in a fight and stuff here and you know, like that's every single bloke here, you know, every day of the week. You go out there now, you sit out there for an hour or two in the yard and you'll see a fight.*

— **Jack, male remandee, medium security, age unknown, non-Aboriginal, urban prison**

*I've seen a lot of fellows die over the years, probably about 10.*

*[FROM OTHER INMATES ASSAULTING THEM?]*

*Bashings, stabbings, fellows that cut their own wrists because fellows have threatened to rape them.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

Interviewees gave a range of explanations as to why they thought fights occurred in prison:

*With the prisons, we get a lot of nationalities who, they sort of fight for each other.*

— **Binh, male remandee, maximum security, 35+ years, NESB, urban prison**

*But there's no work so everyone sits around and they get into fights and all that because they've got nothing to do. And that's why they have got a lot of violence in jail because of nothing to do and nothing happens.*

— **Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

*Put a whole heap of men together, the testosterone goes through the roof you know.*

— **Gareth, male ex-prisoner, 25–34 years, non-Aboriginal, rural prison**

Although the sources of conflict, as theorised by the interviewees, vary from hormones and boredom to mixing nationalities, the explanations commonly position violence as a natural and expected reaction to prison conditions. The significance of this logic, as it applies to the violence experienced by prison inmates, is that it seems to negate the need to report assaults.

*... no, well, I can't think of any cases where they done that [reported assault]. I don't know whether that's sort of, I think some of the guys just accept it; that's part of jail life.*

— **SAAP manager, rural area**

The resignation inmates feel towards violence is conveyed in the following quote:

*[HAVE YOU BEEN HURT OR ANYTHING?]*

*No, I've had three or four fights with people, but yeah fights go on every day out here.*

— **Wade, male sentenced inmate, minimum security, <25 years, non-Aboriginal, urban prison**

Wade says that he has been in several fights but dismisses that as a daily occurrence. Another inmate downplayed the violence by describing them as the 'odd scruff'. It would seem that violence blends into the run of everyday life in prison and consequently inmates do not identify themselves as victims of crime but merely as people living the life that inevitably follows imprisonment. Accordingly, being the victim of violence in prison may not be pursued through authorities because it is normalised by cultural understandings of the nature of prison.<sup>60</sup>

## **Violence as an solution to conflict**

A number of inmates referred to a tendency towards resolving inmate conflicts between themselves rather than through formal channels. Often the resolution itself was also violent. For example:

<sup>60</sup> Edgar et al. (2003) posit that, when viewed in such a way, violence rather than being a breach of social order, actually functions to maintain it: violence as 'convention' provides a predictability and framework through which inmates are not rendered disabled by fear.

*Like, I had a blade put to me throat, because I got a good pair of shoes on. They wanted me shoes. I sorted that out in me own way. ... The cell door was locked and we sorted it out sort of thing. He never got the shoes and he went on protection, so you know what I mean.*

— **Neal, male remandee, minimum security, 25–34 years, non-Aboriginal, urban prison**

Whilst this may be consistent with the broader tendency among those who come to prison to find ‘informal’ solutions to problems (discussed in Chapter 6), it has a particular impact in prison. With a utilitarian view of violence, inmates see no need to involve an officer in their disagreements as the following comments illustrate:

*Well, even if it did [go to a wing officer], I wouldn't you know what I mean? Like 'cause I got brought up a way, I don't back down from no one. Or if someone is talking about me, I'll go and face them and say, 'Well mate, got something to say? Then just say it to me, don't say it to him [meaning an officer], he wouldn't care.'*

— **Dave, male sentenced prisoner on protection, 25–34 years, Aboriginal, rural prison**

*But we are finding the way now, there is a lot of blokes talking about this or that and we lock them in another empty cell, have the punch off, so they shouldn't get out.*

*[RIGHT, SO YOU SORT OF SORT IT YOURSELF?]*

*Yeah, well it's the best way. Without involving an officer ... We get the chance to do it our way sometimes.*

— **Toby, male remandee, 35+ years, maximum security, Aboriginal, urban prison**

These inmates make it clear that their preference is to resolve conflict without resort to prison authorities and that the resolution is physical. One custodial officer explained how force and violence also enters into the interventions by custodial officers:

*But once you use violence ... once they've initiated it themselves, [you] usually will find that's basically the only thing they understand. And because you've jumped on them and because you've shown some force, they have that little bit of respect. And then they will talk to you a bit more, and then they don't mean to do it anymore.*

— **Custodial officer, rural prison**



Accordingly, the notion that violence serves as an effective solution to disputes in prison, independent of authorities, not only may add to the amount of violence/assaults that take place, but also may undermine the use of formal pathways in prisoners' pursuit of justice. Prison complaint processes become redundant in the face of resolutions meted out by the inmates themselves. Further, the use of domination underwritten by force, in both the informal and formal cultures, shapes how social relations are managed within prison.

## Summary

Whilst there is a strong resistance to reporting incidents of violence against inmates to prison authorities because, as discussed in the previous section, of the potential negative consequences, there is also a sense that such incidents are overlooked because they are considered to be integral to life in prison. Violence is normalised in the prison environment through the frequency of its occurrence, its positioning as a natural reaction to the conditions of prison (e.g. the proximity of a large number of people and the mixing of cultures), its trivialisation and its perceived role as an effective solution to conflict. Previous research by Bottoms (1999) (cited by Edgar et al., 2003) supports this nexus between violence, social relations (as they are understood in prison culture) and seeking redress through formal prison mechanisms:

*... the tendency in prison societies to rely on private justice in preference to turning to staff. While this attitude seems certain to lead to an increase in the level of assault, the norms that it is wrong to turn to staff, and that physical force in these circumstances, is a legitimate option, might make assaults an accepted part of the routine. (Edgar et al., 2003, p. 85)*

Consequently, in the case where disagreements are settled between inmates, there is no need to resort to official mechanisms of complaint. When understood in this way, the need to process complaints through the administrative processes of the prison, especially in the context of the stigmatisation such a reaction invites, becomes, in many cases, obsolete. Consequently, the conceptualisation of violence as part of jail life at once normalises it and rationalises a lack of resort to formal processes of legal redress.

## Criminal subjectivity

Another feature of prison culture that appeared to run through interviewees' descriptions of inmates' capacity to access justice and address their legal

needs concerned the way inmates were understood in relation to the label ‘criminal’. This section will discuss how ‘criminals’ were defined according to our interviewees and how being a criminal related to receiving assistance with legal matters.

### **What makes a criminal?**

It is interesting to note that not all inmates conceived of themselves as criminals, irrespective of whether they had been convicted of a criminal offence and/or whether they believed themselves to be guilty of one. In distinguishing between inmate and authentic criminals, it became apparent that merely being in jail for a criminal offence was not sufficient to constitute being a criminal according to some interviewees. To illustrate, there were a number of different indicators of criminality offered by interviewees through which the concepts of inmate and criminal were distinguished:

*I'm not a person camped on the street, used to take drugs or used to take smoke or marijuana and that rubbish. I came from university in [overseas country] and if I knew that what I did was not a legal act, and make problems for me that take me to jail, I would never do it. ... 'Cause I'm not criminal; the criminal has a criminality, it's not in my mind or in my heart.*

— **Ahmad, male sentenced prisoner on protection, 25–34 years, NESB, rural prison**

*... I feel let down by the system in that way. I'm not a habitual offender; I'm not ten, like convictions before it. I'm thirty-two years old ... first offender, never been talked to by the police before, and I get treated as though I'm an absolute criminal. And I get dumped in here with people who are already convicted or serving life sentences, stuff like that.*

— **Justin, male remandee, minimum security, 25–34 years, non-Aboriginal, urban prison**

*Generally, personally I think it's the way I look. I walk into a law firm and they just look at you to say, 'Shit, who have we got here? Where did this criminal come from?'*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

From the comments made above, criminality may be signified by drug taking, being re-offending or having a particularly imposing physical appearance (this particular interviewee was large in stature and wore many tattoos). The source of these comments/behaviours conveying these conceptualisations may be the inmate or someone they have interacted with. It is interesting to note that the

first two comments come from first time inmates: a circumstance where the issue of self-definition may be particularly acute. In combination, the above remarks suggest that the label ‘criminal’ belongs to inmates who have been in prison before. This notion was used both as a means of marking oneself off as NOT a criminal (as with Justin and Ahmad) and as a justification of why someone was treated the way they were (as with Matthew).

The significance of the conceptualisation of criminals among inmates and those who assist them flavours how inmates address legal needs and access justice. In our interviews, this seems to occur in two main ways: perceptions of worthiness to receive legal assistance and presumption of guilt.

### **Criminals as undeserving**

Whilst some inmates drew a distinction between themselves and others on the basis of criminality, there was a sense among interviewees that many non-inmates did not appreciate that distinction. The following quotes concern perceived treatment by a range of players in the justice system and how that treatment was understood by the interviewee as a function of being an inmate/criminal. It should be stressed that these comments are the inmates’ perception of their treatment rather than the expressed views of the stakeholders themselves:

*On my legal advice, no, but on the judges view, yeah. I’m not saying they’re liars, but they got to believe us as well, you know. Just because we’re criminals and just because we’re in jail, we’re not all liars.*

— **Wahib, male remandee, minimum security,  
25–34 years, NESB, urban prison**

*But it’s not a slow process. They [lawyers] just don’t want to do it. You know what I’m saying? They have this mentality, ‘Oh, fuck, he’s a crim. He’s a criminal, he’s a terrible person.’ You know? ‘Leave him, he’ll be all right. Tuck his file there. He’ll be right. He’s not going nowhere.’*

— **Dean, male sentenced prisoner on protection,  
35+ years, Aboriginal, rural prison**

*There’s a duty officer or something there, duty person. Yeah, he was okay ... I also rang up a number that was on the form they sent me, and I got the impression, ‘Bad luck, you’re a crim, you deserve what you get.’ So they give you the minimum help they can sort of give you.*

— **Calvin, male parolee, 35+ years, non-Aboriginal, rural area**

One final comment comes from a prison librarian the value of whose work was questioned at a social occasion because she works with an inmate population:

*It is very much dependant on how nice somebody wants to be. Or whether they think the inmate deserves it. And there is still that, 'They're an inmate. What do they want that for? They shouldn't get that. They should sit in their cell and rot', kind of attitude. But they are still people. Actually, I got that at a party on the weekend. And I was talking to somebody and that is more or less what she said to me. I was telling her about the librarian course and things and she said, 'Why should they get that? They are there to be punished.' I said, 'Being in jail is punishment. Trust me. It's not a place you want to go if you can avoid it.'*

— DCS library staff

What is common throughout these readings of being a prisoner is the link between being a criminal/inmate and a judgement as to whether someone merits assistance. The meaning implied in each of these observations is that, if a person is an inmate and therefore a criminal, their access to assistance is deservedly compromised or withdrawn.<sup>61</sup> The point here is to emphasise the link between an inmate feeling that they do not deserve assistance with legal problems and criminality, and the currency that such logic carries in the prison environment. While the inmate may be mistaken about the views of the service provider, their perceptions can still prove to be a barrier, as they do not believe they will be helped or given quality assistance. Significantly, this may also mean that other explanations for not receiving assistance are not entertained: explanations that may be more amenable to change, such as resources and inefficient processes. Further, referring to a logic which validates prejudicial treatment makes not taking action rational and therefore may de-motivate the inmate to act on future legal issues (as discussed in Chapter 6).

### **Inmates, criminality and guilt**

In the previous section inmates explained how their perceived status as 'undeserving criminals' affected their access to legal assistance. Presumptive guilt is another manifestation of the merging of inmate and criminal. The following comments illustrate this presumption in the context of discussions

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<sup>61</sup> As stated earlier, this was not the expressed view of the stakeholders who were interviewed for this study but rather the reported perceptions of the inmates.

regarding wearing prison ‘greens’<sup>62</sup> for AVL hearings and what this signified about the inmate:

*But they don't change you out of your greens and into your civilian gear ... looking guilty because he's in his greens. .... Being in greens is a big issue because you're looking very guilty. You don't want that. You want be seen as, you know, like the average Joe on the street and it's not do-able for these people.*

— **Gavin, male remandee, minimum security, 25–34 years, Aboriginal, urban prison**

*You got some blokes that go to court in their greens on their sentencing. Now if I was the judge, I'd be thinking, 'Well this bloke doesn't give a shit what I do.' So if I go to a job interview, I'm going to wear a suit, maybe a tie, look nice, presentable, shaved. I'm showing I'm keen and I want the job, you know. Same thing when you see a judge man, this is your life. He's going to say, 'Not everybody in jail is a bad person, not everyone. There are people that get sucked in, sucked in by the, the crowd,' you know?*

— **Abdul, male sentenced prisoner, minimum security, 25–34 years, NESB, urban**

*You know, you just try to look alright, but you're in green ...*

*[WHAT DO YOU THINK THE SIGNIFICANCE OF BEING IN GREEN IS?]*

*Well I think, men can give a sort of subconscious psychological effect on the person who [is] judging you, you know. I mean, for me it's the same, you know. I can be in green or can be in [a] tie, it would be the same about how I feel about all my matters. But for the judge, or for anybody, when he sees you in green, you're already in the 'system'. And that is when you are already in the 'system', it's going to be harder to get out then.*

— **Carlos, male sentenced prisoner on protection, 35+ years, NESB, rural prison**

These inmates explain how the uniform of the inmate denoted guilt in the context of a trial rather than someone for whom the evidence of guilt was being tested. As the last interviewee observes, dressed in the inmate uniform ‘you are already in the system’ and therefore there is a certain level of presumptive guilt that is attached to that — the uniform becomes synonymous with culpability. A similar notion was raised on appeal in the Supreme Court of Appeal in West Virginia (USA) where the appellant challenged a conviction

<sup>62</sup> Inmate uniforms are green pants and t-shirts or long sleeve tops.

on the basis that he was unfairly prejudiced in front of a jury because he was wearing his prison uniform. The judgment noted that:

*More specifically, [the?] Appellant maintains that the jury could not fairly decide the mercy issue when a defendant is forced to wear a jail uniform during the penalty phase since the jail clothing constantly sends the message to the jury that the person wearing the outfit is in custody because he is a dangerous person and the mere sight of someone wearing a prison uniform implies a dangerous character. (State of West Virginia v Finley, No. 32961)*

A rehearing of this phase of the trial was ordered (State of West Virginia v Finley, No. 32961). Indeed, the Fair Trials manual of Amnesty International is explicit about the relationship between the presumption of innocence and the wearing of prison uniform for court appearances:

*Particular attention should be paid that no attributes of guilt are borne by the accused during the trial which might impact on the presumption of their innocence. Such attributes could include ... requiring the accused to wear handcuffs, shackles or prison uniform in the courtroom ... (Amnesty International, 2008, p. 104)*

The overlaying of prison inmate and criminal guilt also provided a logic whereby inmates explained away perceived injustices as part of some karmic balancing out in crime and punishment. Our data suggested this manifested in two ways. Firstly offenders may not be recognised as legitimate victims:

*[WHAT HAPPENED ABOUT THE FACT THAT YOU HAD BEEN ROBBED, DID ANY ACTION COME OF THAT?]*

*They didn't care. Don't care.*

*[DID POLICE INVESTIGATE IT OR ...]*

*They didn't because at that point of time they classified me as a drug dealer ... so it was more or less, fair enough, you sell drugs, you use drugs.*

— **Matthew, male parolee, 25–34 years, non-Aboriginal, rural area**

Secondly, although a person may not be guilty of a particular crime, a guilty verdict for that crime is still considered acceptable because of a sense of generalised guilt:

*Like I've been away twice for something I haven't done but I thought that was just karma getting back at me for me younger days when I was bad. And I was too.*

— **Barney, male ex-prisoner, 35+ years, non-Aboriginal, rural area**

The above quotes suggest that inmates sometimes draw upon a logic which legitimises perceived injustice with respect to legal issues.<sup>63</sup> This is irrespective of whether they are an (alleged) victim or a perpetrator: if they are found guilty of a crime they did not commit, it is balanced out by previous criminal behaviour; having an offence committed against them is merely a consequence of being a criminal and therefore does not warrant action. In both cases, the label ‘criminal’ and the attendant foreclosure on access to justice may explain and/or legitimise the outcome.

### **Summary**

In this section, we have argued that conceptualisations concerning being a criminal and criminality intersect with notions of guilt and inmates getting what they deserve. Inmates on certain charges, who look a certain way, who have a history of incarceration, who use drugs, or who just simply are in prison, can become marked as criminals on the basis of those characteristics. The status of ‘criminal’ then invokes a range of perceptions around worthiness for assistance and access to justice.

The most fundamental premise/assumption is that criminals are undeserving of help and are automatically guilty. Inmates themselves refer to this conception in order to explain their own perceived maltreatment, or to justify why they should get treated better than other inmates. This is not to say that this perception necessarily truly reflects the opinions or treatment of service providers, indeed stakeholders interviewed in this study often expressed just the opposite view. The point is rather that such thinking exists as one rationale by which inmates account for their experiences with the law and as such, may compromise inmates’ access to justice because it rationalises lack of assistance and validates not pursuing legal matters.

## **The culture of compliance**

Up to this point, the discussion of the role of culture in inmates’ capacity to address their legal needs and access justice has centred on the informal culture of prison. However, our analysis suggested that the formal structure of prison also transmitted a certain culture: that of compliance. An inmate’s interactions with people who can provide assistance revealed how compliant behaviour is

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<sup>63</sup> Note this is in contrast to those inmates who described pleading guilty because they had committed the crime and therefore were willing to take the consequences as described in Chapter 6.

promoted in the prison environment, in the process of addressing legal need. This section briefly examines how the culture of compliance builds on pre-existing tendencies towards passivity (see Chapter 6) and affects legal needs and access to justice.

### **The inmate and compliance**

There was evidence among the interviews conducted for this study that some inmates may, because of the demands and deprivations of their incarceration, become institutionalised.

*So the behaviours are very much, trying to please ... like you say, 'Where have you been?' 'Oh, you know, blah.' And they've come from jail and they don't want to acknowledge that. As soon as they call you 'Miss', I know immediately ... you've just come out of jail. Because it's just second nature to them to call you Miss all the time. But they're very, very institutionalised. Like they get up, their rooms are always really neat, they're very much like that, 'What'll I do now?'*

— SAAP worker, urban area

Compliance in prison appears to be generated and maintained both by the demands and comfort of routine, and by the enforced dependence described in Chapter 8:

*Of course you know, like if the worst comes to the worst, I'd just turn back to me old ways again. Because believe it or not, I friggin' liked jail to a certain extent, because you get your own room, your own TV, your own everything, your own little room, your own little world, you see a line, you just get on the end of it. Out of jail you've got more worries than you wouldn't bloody believe. Your shopping bill, your rent, your this, your that. In jail it's all done for you.*

— Jason, male ex-prisoner, 35+ years, non-Aboriginal, rural area

The effect of passive interaction styles as a factor in inmate capacity has been discussed in Chapter 6. What is being elaborated here is the connection between what types of behaviour are promoted or discouraged in the prison context and the rendering of assistance with legal problems.

Past research has addressed the issue of the effect of incarceration on inmates' behaviour patterns. Goodstein (1979) made an important distinction between 'prisonization' (referred to earlier in this chapter) and 'institutionalization' in her study on inmate adjustment to community life. Prisonisation denotes the



degree to which the oppositional culture characterised by an active resistance to formal prison culture, is adopted by an inmate. Institutionalisation, on the other hand, arises out of the experience of prison as an institution that contains ‘... a number of attributes which strip inmates of individual identity – regimentation, lack of privacy, limited opportunities for decision making, relative scarcity of goods and services ...’ (Goodstein, 1979, p. 247) and, we would add, lack of opportunity to act directly (as argued in Chapter 8). Borzycki cites Haney (2002), summarising the impact of the formal structure of prison life and the type of inmate it shapes:

*Imprisonment imposes a rigid routine on an offender that removes the potential for individual decision-making in many aspects of daily life ... prisoners typically possess poor everyday life skills. In removing opportunities to exercise even these limited skills, imprisonment can lead to institutionalisation, in which a prisoner becomes decreasingly able to live independently, and may lose a sense of personal responsibility. Other manifestations of institutionalisation include hyper-vigilance, aggression, emotional over-control, and a loss of self worth. Institutionalisation can be compounded by the lack of purposeful activity many prisoners experience when in custody ... (Borzycki, 2005, p. 37)*

Institutionalisation therefore has been conceptualised in previous research as a deskilling process through which inmates conform to (in this case) prison conditions created by formal institutional processes and requirements. Goodstein (1979) argues that her findings from her study, which examines the degree of institutionalisation and adjustment upon release, ‘... provide a picture of the correctional institution as a place which reinforces the wrong kinds of behaviours if its goal is the successful future adjustment of its inmates. In the process of rewarding acquiescent and compliant behaviour, the prison may, in fact, be reinforcing institutional dependence’ (Goodstein, 1979, p. 267). This passive behaviour may in turn affect inmates’ capacity to access to justice.

### **Compliance, legal need and access to justice**

In the context of examining inmates’ capacity to address their legal needs, we would argue that it is not only adjustment to community life that exposes the detrimental effects of becoming institutionalised, but also the need to be active and persistent about the tasks that may occur whilst inside. For example, the following comments relate to interactions with DCS staff:

*And a lot of times, new officers, new in the sense that they're not regulars in that area for that particular day, they might have a little run in with the best inmate in that wing. A total gentleman of an inmate. Suddenly he's lost his job, you know. And then we come back the next day, 'Oh, so and so has been sacked, he's been kicked out from this room and this.' 'Why?' 'Oh, he wanted such and such a thing and he didn't get it and he just mouthed off and walked away so they charged him, you know.' Little things ... 'But he's my best inmate.'*

— **Custodial officer, urban prison**

*Yeah. I am pretty much someone who sits back. Yeah, I don't go off at them and that stuff, 'cause I know it's not going to get me anywhere ... But if you're a loud mouthed one and a troublemaker ... there's no use asking them for anything because they won't do it for you. Like they'll take the paperwork but they won't put it in ...*

— **Liz, female remandee, maximum security,  
25–34 years, Aboriginal, urban prison**

The implicit, or sometimes explicit, message in these interactions is that the demanding inmate is discouraged. In the following excerpt, a custodial manager summarises the relationship between inmates' dependence upon prison staff and the generation of appropriate behaviour in inmates:

*Remember I'm here to run the unit. By doing that [they] may be dependent on us, and the officers and the staff, because they're the first port of call. And when they figure out being an arsehole's not getting anywhere, they usually think it over and go the easier way, which makes life easier for me, makes life easier for them.*

— **Custodial manager, rural prison**

Such a culture, however, risks promoting a level of a passivity which may result in the inmates not pursuing assistance when it is needed. Indeed, there was some evidence to suggest that in order to obtain help in prison, some assertiveness and persistence may be required:

*Occasionally, and I know this is not the best system, but where I've had an inmate in my ear a lot, and perhaps in the officer's ear, and they've sent him up because he's in their face and in their ear, and so he sends them to me. And so he's making a lot of noise, which is not the best way to react to things I must admit. Occasionally, but if he's got a really good story ... sometimes I'll ring Prisoner's Legal Service.*

— **DCS welfare officer**

*I have prisoners who have no difficulty getting hold of me at any time. Quite recently I had calls ... particular prisoners who were very pushy and they were making five, ten calls a day, each of six minutes. So I think it may depend a bit on who you are and how pushy you are.*

— **Barrister**

Accordingly, the formal culture of prison promotes a compliant and passive inmate who is rarely in direct control of his or her daily activities (see Chapter 8 in the current report, and Easta, 2001). Inmates are rewarded with an ‘easier life’ if they capitulate and comply with the codes of behaviour promoted by the formal prison culture. On the other hand, obtaining assistance with legal matters may require a more persistent and assertive approach. In short, the compliance that is promoted through the punishment and reward practices in prison downplays/de-emphasises the skills which may be useful to confronting legal issues and challenging situations where rights have been transgressed. However, the compliant inmate in the prison setting is not necessarily the inmate who may effectively participate in resolving legal problems they face in prison or when they are released (Goodstein, 1979).

*Also you’ve got to think, engaging with bureaucracies is really difficult when you’ve come out of one and been controlled by one for whatever period of time. [Its] really hard to engage at that level.*

— **SAAP worker, urban area**

## Conclusion

Prison culture is a factor in shaping the degree to which inmates access justice and obtain assistance with their legal issues. The culture not only informs inmates’ behaviour but also that of those who provide legal services as well as those who assist them obtaining access to those legal service providers. That is, the social relations that are embedded in both the formal and informal prison culture set the context for those that populate the pathways of inmates’ access to justice. Inmates may not initiate legal processes for a range of reasons, including those that have their origins in the prison culture. For example, an inmate may not report an assault perpetrated by another prisoner because it betrays a code of behaviour that pits inmates against prison authorities. In other circumstances or cases, he or she may also not report an assault because physical violence is part of the experience in prison or a belief that such incidents can be resolved by responding with further violence. In this way,

the informal structures that operate in the prison environment undermine the formal systems that are aimed at delivering justice to inmates.

Inmates may additionally not challenge circumstances where they do not feel they have been treated justly because expectations transmitted through prison practices render such challenges seemingly pointless. For example, links between being an inmate and what it is to be a criminal have meshed with notions of merit in terms of receiving assistance with legal problems. Consequently, where an inmate feels they have not been treated fairly, they make sense of that experience by resorting to an explanatory logic that, since they are criminals who have broken the law, they deserve whatever treatment they get.

Further, a tendency to compliance, which is reinforced by prison culture, can make inmates less inclined to challenge perceived injustices, as non-compliance may attract disciplinary action or result in help being withdrawn. This attitude could further extend into post-release life where the ex-inmate must be far more active in pursuing assistance. As such, prison culture may act as a barrier for inmates' access to justice because it may make rational the inaction on the part of the inmate and (apparent) withholding of assistance by stakeholders. In these cases, it could be said that the informal structure reflects the formal — proactive behaviour useful in serving legal needs may be downplayed as prisoners adapt to the strictures of institutionalisation.

However, our analysis has also demonstrated that social relations are always in a state of flux and there is potential for transformation of practice through symbolic action. For example, custodial officers may carry out welfare tasks within the constraints of the oppositional code by paying sensitive attention to the ramifications of interacting on a personal level with inmates (as one custodial officer reported he did). Therein lies the challenge to service providers: formal organisational processes and remedial strategies do not operate independently of the informal social relations that exist in the prison environment; they are enmeshed and therefore have the potential to destabilise and transform each other. Consequently, their interdependence represents both an opportunity as well as a threat to innovations aimed at improving inmates' access to justice.

# 10 Discussion

Imprisonment inherently entails isolation of the inmate from the outside world. As such, avenues for legal assistance are fewer and routes to them more complex. These facts alone provide ample scope for disrupted access to legal information, advice and participation in legal processes. Although there is no doubt that being a prisoner brings unique challenges to individuals trying to address their legal needs from within this environment, the object of this report has not been to be critical of the justice system in general, or DCS in particular. Nor has it been to suggest that the current system and practices are the only means by which justice can be done. Rather, the aim of this report has been to demonstrate where, in the nexus between inmate, prison and legal processes, barriers to legal help arise for inmates on the basis of their imprisonment. Through such an analysis it has been possible to identify how opportunities to prevent, identify and/or address legal problems may be facilitated and supported.

As argued in the preceding chapters, whilst prisoners do have opportunities to obtain legal assistance, aspects of their own capacity, the systemic environment, the people who act on their behalf and the cultural milieu operating within the prison environment may weaken the potential of those opportunities to adequately serve inmates' legal needs. The following paragraphs briefly summarise the main issues raised in our analysis.

At an aggregate level, inmates tend to come to prison with complex histories and multiple impairments. In Chapter 6 we argued that the combination of a chaotic lifestyle prior to incarceration with limited financial and personal resources, mental and intellectual disabilities, comprehension difficulties, limited education, and poor skills served to generate legal issues and complicate their resolution. Indeed, with issues often spiralling out of control,

imprisonment is often a marker for someone reaching a crisis as well as being a crisis in itself. The subsequent criminal and civil legal processes which surround incarceration place high demands on the capacity of prisoners, a capacity many do not have. Indeed, for many inmates, their personal resources may be in highest demand when they are at their lowest ebb, for example when they are first received into prison.

In Chapter 7, we focussed on the broader systemic environment which inmates must negotiate to address their legal needs. The picture that emerged was of a set of systems, which operated at the limits of their resources and were further tested by tensions between the different components. For example, the resolution of legal problems generally required the welfare and support functions to be offered in prison, but these services were allocated a lower priority than security when resources were scarce. The prioritisation of security concerns meant that welfare and support needs may not be served, or would be delayed. In other cases, the legal needs of prisoners may remain unaddressed because of the incompatibility between the routines of inmates and the schedules of lawyers, often seriously compromising or complicating communications between them. In this way, the sometimes discordant operations of different parts of the systems which manage inmates and resolve legal issues, challenged inmates' ability to effectively and efficiently deal with their legal problems.

Whilst people often seek legal help through third parties in the general community (Coumarelos et al. 2006), it was argued in Chapter 8 that inmates were almost entirely dependent upon third parties whilst in prison. DCS staff, staff from other agencies, friends and families often acted as intermediaries in circumstances where inmates could not facilitate their own legal help. On the one hand, these intermediaries provided essential and useful assistance. On the other hand, our analysis suggested that there were risks that the tasks entrusted to intermediaries may not be fulfilled or may lead to breaches of confidentiality or even exploitation. Further, finding the appropriate intermediary and engaging their assistance is not necessarily simple in prison: pathways to legal assistance lack consistency within and between prisons and the availability of formal information on how to obtain assistance was unreliable. Finally, even when the will to assist was there, those approached by inmates sometimes did not feel sufficiently equipped to meet the inmates' needs.

Finally, prison culture as discussed in Chapter 9 added another layer of complexity to inmates' access to justice. Features of the formal and informal prison culture, such as the oppositional code of behaviour, the naturalising

of violence in prison, the conceptualisation of inmates as unworthy of assistance and the promotion of passivity may undermine the reporting of offences against inmates and/or legitimises the withholding of assistance. Consequently, even when everything else is functional (e.g. inmate capacity, the systemic environment and intermediaries), the subcultural resonances may suggest to inmates that the pursuit of justice is unnecessary, unpalatable or futile. Further, such perceptions persisted despite the heterogeneity in inmates' actual experiences of assistance with their legal problems.

This report has discussed, largely in isolation from each other, how inmate capacity, the systemic environment, the use of intermediaries and the prison culture can give rise to barriers to an inmate's ability to access justice. However, we have identified a number of broader themes that describe the effects of the interplay between these elements. These broader themes may be summarised as:

- ◆ the inverse relationship between accessibility and quality of legal assistance/information
- ◆ the fit between prisons, prisoners and opportunities for access to justice
- ◆ the relationship between prison, disempowerment and meeting legal needs
- ◆ the targeting and timing of legal assistance.

The discussion below will expand on these concepts and relate them to the data presented in the previous five chapters and will consider the implications for policy. This will provide a framework within which the ability of prisoners to access justice may be considered and potentially improved. The final conclusion will then summarise how strategies for improving inmates' access to justice may be appropriately targeted across the different stages of incarceration.

## Accessibility and quality of legal help

Our analysis has demonstrated that access to legal assistance was variable among inmates, in particular, the greater the isolation of an inmate, the harder it was for him or her to access legal assistance (Chapter 7). Isolation may be geographic or a function of inmate classification (including remand versus sentenced). For example, inmates on protection or in segregation face the biggest challenges in accessing assistance, followed by those in maximum

security (with no association restrictions). Inmates located in rural prisons also experience difficulties accessing the range of services required to meet their legal needs. Beyond these barriers, however, was the broader issue of the quality of the assistance available to inmates for their legal needs.

Inmates are able to access assistance for their legal problems from formal sources (e.g. lawyers and legal information resources) and informal sources (e.g. friends, family and other inmates). The discussion in the previous five chapters, however, suggests an inverse relationship between accessibility in prison of assistance for legal problems and the quality of that assistance. This was observable in all aspects of legal assistance, affecting access to legal information, advice, and participation in legal processes.

Inmates' experiences with obtaining legal information from prison libraries were indicative of this inversion. Libraries are located on prison grounds which, in principle, make them easy to access. However, the limited opening times (themselves subject to further reductions because of staff shortages and lockdown) and the completeness and currency of the information held therein, undermines their utility. Further, the process for loaning materials from the main law library was slow and was contingent upon requests being clearly articulated by the inmate, a challenge for many within this population. Accordingly, prison libraries have the potential to provide an opportunity for inmates to independently obtain quality legal information, but at the time of our interviews, inadequate access and resources weakened this potential.

Similarly, verbal legal advice and information also suffered through an inversion between access and quality. For instance, expertise in the form of lawyers and legal assistance services were largely located outside prison and could be difficult to contact by telephone or to arrange face-to-face meetings (Chapter 7). When they did occur, advice sessions with lawyers were often said to be too brief to obtain the advice and reassurance needed, or for the inmate to give proper instructions. In contrast, other inmates were an accessible resource in ready supply and easy to access for most inmates. However, reflective of the theme of an inverse relationship between access to, and quality of, legal information and advice, although their proximity makes them an attractive alternative, the reliability of the information they can offer is uncertain.

Problems associated with obtaining information about pathways to legal assistance and legal processes from DCS staff could also be understood through the intersection of access and quality. In Chapter 8 it was argued that some



DCS staff, especially custodial officers located in the wings with inmates, confessed to having only rudimentary knowledge of how inmates might obtain legal assistance,<sup>64</sup> gleaned from experience rather than through formal training or resources on this issue. Often the officers would refer inmates to welfare staff who may have greater knowledge but whose availability was considerably less by comparison. Induction videos and handbooks were also opportunities for assistance but accessibility was variable. Hence once again the better informed assistance was located, in at least one sense, at a greater distance from inmates than less informed sources, and that closest to inmates was not supported and/or maximised.

### **Policy implications**

Generally speaking any strategy aimed at improving inmates' access to justice would need to improve the quality of information that is readily available to inmates and/or improve the accessibility of higher quality sources.

One strategy would involve improving the quality of the written information located within prisons. To this end, and during the conduct of this research, the accessibility of plain language legal materials has been vastly improved in NSW prisons. The State Library and DCS have placed LIAC (Legal Information Access Centre) materials in all NSW jails. LIAC materials are plain language legal information on a range of civil, family and criminal law topics, which are available through public libraries in NSW. Prison libraries have been added to the LIAC network. The service also involves training relevant staff and inmate clerks in the use and the holdings of prison libraries. The course is organised through an external body so completing the course will provide a recognised qualification for the trainee. Part of the training is in the use of LIAC materials.<sup>65</sup>

At the time of the interviews (February 2006), there were seven inmate librarians participating in the LIAC program. The added benefit of providing LIAC resources in prison is that the same resources are available at public libraries in the community. This potentially allows for some continuity in the

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<sup>64</sup> Clearly we are not recommending in this report that non-legally trained people should give legal advice but rather that they should have enough knowledge to direct inmates down the correct pathway to legal help.

<sup>65</sup> LIAC provides regularly updated standard legal collections and collection information including *The legal toolkit* — a core plain language collection that is available in 300 locations, free legal pamphlets, and an annotated guide to sources of free legal advice and assistance. A listing of the exact materials to be supplied in prison libraries was not available at the time of writing. (Information source: pamphlet, 'The Legal Information Access Centre (LIAC) Access to quality legal information for the community')

information that is available to people when they are in or out of prison. Whilst this initiative will help address inmate legal needs, consideration must also be given to meeting the needs of those inmates who lack the capacity, through cognitive impairment or poor literacy skills, to use written resources.

Further examples of where quality legal advice has been made more accessible to inmates include the PLS visiting legal advice service and the placement of the LawAccess telephone number on the inmates' phone cards. The implementation of a specialist civil (and family) law advice service to prisoners would also address this need; a strategy that has recently been piloted in women's prisons. This option is discussed in greater detail later in this chapter. Another strategy to improve the knowledge base of those closer to inmates, such as prison welfare staff, has been a project where the NSW Office of Fair Trading (OFT), the Energy and Water Ombudsman NSW, the Office of State Revenue and others provided training to such staff so they could better inform and assist inmates about debt issues (OFT, 2006, p. 28; NSW Sentencing Council, 2006, p. 37). Accordingly, improving access to quality advice/information or improving the quality of assistance provided by sources easily accessed by inmates may address some of the barriers raised by the separation of prisoners from the services that provide legal assistance.

## Prisoners and opportunities to access justice

In this section, we explore some of the incongruities that exist between inmates' legal needs, their capacity to address that need, and the systems in place to facilitate legal assistance. The mismatches seem to occur between systems (the correctional and legal systems), priorities (security and welfare), personal capacities (e.g. what is required of inmates to meet their legal needs) and the apparent realities of their environment (e.g. prison culture). Three main areas of difficulty have been identified: communication, capacity, and prison routine or customs.

### **Communication: capacity versus requirements**

Problems with communication were often implied by interviewees in this study when describing the barriers to inmates gaining legal assistance and participating in legal processes. Chapter 6 discussed at length the often compounded difficulties inmates have with both verbal and written language. Through combinations of organic comprehension difficulties, such as those

generated by drug and/or alcohol abuse or brain injury, insufficient education, and/or stress and anxiety, inmates can struggle to understand and to make themselves understood. Yet there are many aspects of obtaining legal assistance which fail to take into account these problems.

Firstly, much of the communication with lawyers takes place over the telephone, a communication method not conducive to ameliorating the effects of poor communication skills. Similarly, limited literacy and poor education are also issues for many inmates, yet access to legal information and participation in the legal process is often contingent upon being literate and skilled at filling in forms. The process for obtaining legal information from the law library at the MRRC from a remote jail provided one example of this. The apparent exclusion of intellectually disabled inmates from programs that are required for parole because of the emphasis on written materials is another example.

Secondly, as noted in Chapter 7, the majority of opportunities for receiving legal advice are brief. Inmates often do not have much time to interact with their lawyer whether it is via the telephone or in person and yet, as described in Chapter 6, many inmates have a limited ability to communicate succinctly and effectively with their lawyer. Consequently, with generally poor communication skills, inmates would benefit from longer interactions with their legal advisers.

Finally, information on how to obtain legal assistance from within prison is often variable both within and between prisons, and is at times even absent (Chapter 8). As a result, inmates may miss opportunities to obtain legal information, advice and participate in legal processes, especially if they are new to a particular prison or the prison environment in general. It was argued in Chapter 6 that there was a degree of assumption around inmates' knowledge of the justice system because of their prior experience of it. However, in reality, this knowledge was often only partial (mainly around their own criminal matter and infrequently around civil or family law issues) and may have been impaired by comprehension and cognitive issues. In other words, there appeared to be a lack of fit between inmates' information needs and the provisions made for those needs.

### **Capacity: supply versus demand**

Capacity was another area where there was an inequality between the lived experience of prisoners' and the opportunities available to address their legal needs whilst in prison. For example, in Chapter 6 we described the often depleted

personal and financial capacity of inmates at the very times when they face overwhelming demands to address their legal needs. So while legal processes represent an opportunity to meet their legal needs, participation may require tenacity and a set of comprehension skills beyond that of many inmates.

Further, due to their incarceration, inmates often required additional resources, such as the assistance of their friends and family to address legal issues (see Chapter 8). However, the common practice of moving inmates between prisons also takes them away from their external supports (including their lawyer). Further, the cycle and nature of criminal activity and its consequences can often leave inmates without any support network at all, distant or otherwise. Accordingly, at once, imprisonment in some respects necessitates more capacity but at the same time diminishes their resources through the inherent isolation, stress, anxiety, depression (Chapter 6) and lack of autonomy (Chapters 8 and 9) that incarceration can bring.

It was demonstrated in Chapters 7 and 8 that opportunities for access to justice were undermined by lack of systemic capacity. For instance, in order to access legal information or legal advice, inmates often needed to go through intermediaries. However, the prioritising of security over support functions often meant that the staff that may be needed to facilitate an inmate's visit with a lawyer, get their lawyer's telephone number put onto their phone card or to help them access the library may be sacrificed for a security matter (Chapter 7). Chapter 7 also detailed the challenged resources of the public legal profession. Consequently, whilst technically assistance with a legal problem was available, the distribution of resources within the systemic environment meant that, at times, in reality these opportunities were unavailable.

### **Prison routine: procedures/conventions versus practicalities**

In the discussion of the systemic environment (Chapter 7), the routines of prison and the practices of service providers were noted to be, at times, incompatible. For example, security measures such as a lockdown, meant that inmates were not available at the times when their lawyers were onsite. Similarly, inmates were not able to access telephones at times when lawyers were out of court, and the lawyers could not easily return calls if an inmate left a message. Accordingly, the discordance between the formal routines to which prisoners must adhere and the hours of operation of agencies that carry out legal processes or provide legal assistance serve to undermine inmates' ability to address their legal needs.

The informal conventions or the subculture of the prison environment also clashed with some avenues of legal redress. Broadly speaking, difficulties may arise when one inmate wrongs another and approaches custodial staff for assistance with any legal problem. It was argued that inmates may not pursue certain avenues of redress available to them because they ran counter to behaviour that was appropriate according to the prison subculture. Inmates and officers are understood in the prison subculture to be inherently and irrevocably in opposition to each other. Consequently, going onto protection or informing prison authorities of an assault against one inmate by another, for example, constitutes a betrayal of inmate 'brotherhood'.

Moreover, some inmates felt they could not freely approach officers to request assistance with any legal (or any other) problem because other inmates may interpret this as informing or just being too close to 'the enemy' as it were. Consequences for these courses of action include stigmatisation or violence. Accordingly, seeking legal assistance from an officer is considered unattractive or worse, unsafe, in the informal code of behaviour for inmates. Moves towards dual roles for officers (i.e. inmate management and welfare), whilst improving accessibility to assistance for inmates, may be problematic with the current informal frameworks that structure social relations within prison.

Finally, the tendency for inmates to have more informal arrangements for child custody, financial transactions, and housing also presents as a challenge to later successfully using the law to resolve these issues. In Chapter 6 a range of circumstances were outlined concerning how inmates who have informal arrangements are vulnerable to having difficulties enforcing or even negotiating those arrangements whilst in prison.

In summary, our analysis suggests that the opportunities for inmates to access justice or to address their legal needs were at times misaligned with the lived experience of prison. Mismatches were observed between the communication avenues most effective for inmates and those most often used to obtain legal assistance, the personal and systemic resources available to inmates and pathways to legal assistance, and the daily realities of inmates and the operational practices of legal services. A better fit between these various components would serve to improve access to justice and maximise the efficacy, services and availability of people who assist inmates.

## **Policy implications**

Being aware of the points at which opportunities for inmates to access justice are compromised or are missed because they do not engage with the realities of prison life can assist stakeholders to identify how to maximise the support they provide to this group. In terms of the three main areas discussed above, a number of strategies should be considered.

Firstly, the means of communication required needs to take into account the preferences and skills of the inmate. For example, inmates prefer face-to-face communication, and may require more time to digest complex legal information in order to make informed decisions and give instructions to their lawyer. Prison inmates may also need assistance with reading complex legal documents, but assistance that does not risk confidentiality, embarrassment or exploitation (see Chapter 8). Inmates also require, especially at the initial stage of their incarceration, clear, accurate, detailed and reliable information about how to get assistance with their legal needs. Currently, pathways to assistance are obscured by inconsistency in the provision of assistance, and by unreliable or missing formal information.

Secondly, there is clearly a relationship between resources (both personal and systemic) and inmates' ability to take advantage of opportunities for legal assistance. Increasing the skills of inmates (for example, by giving them effective access to legal information via the library or in the form of training or education) or tailoring the demands made on their capacities (for example, by providing accessible information about their legal matter, and sufficient time to discuss this with their legal adviser) could serve to narrow the gap. In some jurisdictions, law students have been involved in providing face-to-face 'court readiness programs' and other forms of legal information and assistance to prisoners, as part of their studies (e.g. Naylor & Jacobson, 2007; Lajeunesse, 2002).

From the systemic resources point of view, our analysis does point to considerable strain on Legal Aid services and those provided by DCS staff. Clearly, the provision of more or better resources in terms of equipment, telephones, and staff are subject to budget concerns, however, our data suggest that there may be a synergistic benefit to be exploited from directing resources towards inmates' welfare concerns. For instance, more resources directed towards inmates' legal needs may ease the strain on custodial staff, because inmates are more settled and require less intensive behaviour management. As Lajeunesse (2002) observed in her study of access to justice in Canadian federal prisons:

*Not providing adequate services has profound impacts ... Respondents indicated that access to legal counsel would likely result in better institutional behaviour due to lessened feelings of frustration and powerlessness among inmates. This in turn would lead to an improved ability among inmates to focus on their programming needs while incarcerated. Presently, as evidenced by respondents in this research, there are multiple problems associated with lack of access to legal counsel .... This builds up resentment against 'the system' adding to any earlier perceptions of injustice on the part of some inmates. (Lajeunesse, 2002, p. 7)*

Consequently, there may be a degree of offsetting the increased supply of resources to welfare issues to the lowering of demand for custodial functions. Similarly, assisting inmates to address outstanding non-criminal issues before their release may be more efficient than trying to address them post-release, at a point when inmates have multiple demands on their personal resources in order to re-establish their lives and they may not be so easy to locate and assist.

Having advice services via AVL can circumvent the need for lawyers to attend prisons and increase time spent in advice sessions because inmates are assembled prior to the link being activated. Accordingly, where support activities adjust to, or circumvent, the impact of security functions, inmates are able to continue receiving support in the face of prison-imposed restrictions.

Thirdly, services and functions both within and external to DCS need to engage with the DCS security operations and inmates' routines. Security will, more than likely, remain the foremost concern in prisons and cannot be ignored by legal service providers if it has the potential to disrupt support services. In negotiation with DCS, perhaps services could be made less vulnerable to security activities or incorporate sufficient flexibility so that consistent service may be maintained. An example of this in the current study was where the chaplain, official visitors and welfare officers were able to go to the wings/pods to see inmates who, due to their prisoner classification, could not easily leave the wing to seek assistance (see Chapter 7). The main point here is that, because the inmates did not have to wait for an escort to meet with these people and receive help, the service provision was less vulnerable to security requirements. External services could also provide opportunities that take into account the current strictures governing prison life, such as the hours that the telephones operate and routine lockdown (Chapter 7). For example, a number of inmates mentioned how they could ring or leave a message on their private lawyer's mobile phone. That said, the expense of contacting a mobile number must also be taken into consideration.

Finally, strategies designed to assist inmates with their legal problems need to take account of prison culture in order to be effective. This is not to say that this culture and the subjective positions taken up by inmate and officer are immutable or universally experienced. Rather, the issues discussed in this analysis are those which our research suggests affect access to justice and consequently may affect strategies concerned with improving it. Culture is difficult to change particularly when its logic is reinforced by a range of systems, practices and ideologies.

To simultaneously avoid reinforcing a culture (or subculture) yet effectively engage with the limitations it imposes, is a dilemma that many service providers face in a range of contexts (e.g. domestic violence (Davis, 2000), HIV prevention (Parker et al., 2000)). Strategies that run counter to the informal order of social relations, such as custodial officers taking on increasing responsibilities in inmate support, may therefore require a period of adjustment and/or modification. Officers would also need to be adequately resourced so they can best support and refer inmates who need legal and other assistance. In Chapter 9 it was demonstrated how officers may still provide assistance without leaving the inmate vulnerable to violence or stigmatisation, by strategically establishing modes of interaction with them. The important message here is that agencies understand the current limitations and assumptions that aspects of prison culture bring and engage with them when developing service provision strategies.

Similarly, the tendency towards having informal arrangements around important issues such as housing, finance, and child care needs to be addressed, particularly taking into account the reluctance to use, or a mistrust of, the formal processes, as well as a lack of knowledge of those processes. The assumption that repeat or long-term inmates have a good knowledge of legal and/or administrative processes may be misplaced as many inmates habitually operate outside formal processes and are usually ignorant or, at least, mistrustful of them. Pre-release basic instruction on how inmates may manage these issues through formal processes and the benefits that these processes may bring, may assist them in being able to preserve their rights and become accustomed to using the law to their own advantage. Putting such knowledge into practice may also assist in improving their legal position by having formal supporting documentation.



## Disempowerment and meeting legal needs

There is already much written about the disempowerment of the inmate in a prison setting and the essential dominance of prison authority over the prisoner (see for example, de Viggiani, 2007). However, this section will discuss the disempowerment in the prison setting as it relates specifically to meeting legal needs.

One of the strongest contributors to the sense of disempowerment surrounding inmates meeting their legal needs was the pervasive necessity for intermediaries, as described in detail in Chapter 8. From booking an appointment with the PLS visiting legal advice clinic, to having their belongings retrieved and/or stored, inmates rely heavily on others to carry out tasks on their behalf. The opportunities for an inmate to conduct autonomous research and to take action to address their legal needs are minimal, with the inmate being frequently dependent upon others, plainly a potentially disempowering position to be in. The risks associated with such a vulnerable position were also described: a small number of inmates suffered financial loss, other inmates had their privacy breached through exploitative relationships with their intermediaries and a substantial number of inmates were unskilled or even felt deskilled concerning how to deal with authorities and how to actively resolve their legal problems.

Chapter 8 also contained evidence of the inconsistency of assistance received through intermediaries. Inmates were not sure, from one prison to the next, from one staff member to the next or from one inmate to the next, that the information and assistance they receive will ultimately get them the legal assistance they require. Inmates may feel a further sense of disempowerment as the ground upon which they pursue pathways to legal assistance repeatedly shifts, consequently undermining their development of knowledge and the confidence to know that their actions will bring a satisfactory outcome.

This sense of disempowerment, which can result from the loss of personal autonomy, can also be seen in the adoption of the culture of compliance, as described in Chapter 9. A key component of the compliant inmate identity is conformity with the formal culture of the prison and unquestioning submission to prison routines and structures. We argued that this persona is promoted through the reinforcement of passive behaviour and the discouragement of more confronting behaviours, which may not attract assistance when it is needed. Non-conformity, however, also had a mutually

reinforcing relationship with disempowerment in the realm of the law. In Chapter 6 it was asserted that previous experience with the criminal law, which is perceived as working against the inmate, further diminished their willingness to use other legal processes (e.g. civil and family law) to their benefit. Further their lack of previous experience in using the civil law processes, because they have habitually by-passed the law in arranging their affairs, means that inmates often opt out of initiating or participating in legal processes that could benefit them.

The relationship between inmates and their lawyers was another potential site of disempowerment. Our interviews contained many complaints from inmates about their representation by Legal Aid and the ALS, and, to a lesser extent, by private solicitors. It was not possible in this research to examine the validity of such complaints as the sample of inmates was clearly biased towards those whose criminal matters have resulted in a period of incarceration. However, in Chapter 7 it was suggested that at least some of the dissatisfaction expressed was derived from the lack of input inmates felt they had in their case — a lack of input caused by the limited access inmates had to their lawyers whilst in prison. More specifically, some interviewees felt that lawyers did not have sufficient time to spend with inmates (particularly those with limited comprehension or cognitive capacity) to get a complete picture of their criminal matter and to discuss possible strategies and outcomes. It was also apparent that dissatisfaction with the legal assistance provided (whether warranted or not) undermined inmates' faith in the legal system in general and Legal Aid/ALS lawyers in particular because they felt that they did not, and would not in the future, receive a fair defence.

A client's inclusion in the process of resolving their matter has been highlighted by previous research as an important aspect of the perceived quality of legal services (Hunter et al., 1999). In an examination of access to justice by the NSW Law Society, the Taskforce commented:

*The public image of the legal profession is a key element of the community's evaluation of whether they will be able to access the justice system. The legal profession is seen as the gatekeeper to the justice system. Research conducted by the Law Society and others reveals that: solicitors are assessed by the community on the basis of a range of complex and interlinked factors such as ... the way in which the solicitor communicates with and involves the client in the day to day work on the matter. (Law Society NSW, 1998, pp. 46–47)*

In light of the evidence given in this report, regarding the limited opportunities prisoners have to interact with their lawyers, it is therefore not surprising that the importance of ‘involvement’ emerged as a theme in the discussion of inmates’ ability to access justice. When, as the report quoted above suggests, evaluation of the quality of legal assistance partly depends on the degree of involvement of the client, the systemic environment described in Chapter 7 clearly works against this aspect of a satisfactory assessment. Accordingly, limited resources in the form of publicly funded lawyers may underlie some of the disempowerment felt by inmates in addressing their legal issues. It reduced the opportunities for adequate input from the inmate regarding their matters and, less directly, undermined their faith in a fair legal system.

One final area in which the theme of disempowerment of the inmate and inmate’s legal needs was visible was in the cyclical nature of incarceration and the consequent accumulation of disadvantage. In Chapter 6 it was revealed how one occasion of imprisonment relates to the next period of incarceration through the incursion of legal problems prior to, and as a result of, prison, such as the lack of resolution of problems whilst inside and the stripping of the inmate of skills that may assist in them dealing with legal problems whilst in prison. Inmates also lose family support, friends, money, possessions, jobs, knowledge of current technologies and housing each time they are incarcerated, cumulatively compromising their ability to remain free of or to tackle effectively legal problems (Borzycki, 2005; Baldry et al., 2003). Consequently, there is an intimate and mutually harmful relationship between disempowerment and the legal needs of inmates as inmates move in and out and back into prison.

Disempowerment of inmates in addressing legal needs seems, from our analysis, to emanate from a number of areas: the divestiture of responsibility for tasks serving the resolution of legal needs; reinforcement of passive behaviour; cumulative disadvantage; and, an undermining of faith that the law can be an instrument of justice for them. In these ways, pathways to legal assistance from prison may both suffer from the disempowerment that often besets prisoners, as well as contribute to it. Consequently, policy makers would need to simultaneously look at engaging with the effects of disempowerment whilst attempting not to further exacerbate it when formulating policy to improve access to legal assistance for prison inmates.

## **Policy implications**

One of the clearest directions for policy makers with respect to disempowerment and inmates' legal needs is to reduce the number of intermediaries required along pathways to legal assistance. Providing opportunities so that inmates may conduct independent research and progress their legal matters without requiring the intercession of others may not only restore a degree of autonomy and maintain/develop skills, but may also minimise delay and draw less on scarce human resources. The inclusion of the LawAccess telephone number on inmates' phone cards is an example of a strategy where inmates may directly obtain legal information and advice as they need it, enhancing their independence of DCS staff or others, and improving their levels of legal knowledge.

LawAccess is a free statewide (NSW) telephone service that provides legal information, advice and referrals. Legal officers can provide legal advice over the telephone, and/or refer the caller to another legal or related service that is appropriate to their needs. They can also send out information, discuss eligibility for Legal Aid and assist with making an application for Legal Aid. Inmates would then not only be in a better position to understand their legal matters and what they can do about them, but also assess the performance of counsel and the fairness of the outcome. Further, continuity of service with LawAccess from inside to outside prison (and vice versa) means that the inmate may be already familiar with the service and therefore more likely to use it once they leave prison.

To minimise the haphazard and consequently disempowering nature of the pathways to legal assistance, processes may need to be rationalised and personnel supported so that assistance is reliable, effective and is recognised as part of their duties. An essential element in this is the provision of adequate support to personnel providing information about legal problems (not legal advice, see definitions in Chapter 5) in the form of training and the availability of comprehensive and up-to-date information about pathways to legal assistance that is readily accessible and executable. In addition, introducing LIAC materials into prison libraries is another strategy which enables direct access to legal information. Further, both LIAC and LawAccess are resources which can also be directly accessed by inmates on the outside after their release from prison which affords a continuity that can bring confidence and trust in quality sources of information.

As noted in Chapter 6 inmates are accustomed to informal arrangements and/or conducting their affairs outside of the law, so they have little experience in using the law as a tool for their own benefit. Making inmates aware of their rights and how they go about ensuring them through such programs may empower them to be an active user of the law rather than a passive recipient of legal actions, circumventing future legal problems through early and effective action. Consequently, educating and skilling inmates in issues with legal implications such as financial literacy, welfare rights, family rights and obligations before they are released may also assist in the alleviating or avoiding legal problems post-release. One welfare officer who was also a financial counsellor described a program she devised that gave inmates information about how the SDRO and the Victims Compensation Tribunal function.

Finally, allowing inmates more time with their legal advisers may be another way in which inmates would be empowered in meeting their legal needs. Having sufficient resources to allow inmates enough time to convey their case to their lawyer, and discuss strategies in consultation with the inmate may assist inmate defendants in participating more fully and effectively in their legal matters.

## Targeting and timing legal assistance

The previous three sections have described how barriers related to inmate capacity, the systemic environment, pathways to legal assistance and prison culture interact to produce an inversion between access and quality of assistance with legal problems and a mismatch between prisons, prisoners and opportunities to access justice, and the disempowerment of the inmate. The implications of these factors for policy makers and the strategies that need to be designed to assist the prevention and resolution of prisoners' legal needs were also outlined. However, imprisonment and being a prisoner is a dynamic rather than a static state and is only one (although often recurring) phase in a person's life. Consequently, strategies aimed at improving access to justice for inmates may be best targeted when the ebb and flow of legal needs, personal capacity and the environment in which the person is operating during the incarceration process, are taken into account.

To begin with, imprisonment itself can be seen as a 'circuit-breaker' whereby there is a hiatus in an increasingly chaotic lifestyle. In comparison to the often turbulent period prior to custody and the demanding times post-release, prison

may represent an opportunity for services to be brought to the person when, relatively speaking, they may have an opportunity to address them. Such an approach resonates with a discussion of health care services in Australian prisons by Levy (2002):

*The issue of access to health services presents a number of challenges to those responsible for inmate health care. Not only do prisoners have poorer access to health services in the community prior to incarceration (Glaser & Greifinger, 1993) but also, when they return to the community, they may encounter difficulties in obtaining medical care and social services (Warren et al., 1994). Given these realities, imprisonment, perversely, provides an opportunity to address the health needs of a group that is difficult to access in the community.'* (Levy, 2002, p. 242)

Recognising imprisonment as just one stage in an inmate's life, the observations made above about health care may well also apply to the provision of legal care, particularly for family and civil issues.

Turning to the incarceration process itself, inmates generally move through different forms of custody: from police custody at arrest, to a remand centre if bail is refused, and then to a 'sentenced' jail once convicted. Virtually all prisoners are also released from custody, the majority within six months of their arrest. Following release, an inmate may be subject to parole or they may be discharged unconditionally. Accordingly, a prisoner's environment can change considerably as he or she moves through the incarceration process. It alters in terms of the demands it makes of inmates and in the barriers it presents to accessing legal assistance. Further, the types of legal problems inmates face and their own personal (e.g. cognitive) capacity to identify and address these legal issues also vary considerably as they move through these phases of imprisonment. Consequently, effective targeting of services to prisoners and ex-prisoners should take account of the changing needs, capacities and environments as inmates move through the incarceration process.

To assist service providers and policy makers in targeting resources and strategies to better meet the legal needs of prisoners, Table 10.1 (*see* page 280) summarises the legal issues, the state of the inmate, features of the environment, and the key barriers to legal assistance across the various key stages of incarceration: charge and detention, remand, sentenced, pre-release and post-release. The table illustrates and takes into account the ebbs and flows in: civil and criminal legal needs, personal capacity, and the systemic constraints affecting an inmate's access to justice at different points in the system.

## Conclusion

It is clear from the statistics provided in Chapter 2 that prison inmates, as a group, are highly disadvantaged. At the aggregate level, they are under educated, have high rates of mental illness and intellectual disability, have drug and/or alcohol addictions and are financially compromised. Imprisonment tends to compound these disadvantages. Each time the person cycles through the justice system, personal supports are strained, skills atrophy, financial resources are depleted and the capacity to operate well 'on the outside' and without resort to unlawful means is further diminished. Many of the symptoms and causes of these problems have legal implications, with family breakdown, difficulties with housing, debt, conflict with government authorities all generating and reflecting the disadvantage that prisoners experience. However, there has been little research examining this group and their legal needs. This study has sought to address this dearth of knowledge and identify areas which may be amenable to improvement.

Our study drew upon the opinions and experiences of inmates, ex-inmates and the professionals who work with them. As a group, the sample of inmates and ex-inmates broadly reflected the disadvantaged population described in the literature: many had not completed a full school education and more than half had spent time in prison before. Our sample included men and women of various ages, Aboriginal people and people from non-English speaking backgrounds. We spoke to inmates in a range of custodial situations. Pertinent to this investigation, however, was that many of the inmate interviewees also had legal problems in addition to the criminal offence for which they were incarcerated. In many cases, they were dealing with a range of other criminal, family and civil law issues. These included debt, child access and residence, child support payments; immigration, loss of licence, AVOs, loss of personal property, and business related issues.

Our research indicated that there are both opportunities for addressing these legal issues as well as vulnerabilities in the systems that provide that redress. Opportunities for obtaining information about legal issues and how to address them were made available through the prison law library and its borrowing service at the MRRC, information provided by DCS, written information such as posters and pamphlets distributed by legal services and (since interviews ceased) through LIAC. Sources of legal assistance to inmates included private lawyers, Legal Aid including the PLS, ALS lawyers and Aboriginal field

**Table 10.1: Su □  
by stage of incarceration**

<i>Legal issues</i>	<i>State of prisoner</i>	<i>Features of the environment</i>	<i>Key barriers</i>	<i>Policy/service provision implications</i>
<b>Phase characterised by acute personal and legal crisis in □</b>				
Criminal law	Shocked and/or feeling anxious and fearful	Crowded police/court cells that lack privacy for legal consultation	Little access to legal information or advice about criminal charges, particularly for those without private representation at the time of arrest	Resources for longer appointment times with legal advisers, taking into account the often reduced capacity and high need of prisoners at this time
Bail	Possible drug and alcohol intoxication or withdrawal	Little access to telephones	Confidentiality compromised when speaking to legal adviser in police or court cells	Training for lawyers about factors affecting prisoner capacity (e.g. drug and alcohol impairment, mental illness and the impact of a chaotic history or lifestyle)
Child protection and custody	Possible unstable mental health	No access to library	Personal capacity may be limited by intoxication, shock, lack of appropriate medication for mental illness and anxiety but crucial statements may still be made	Provision of time and space for private legal consultations in police cells
Personal property and pets	Limited financial capacity	Legal Aid available for bail but not for criminal matters at time of arrest	Limited financial capacity may impact on ability to get bail	Assessment of and assistance with immediate non-criminal needs (e.g. housing, child care, employment, property and pets) especially if held in police cells for extended periods
Notification of employer	Possible limited proficiency in English, literacy problems, and/or cognitive delay	Limited time with duty lawyer at bail hearing	Detention may be sudden and unexpected	Consideration of a legal advice service for prisoners with urgent civil/family legal issues in police/court cells where prisoners are held for extended periods
	Focusing on criminal matter — other civil issues not a priority	No or limited access to prison welfare support		
	May not seek or receive informal support because of distance, lifestyle, sense of shame, and/or belief that release is likely (on bail or because there will be no charge)			



Legal issues	State of prisoner	Features of the environment	Remand	Key barriers	Policy/service provision implications
<p><b>Phase characterised by a need to sit a reduction in personal</b></p> <p>Criminal law</p> <p>Housing (tenancy and mortgage payments)</p> <p>Employment/business related legal issues</p> <p>Social security</p> <p>Ongoing need to organise affairs relating to family and children</p>	<p>Prisoner continues to be in shock, and is feeling unsettled and highly anxious</p> <p>Prisoner unsure about length of time to be spent in custody</p> <p>Possible drug and alcohol intoxication or withdrawal</p> <p>Re-establishing appropriate psychiatric medication</p> <p>Unfamiliarity with available help and processes in prison</p> <p>Court processes and outcomes not well understood</p> <p>Limited financial capacity</p> <p>Possible limited proficiency in English, literacy problems, cognitive delay and/or mental health problems</p> <p>Focusing on criminal matter — other civil issues not a priority</p> <p>May not be aware of full range of outstanding civil issues</p> <p>Tendency to have informal arrangements for child care, property, housing and debt</p> <p>May have limited knowledge of prison processes and culture</p>	<p>Most remandees in maximum security, which is a highly stressful environment</p> <p>Phone cards may take time to be functional</p> <p>Staff shortages lead to custodial officers being stripped from duties such as sorting the mail and setting up phone cards</p> <p>Vulnerable prisoners may be placed on protection, which has more restrictions on movement and limits out-of-cell hours</p> <p>Restrictions on movement experienced within the correctional centre when first received due to monitoring by prison staff</p> <p>Prisoner may not receive induction information because of lack of resources</p> <p>Prisoners legal advice service has limited time to spend with each prisoner</p> <p>Limited window of time for lawyers to attend prison (e.g. due to lockdown times) or for inmates to telephone lawyers (e.g. the lockdown occurs in the early afternoon before the lawyers are out of court)</p> <p>Prisoners cannot directly receive telephone calls in prison</p> <p>Time limited telephone calls and a limited number of telephones available</p> <p>Legal advice service lawyer may not be able to give advice outside his or her area of expertise e.g. on civil/family issues because he or she has specialised as a criminal lawyer</p> <p>Frequent movement of prisoners between correctional centres may disrupt communication with lawyer and informal intermediaries</p> <p>No internet access to legal information</p> <p>Prisoners must use intermediaries for assistance with legal problems</p> <p>Obtaining legal information from library may entail delays</p> <p>Limited access to computer to read briefs</p> <p>Transfer to court long and may involve transfer to another prison (avoided if hearing by AVL)</p> <p>Prison culture discourages use of custodial staff for information</p>	<p>Personal capacity may be limited by intoxication, shock, depression, anxiety, re-establishing psychiatric medication and uncertainty about time that will be spent in custody</p> <p>Problems associated with phoning legal for advice because of prisoner classification, restriction on movement, delayed telephone approval, limited time available on telephones, competition for telephone use and lawyer not available during prison operating hours</p> <p>Prisoners reliant on publicly funded legal services because of poor financial capacity — yet these services are limited by resources</p> <p>Access to legal advice given in person reduced because of lockdown, prisoner classification, timeliness, movement between prisons and low resources of publicly funded legal services</p> <p>Reduced capacity to give instruction to lawyers because of comprehension difficulties, privacy and limited time with adviser</p> <p>May not receive legal mail in time to prepare for court because mail distribution is delayed (e.g. delays may occur because the officer responsible has been placed on security related duties during staff shortages)</p> <p>Intermediaries delay or fail to carry out tasks related to obtaining legal assistance</p> <p>Reduced capacity to access legal information because of prisoner classification, restriction on movement and delayed responses to legal information requests</p> <p>Difficulty understanding legal documents and court processes because of complexity, limited proficiency in English and literacy problems</p> <p>Transportation to court hearing on trucks is highly unpleasant and prisoners may plead guilty to avoid it</p> <p>Criminal matter takes priority to the possible detriment of civil/family legal issues</p> <p>Unfamiliarity with formal and informal prison 'rules' may leave them vulnerable and/or unable to initiate obtaining assistance</p>	<p>Assessment of remandees' civil and family legal needs</p> <p>Clear, reliable and timely information for prisoners about how to access legal assistance for civil, family and criminal law problems from jail</p> <p>Strategies to ensure that prisoners in reception, segregation and protection can access legal assistance</p> <p>Clear and consistent information and support for DCS staff about their role as a link to legal assistance (e.g. consideration of courses such as law for non-lawyers for key custodial and other staff like Wing Officers, Welfare Officers and Community Corrections Staff)</p> <p>Continuation of the PLS weekly visiting legal advice clinic, with funding to allow for longer appointment times</p> <p>Continuation of visits by the ALS field officers</p> <p>Maintenance of LIAC information and staffing in all prison libraries</p> <p>Prisoners (staff and prisoner peers) who may assist prisoners to complete library request forms are clearly identified to prisoners and trained appropriately</p> <p>Develop phone cards that are transferable between prisons</p> <p>Consideration of ways to improve telephone communication between prisoners, legal and government services (e.g. instituting a message service for lawyers trying to contact prisoner clients and setting up special telephone numbers for prisoners without automated waiting periods)</p> <p>Increasing the accessibility and availability of welfare staff/staff that can assist with welfare issues (e.g. advocacy and contact with government agencies)</p> <p>Provide community legal education for longer term remand and sentenced prisoners on issues including housing, debt/finance, child custody, domestic violence issues, immigration and employment</p> <p>Increase opportunities for prisoners to act autonomously in address their legal issues (e.g. enable access to government agencies such as SDRO)</p>	

Legal issues	State of prisoner	Features of the environment	Sentenced	Key barriers	Policy/service provision implications
<p>Appeal sentence/conviction</p> <p>Access to children and other family matters</p> <p>AVO/ADVOs</p> <p>Prison disciplinary matters</p> <p>Assault or other accidents in prison</p> <p>Victims compensation restitution</p> <p>Outstanding warrants and DNA testing</p> <p>Unpaid fines, child support, DOH, Centrelink and other debts</p> <p>Defamation</p>	<p>More familiar with available processes and culture in prison</p> <p>Receive treatment for mental illness and alcohol or other drug problems</p> <p>DEPENDENT UPON LENGTH OF SENTENCE</p> <p>More involved in work and education programs</p> <p>Has links within jail to other inmates and staff</p> <p>Less connected with life outside prison</p>	<p>Most sentenced prisoners in lower security prisons</p> <p>Longer out-of-cell hours</p> <p>May still be transferred between prisons if in a rural/regional location, higher costs are incurred for telephone calls and, consequently, there is less access to the prisoner's private lawyer as well as to family/friends</p> <p>At the time of our interviews, limited and outdated legal information materials were available at sentenced jails (LIAC material are now distributed)</p> <p>No direct access to law library based in MRRC</p> <p>Free telephone calls to Legal Aid but prisoners have to pay for telephone calls to private lawyers</p> <p>Little or no resources to assist with resolution of civil/family legal issues</p> <p>Limited access to formal hearings for civil/family law matters</p>	<p>Prisoners must have money and be prepared to pay for certain charges, such as telephone calls to their private lawyer, with the cost being higher if the prisoner is transferred to a regional prison</p> <p>Difficulties accessing solicitor when transferred to a prison away from the prisoner's usual place of residence</p> <p>Loss of connection with the outside world reduces prisoners' motivation to address outstanding legal problems</p> <p>Limited access to current, relevant legal information materials from sentenced jails</p> <p>For those on short sentences, limited access to education or other programs and there is less time to 'settle' into jail and address issues</p> <p>For those on longer sentences, prisoners are more entrenched in prison culture and are less likely to report assault by other prisoners</p> <p>A more passive approach to addressing issues may evolve during the prison sentence</p> <p>Accessible information sources (e.g. other prisoners) may not have reliable information</p>	<p>Regular specialist civil/family legal advice clinics in sentenced jails</p> <p>Maintenance of LIAC information and staffing in all prisons</p> <p>LawAccess number charged as a local call on all prisoners' phone cards</p> <p>More formal streamlined processes for prisoners to contact relevant government agencies (e.g. SDRO to address fine-related debt and DOH concerning housing debt)</p> <p>Increasing the number of welfare staff/staff that can assist with welfare issues, including advocacy and contact with government agencies</p> <p>Further explore and evaluate the use of AVL for the provision of legal advice services in prison</p> <p>Improved systems of contact between prisoners and lawyers (e.g. reliable message system and mobile numbers)</p> <p>Better access to forums for resolving civil/family matters</p> <p>Calling in of warrants to enable the prisoner to serve time concurrently</p>	<p>Regular specialist civil/family legal advice clinics in sentenced jails</p> <p>Maintenance of LIAC information and staffing in all prisons</p> <p>LawAccess number charged as a local call on all prisoners' phone cards</p> <p>More formal streamlined processes for prisoners to contact relevant government agencies (e.g. SDRO to address fine-related debt and DOH concerning housing debt)</p> <p>Increasing the number of welfare staff/staff that can assist with welfare issues, including advocacy and contact with government agencies</p> <p>Further explore and evaluate the use of AVL for the provision of legal advice services in prison</p> <p>Improved systems of contact between prisoners and lawyers (e.g. reliable message system and mobile numbers)</p> <p>Better access to forums for resolving civil/family matters</p> <p>Calling in of warrants to enable the prisoner to serve time concurrently</p>
<b>Pre-release</b>					
<p>Securing parole</p> <p>Outstanding debts</p> <p>Identification documentation</p> <p>Deportation and immigration issues</p> <p>Outstanding warrants</p> <p>Unpaid fines</p>	<p>Phase characterise <input type="checkbox"/> concerning his or her release, partly stemming from an inadequate knowledge about the situation outside of prison</p> <p>May be more comfortable in prison than outside</p> <p>May feel heightened emotions about leaving prison, either nervous or eager</p> <p>Possible unrealistic expectations of post-release life</p>	<p>Lower security</p> <p>May be placed in rural/regional location, which leads to increased costs of telephone calls, less access to non-local lawyers and more difficulty in making arrangements for post-release support</p> <p>Limited information on civil/family law matters</p> <p>Limited places in courses, which prisoners may need to attend so that they can be eligible for parole</p> <p>Parole hearing conducted at a distance to prisoner's prison</p>	<p>Lack of access to up to date accurate legal information because of barriers to accessing a law library and/or out of date library content</p> <p>Willingness to agree to parole conditions that can't be met</p> <p>Less access to lawyers because of geographical location</p> <p>Failure to attend court or parole hearing on the basis that, by leaving their current prison to attend their hearing, they will lose standing and privileges</p> <p>Cannot meet parole requirements because insufficient places on required courses</p> <p>For short stay prisoners, less time to address outstanding legal issues and to prepare for release</p>	<p>Support and assistance to address outstanding legal issues:</p> <ul style="list-style-type: none"> <li>• outstanding warrants</li> <li>• commence child access arrangements</li> <li>• payment of fines to regain license</li> <li>• deportation and immigration</li> </ul> <p>Establish familiarity with resources/networks that may be continued outside of prison (e.g. LIAC and LawAccess)</p> <p>Sufficient places/organisation of courses to allow prisoners to meet eligibility requirements by the end of their non-parole period</p> <p>Alternatives to travelling for, and otherwise not participating in, parole hearings</p> <p>Provide sufficient information/education about basic life skills, such as opening bank accounts, regaining a drivers licence, obtaining identification such as a Medicare card and accessing legal assistance outside of prison</p>	<p>Support and assistance to address outstanding legal issues:</p> <ul style="list-style-type: none"> <li>• outstanding warrants</li> <li>• commence child access arrangements</li> <li>• payment of fines to regain license</li> <li>• deportation and immigration</li> </ul> <p>Establish familiarity with resources/networks that may be continued outside of prison (e.g. LIAC and LawAccess)</p> <p>Sufficient places/organisation of courses to allow prisoners to meet eligibility requirements by the end of their non-parole period</p> <p>Alternatives to travelling for, and otherwise not participating in, parole hearings</p> <p>Provide sufficient information/education about basic life skills, such as opening bank accounts, regaining a drivers licence, obtaining identification such as a Medicare card and accessing legal assistance outside of prison</p>

Legal issues	State of prisoner	Features of the environment	Key barriers	Policy/service provision implications
<b>Post-release</b>				
<b>Pha</b>				
<b>few financial resources, absent or outdated skills, poor housing options and an unstructured environment</b>				
<p>Complying with parole conditions</p> <p>Social security debt and proving social security eligibility</p> <p>Housing debt</p> <p>Identification documentation</p> <p>Outstanding fines and other debts</p> <p>Police attention and harassment</p> <p>Discrimination issues when trying to find employment and housing</p> <p>Access/custody of children</p> <p>Victims compensation restitution</p>	<p>Capacity to meet responsibilities reduced by lack of autonomy in prison</p> <p>Deskilled</p> <p>May be stressed, overwhelmed or fearful</p> <p>Face recurring alcohol or other drug and/or mental health issues</p> <p>Lack of support network due to release into a new area or relationships damaged prior to incarceration</p> <p>No drivers licence</p> <p>Stigmatised because of imprisonment</p> <p>Reduced financial resources</p> <p>Out of touch with current technology, procedures and social mores</p> <p>Accustomed to acting passively and/or aggressively</p> <p>May have few social supports and be tempted back to negative patterns of behaviour</p>	<p>Greater access to legal services than current prisoners</p> <p>No, inappropriate, or temporary housing</p> <p>May be subject to multiple compliance regime (parole, Centrelink requirements, AVO/ADVOs, methadone, etc.)</p> <p>Unstructured environment (particularly if not on parole)</p> <p>Old networks linked to substance problems and/or criminal behaviour</p> <p>Restrictions placed on people with whom the person can associate</p>	<p>Lack of support and multiple responsibilities may lead to breach of parole or re-offending</p> <p>Housing and reduced financial resources may make it difficult to regain custody of children</p> <p>Re-connection with family/friends may make it difficult to avoid drug or alcohol use and criminal activity</p> <p>Difficulty in modifying passive yet aggressive behaviour patterns to meet social expectations especially when dealing with services/authorities</p> <p>May have made unrealistic arrangements/commitments that are prone to break down and may place them at risk of breaching parole conditions</p>	<p>More general support for prisoners upon release, including with housing, employment and reintegrating with family/community to assist in the prevention of parole breaches and going outside the law to meet needs</p> <p>Upon release, all prisoners are provided with:</p> <ul style="list-style-type: none"> <li>• LawAccess number</li> <li>• PLS number (if need assistance to vary parole conditions)</li> </ul> <p>Information for Community Corrections staff about legal services for their clients (at the very minimum, knowing about and giving out the LawAccess telephone number)</p> <p>Consideration of courses such as 'law for non-lawyers' for Community Corrections staff</p> <p>Information for support agencies/welfare staff about legal services available for their ex-prisoner (and other) clients. At the very minimum, giving out the LawAccess telephone number</p> <p>Recognition by authorities of the multiple obligations that prisoners experience while trying to re-establish life outside prison</p>

officers, and latterly, LawAccess. DCS support for prisoners to participate in legal processes came through the provision of transport to court for criminal matters, the tracking of court dates through OIMS, the implementation of the AVL system, and the work of welfare and other program staff.

Vulnerabilities in access to justice for prisoners and ex-prisoners are also identified in this research. For example, the lower priority given to non-criminal matters, the extra legal issues that incarceration may generate and the risk of re-incarceration if legal problems are not addressed, all added to the burden of inmates' legal needs. From the present analysis, it also seems that there are vulnerable groups within the inmate population, such as those with comprehension difficulties, people on remand or in protection or segregation and those who had limited personal and/or financial resources. Finally, the pathways to assistance with legal problems were also at risk of disruption because of features of the prison environment: for example, DCS processes that clashed with processes of other parts of the systemic environment; processes that involved many steps or intermediaries; procedures that differed from prison to prison or changed with different personnel; processes that were not well resourced or that resourcing to them was not prioritised; and, the processes for which responsibility is not clear and/or accountable.

Facilitating access to justice for prisoners involves taking into account these vulnerabilities and noting where processes may be adjusted to avoid or strengthen areas of weakness. With respect to legal problems, the question is whether any processes may be instituted to minimise the generation of new problems (such as the automatic notification system of Centrelink, or facilitating periodic payments to the SDRO so that inmates can regain their driver's licence sooner after release) and services/education targeted at the most common legal issues encountered by inmates. Further, services need to be made available during the more stable, sentenced phase of incarceration so that inmates can address their (potential) legal issues before the demands of release and reintegration are upon them. Accordingly, some relatively simple adjustments to policy and practice by stakeholders may markedly improve the likelihood that inmates' legal problems may be addressed.

For groups at a particular disadvantage, such as people in protection or segregation or those with an intellectual disability, policy makers should examine whether current and planned practices and programs reach these people — a different mode of communication may be needed, longer

appointments should be scheduled, or verbal information needs should to be supported by a written document and vice versa. From interviewees in this report, it would appear that there is a considerable range in terms of inmates' capacity with basic skills such as reading and writing, as well as their understanding of the law and the policies and procedures of prison. Consequently, a 'one size fits all' approach will not reach all inmates. Further, resourcing those people and services that are within easy and frequent contact with inmates (e.g. welfare and certain custodial staff) and/or ensuring reliable/efficient access to legally trained assistance would help avoid the often inverse relationship between the quality and accessibility of legal information and assistance.

There were also pathways to legal assistance that were vulnerable to breakdown: processes that were caught between different parts of the justice systemic environment; convoluted processes; processes that differed from prison to prison or altered with changing personnel; processes that were not well resourced; and processes for which responsibility was not clear. However, some of the circumstances that disrupt these pathways are unlikely to change or would take some time to change. Consequently, it is important that agencies work with these limitations and ensure that their processes are robust against the impact of security or the prison culture, and that there are ways of engaging with these processes. Service providers need to acquaint themselves with these issues and determine how best to negotiate these processes so that opportunities and time (their own and the inmate's) do not go to waste.

Finally, judicious timing of assistance and services may ensure that help comes when inmates can best capitalise on it and that legal issues are averted before they become problems. For example, skilling or re-skilling inmates in the management of their time, money and interactions with authorities before release may assist ex-inmates to remain independent and avoid resorting to solutions outside the law.

Consequently, satisfying legal need from within the prison environment can be a complex process. Isolation from services, the formal and informal regulation of movement and interactions, personal capacity and the tension between components of the justice system all affect how opportunities are exploited or missed. And there is no doubt that opportunities do exist for prisoners to address their legal needs and to prevent new problems from developing. Our research showed that many strategies are successful in bringing legal assistance

to prisoners, by engaging with the prevailing conditions and working with the limitations concomitant with imprisonment. Whilst it is true that some of the circumstances that may work against access to justice for inmates may not change, or will only change slowly, it is certainly possible to successfully address the legal needs of prison inmates and bring the opportunity for justice to people held in custody.

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## Legislation

- ◆ *Bail Amendment (Repeat Offenders) Act 2002* (NSW)
- ◆ *Bail Act 1978* (NSW)
- ◆ *Civil Liability Act 2002* (NSW)
- ◆ *Commonwealth Electoral Act 1918* (Cth)
- ◆ *Crimes (Administration of Sentences) Act 1999* (NSW)
- ◆ *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* (NSW)
- ◆ *Crimes (Administration of Sentences) Regulation 2001* (NSW)
- ◆ *Crimes (Forensic Procedures) Act 2000* (NSW)
- ◆ *Crimes (Sentencing Procedure) Act 1999* (NSW)
- ◆ *Crimes (Sentencing Procedure) Regulation 2000* (NSW)
- ◆ *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth)
- ◆ *Evidence (Audio and Visual Links) Act 1998* (NSW)
- ◆ *Felons (Civil Proceedings) Act 1981* (NSW)
- ◆ *Human Rights and Equal Opportunity Commission Act 1986* (Cth)
- ◆ *Human Rights and Equal Opportunity Commission Regulations 1989* (Cth)
- ◆ *Jury Act 1977* (NSW)
- ◆ *Parliamentary Electorates and Elections Act 1912* (NSW)
- ◆ *Privacy and Personal Information Protection Amendment (Prisoners) Act 2002* (NSW)
- ◆ *Privacy and Personal Information Protection Act 1998* (NSW).
- ◆ *Victims Support and Rehabilitation Act 1996* (NSW)

## Case law

*Dietrich v R* (1992) 109 ALR 385

*Roach v Electoral Commissioner* [2007] HCA 43

*Sales v Minister for Immigration and Multicultural Affairs* [2006] FCA 1807

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# Appendices

## Appendix 1: Areas of law particular to inmates

### **Voting**

In 2006 the Federal Parliament passed the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* which amended section 109 of the *Commonwealth Electoral Act 1918* so as to provide that any prisoner serving a full-sentence of imprisonment could not vote in federal elections. However, the impact of this amending legislation on prisoners' right to vote was recently struck out by the High Court of Australia in *Roach v Electoral Commissioner*.<sup>1</sup> This returned the law to the situation existing before the 2006 amendment, whereby those prisoners serving a sentence of less than three years have the right to vote in Federal elections.

Under NSW legislation, section 21 of the *Parliamentary Electorates and Elections Act 1912* stipulates that only unconvicted inmates on remand and inmates serving sentences less than 12 months are entitled to vote in State elections.

### **Jury duty**

In NSW, current prisoners and some ex-prisoners are disqualified from serving on a jury. Under section 6 of, and Sch 1 to, the *Jury Act 1977*, a person who at 'any time within the last 10 years in New South Wales or elsewhere has

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<sup>1</sup> [2007] HCA 43

served any part of a sentence of imprisonment’ or a person who is ‘currently bound by an order made in NSW or elsewhere pursuant to a criminal charge or conviction’ (including a parole order, remand in custody, or a good behaviour order) is disqualified from serving as a juror in NSW.

## **Privacy**

The *Privacy and Personal Information Protection Amendment (Prisoners) Act 2002* (NSW) withdrew the ability of prisoners and their families and associates to seek compensation for a breach of their privacy under the *Privacy and Personal Information Protection Act 1998* (NSW).

## **Personal injury**

In NSW, prison inmates are able to pursue civil claims for events predating their incarceration. They are also able to pursue civil claims for events that occur whilst in prison. However, there are a number of legislative barriers, specifically the *Felons (Civil Proceedings) Act 1981*, the *Civil Liability Act 2002* and the *Victims Support and Rehabilitation Act 1996*, which may prevent certain inmates from pursuing claims.

Firstly, section 26C *Civil Liability Act* states that a criminal offender is not to be awarded damages unless the degree of permanent impairment is at least 15%. Further under section 26J, if the action is against a ‘protected defendant’ (includes prison authorities, prison health authorities, public health organisations, prison management companies and government departments), an amount will be withheld to pay any outstanding ‘victim support payment’ amount owed by the offender.

Section 54 of the *Civil Liability Act* also regulates awards to ‘criminals’ by stating that a court is not to award damages if ‘the death of, or the injury or damage to, the person that is the subject of the proceedings occurred at the time of, or following, conduct of that person that, on the balance of probabilities, constitutes a serious offence’ and ‘that conduct contributed materially to the death, injury or damage or to the risk of death, injury or damage’. This section does not apply to an award of damages against a defendant if the conduct of the defendant that caused the death, injury or damage concerned constitutes an offence (whether or not a serious offence).<sup>2</sup>

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<sup>2</sup> A serious offence is an offence punishable by imprisonment for 6 months or more pursuant to s 54(2) of the *Civil Liability Act*.

For claims against persons other than protected defendants, damages are assessed on the same basis as they would be for other members of the public although section 4 of the *Felons (Civil Proceedings) Act* states that those inmates, who have been convicted of committing a serious indictable offence,<sup>3</sup> ‘may not institute any civil proceedings in any court except by the leave of that court granted on application’. Under section 5, leave may only be granted if the court finds that the case, based on the application, has merit.

And lastly, under section 24 of the *Victims Support and Rehabilitation Act*, people who have sustained their injury in the commission of a crime or while in prison are not eligible for victim’s compensation unless there are ‘special circumstances’ as decided by a tribunal.

### **Discrimination**

The Anti-Discrimination Amendment (Offender Compensation) Bill 2007 was introduced to the Legislative Assembly in May 2007. The Bill stipulates that where an offender is awarded compensation for loss or damage suffered by reason of conduct of protected defendants while they are in custody, this is to be paid into the Victims Compensation Fund rather than to the offender. This discharges the defendant from paying the compensation to the offender.

### **Reproductive material**

The Correctional Services Legislation Amendment Bill 2006 was introduced to the Legislative Assembly in May 2006 with the purpose of prohibiting inmates who are serving sentences for serious indictable offences or who are awaiting sentencing for such offences from providing their reproductive material<sup>4</sup> for use, or storage, for reproductive purposes at hospitals and other places.

The Correctional Services Amendment Bill 2006 was referred to the NSW Parliament Legislative Council General Purpose Standing Committee No. 3 by the Legislative Council on Wednesday 7 June 2006 for inquiry and report. However, as the Legislative Council was prorogued in January 2007 as the result of the State election, the inquiry has expired and the bill has not progressed further through parliament.

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<sup>3</sup> An offence heard in the District Court and above by a Judge and Jury.

<sup>4</sup> Sperm from a male or ovum from a female.

## Appendix 2: The sampling frame

Table A2.1 details the proposed distribution of prisoner and ex-prisoner interviewees across gender, geographic location, indigenous status, language background, classification and sentencing status.

**Table A2.1: Proposed sampling for prisoners and ex-prisoners to be interviewed**

Remand 20	Sentenced 20		Released 20	
	Short sentence 10	Long sentence 10	Parole 10	Unconditionally released 10
	Max security 5–10	Min-med security 10–15		
<b><i>Across the above strata, the sample will be split approximately:</i></b>				
Rural-Regional/Urban (20/20) Males/Females (34/6) Indigenous/NESB/ Non-Indigenous Anglo (11/7/22) Age 18–44/Other age groups (30/10)			Rural-Regional/Urban (5/15) Males/Females (18/2) Indigenous/Non-Indigenous (3/17) <sup>1</sup>	

**Notes:** <sup>1</sup> NESB (Non-English Speaking Background) and age were not further specified due to the likely difficulty with fulfilling such specific requirements within the small sample size and numbers likely to consent.



## Appendix 3: Information sheets and consent forms

### 3.1 Prisoners participant information sheet

#### “The legal needs of prison inmates and people recently released from prison”

##### Participant Information

The Law and Justice Foundation is doing some research looking at the legal needs of people in NSW. In this project we are talking with people in prison and people recently released from prison. The Foundation is looking at where people go for help with their legal problems, and how to make it easier for people to get legal information and advice when they need it.

We are doing this so that policy makers, and people who provide services to people in prison or recently released, can see what types of legal problems people have when they are in prison or coming out of prison. This will help them improve the access people have to legal information and legal services.

We will be asking you about legal problems you may have had before you came to jail and problems that might have come up since you have been inside. We will also ask you about any help you have had with these problems. The interview will take probably 30 minutes to an hour. If you want me to stop asking questions at any stage or if you do not want to answer any particular question, please just say so. There is no penalty for stopping or pulling out of the interview altogether.

I will not put your name on any copy of your interview and we will not report any information that shows that it was you who spoke to us. For example, if we quote someone in the report, we will not use their name or any detail that allows other people to identify them.

I will ask you to sign a form which says that you have agreed to talk with me for this study. This form won't be kept with your interview or linked with your interview in any way, so no one can match your name with what you have said. All the information you provide will be held securely and in the strictest confidence at our office. Corrective Services will **not** be given access to this interview.

If you agree, I would also like to tape record the interview. This is only so I am not writing things down while we are talking. I will wipe the recording as soon as I have written up the interview. If you want the tape recorder turned off at any stage please tell me. If you decide that you don't want me to use anything you've said in our report please tell me, and we will not use it. The information you provide is confidential and will be disclosed only with your written permission, OR EXCEPT AS REQUIRED BY LAW. For example, if you tell me about a serious crime that you have committed which the authorities are not aware of, then legally I would have to report it. But if you start to say something like this, I will remind you that I have to report it.

## 3.2 Ex-prisoners participant information sheet

### **“The legal needs of prison inmates and people recently released from prison”**

#### **Participant Information**

The Law and Justice Foundation is doing some research looking at the legal needs of people in NSW. In this project we are talking with people in prison and people recently released from prison. The Foundation is looking at where people go for help with their legal problems, and how to make it easier for people to get legal information and advice when they need it.

We are doing this so people who provide services to prisoners and ex-prisoners and make policy can see what types of legal problems people have when they are in prison or coming out of prison. This will help them improve the access people have to legal information and legal services.

We will be asking you about legal problems you may have had since you've been released including problems that might have come up when you were inside. We will also ask you about any help you have had with these problems. The interview will take probably 30 minutes to an hour. If you want me to stop asking questions at any stage or if you do not want to answer any particular question, please just say so. There is no penalty for stopping or pulling out of the interview altogether.

I will not put your name on any copy of your interview and we will not report any information that shows that it was you who spoke to us. For example, if we quote someone in the report, we will not use their name or any detail that allows other people to identify them.

I will ask you to sign a form which says that you have agreed to talk with me for this study. This form won't be kept with your interview or linked with your interview in any way, so no one can match your name with what you have said. All the information you provide will be held securely and in the strictest confidence at our office. Corrective Services will **not** be given access to this interview.

If you agree, I would also like to tape record the interview. This is only so I am not writing things down while we are talking. I will wipe the recording as soon as I have written up the interview. If you want the tape recorder turned off at any stage please tell me. If you decide that you don't want me to use anything you've said in our report please tell me, and we will not use it. The information you provide is confidential and will be disclosed only with your written permission, **OR EXCEPT AS REQUIRED BY LAW**. For example, if you tell me about a serious crime that you have committed which the authorities are not aware of, then legally I would have to report it. But if you start to say something like this, I will remind you that I have to report it.

### 3.3 Prisoners and ex-prisoners consent form

**“The legal needs of prison inmates and people recently released from prison”**

**Consent to participate**

Is there anything said in the participant information that you are not sure of or that you want to know more about?

YES  NO

1. The study called “the legal needs of prison inmates and people recently released from prison” has been explained to me by the researcher and I have a copy of the participant information sheet. I agree to talk with the researcher for this study. It is my choice to talk with the researcher and I know that I can stop at any time without any penalty. I understand that information about me and anything I say is confidential and will be disclosed only with my written permission, or except as required by law. I understand that no one will be able to identify me in any of the reports.

Signed:  
(Participant)

Date:

Signed:  
(Witness)

Name:

Date:

2. I consent to the interview being tape record.

Signed:  
(Participant)

Date:

Signed:  
(Witness)

Name:

Date:

If you have any concerns about the way this interview was conducted, please speak with the welfare officer, or write to Principal Investigator, Prisoners Project, GPO Box 4264, Sydney NSW 2001.

### 3.4 DCS staff participant information sheet

#### **“The legal needs of prison inmates and people recently released from prison”**

##### **Participant Information - staff**

The Law and Justice Foundation is undertaking research into the legal needs of disadvantaged people in NSW. In this project we are talking with prison inmates, people recently released from prison and people who work with inmates and ex-prisoners. The Foundation is looking at how inmates get help with their legal problems, and how to make it easier for them to get legal information and advice when they need it. This project is being undertaken to inform policy makers and service providers about the types of legal problems people have when they are in prison or coming out of prison, and to assist in improving access to legal information and legal services.

We will be asking you about your experiences of the legal problems faced by prison inmates and released prisoners. We will also be asking about the issues inmates and released prisoners face accessing legal assistance and participating in legal processes, and the challenges that staff face in assisting them to do so. The interview will take probably 30 minutes to an hour. If you want me to stop asking questions at any stage or if you do not want to answer any particular question, please just say so. There is no penalty for stopping or pulling out of the interview altogether.

I will not put your name on any copy of your interview and we will not report any information that shows that it was you who spoke to us. For example, if we quote someone in the report, we will not use their name or any detail that allows other people to identify them.

I will ask you to sign a form which says that you have agreed to talk with me for this study. This form won't be kept with your interview or linked with your interview in any way, so no one can match your name with what you have said. All the information you provide will be held securely and in the strictest confidence at our office. Corrective Services will **not** be given access to this interview.

If you agree, I would also like to tape record the interview. This is only so I am not writing things down while we are talking. I will wipe the recording as soon as I have written up the interview. If you want the tape recorder turned off at any stage please tell me. If you decide that you don't want me to use anything you've said in our report please tell me, and we will not use it. The information you provide is confidential and will be disclosed only with your written permission, OR EXCEPT AS REQUIRED BY LAW. For example, if you tell me about a serious crime that you know of which the authorities are not aware of, then legally I would have to report it. But if you start to say something like this, I will remind you that I have to report it.

### 3.5 DCS staff consent form

## “The legal needs of prison inmates and people recently released from prison”

### Consent to participate

Is there anything said in the participant information that you are not sure of or that you want to know more about?

YES

NO

1. The study called “the legal needs of prison inmates and ex-prisoners” has been explained to me by the researcher and I have a copy of the participant information sheet. I agree to talk with the researcher for this study. It is my choice to talk with the researcher and I know that I can stop at any time without any penalty. I understand that information about me and anything I say is confidential and will be disclosed only with my written permission, or except as required by law. I understand that no one will be able to identify me in any of the reports.

Signed:

Date:

(Participant)

Signed:

Name:

Date:

(Witness)

2. I consent to the interview being tape record.

Signed:

Date:

(Participant)

Signed:

Name:

Date:

(Witness)

If you have any concerns about the way this interview was conducted, please contact Anne, the Principal Investigator on xxx xxxx.

## Appendix 4: Interview schedules

### 4.1 Interview schedule for prisoners (and ex-prisoners)

**Note:** the interview schedule of ex-prisoners only differed to adjust for their present circumstances

#### **INTRODUCTION**

**Hi, thanks for agreeing to chat with me. I really appreciate your time. I'm [give first name only]. Do you mind if I get your first name so I know what to call you during the interview?**

*[Go to participant information and consent form. This must be read out to the interviewee and signed by both the participant and a witness before continuing]*

**I should just say, I am not a lawyer, but at the end, I can give you information about where to get legal help if you need it.**

#### **LEGAL ISSUES GENERALLY**

1. To start off with, we are going to talk about legal problems you may have including problems that may have started before you came in. But is there anything in particular you would like to tell me about first? Perhaps some legal issue that is really bothering you or has come up recently?

*[Explore fully: when the problem first occurred, what steps the person took (if any) to address it, what advice/information they sought, what they actually received, any barriers encountered, any problems in executing the advice, and the current status of the problem. Particularly interested in any action they may have taken whilst in prison and how that panned out.]*

2. I'm going to ask you about legal issues that might have come up before or when you came into prison — like housing or debt problems. Just to help me understand these things
  - a) Can you tell me how long you have been inside for *[this time, if in more than once]*?
  - b) Are you on remand or have you been sentenced?
  - c) *[If sentenced]* How long is your sentence/how long have you got to go?  
*[If on remand]* When is your trial?

## **HOUSING**

3. So I'll just go through a number of different areas now where you might have had some legal issues. Just starting with housing, can I just ask where were you living before you came inside?

*[Do not read out – use as prompts]*

- ◆ If own home, → a) Do you have a mortgage?
- ◆ If Dept of Housing, → b) Were you on the lease?
- ◆ If private rental, → c) Were you on the lease?
- ◆ If caravan park, → d) Did you have a lease or contract?

*[Other accommodation types]*

- ◆ Boarding house
- ◆ SAAP accommodation
- ◆ On the street
- ◆ With friends
- ◆ With family
- ◆ Other

4. What is happening with your mortgage/lease/accommodation while you are inside? E.g. Is someone else staying there? Are you still on the lease?

*[If things have not been sorted out/there is a problem]*

- a) Since you came inside, what have you been able to do about it?
- b) *[If has done nothing]* Why was that?
- c) Where did you go for any information/advice?
- d) Did they/that help?
- e) Is it still a problem?

5. *[If relevant]* Have any arrangements been made about your gas, electricity and telephone? To stop services or suspend payments, etc.?  
*[Explore fully with each service mentioned what they have done about these services]*

- a) What is happening with your mail while you are inside?

6. Did you have any problems with your accommodation while you were living there before you came inside that are still not fixed?

*[For example, eviction, disputes with the landlord, blacklisting, discrimination, getting a bond back, fees, privacy issues or use of amenities]*

*[If there was a problem]*

- a) What happened?
  - b) Since you came inside, what have you been able to do about it?
  - c) *[If has done nothing]* Why was that?
  - d) Where did you go for any information/advice?
  - e) Did they/that help?
  - f) Is it still a problem?
7. Where do you plan to live once you are released?
8. Have you made any arrangements for that?
9. *[If release is imminent ask]* Has anyone discussed your post-release accommodation with you in here?

### **EMPLOYMENT/INCOME**

10. Did you have a paid job before you came in? *[If no, go to Q14]*

*[If had a job]* Was that:

- a) A permanent or casual/seasonal job?
  - b) Contract? *[If yes, explore their understanding and conditions of the contract]*
  - c) Cash in hand?
  - d) Own business?
11. How long had you been at that job?
12. What happened with that when you came to jail?
13. Do you have any legal issues with your job/business that are still not sorted out?



**[Prompts: From job — A dispute over conditions of employment such as pay, superannuation, working hours, breach of award conditions, leave, union membership or other working conditions or lack of contract]**

**[Prompts: From business - commercial tenancy issues, problems with people owing you money, problems paying your business bills, employment related issues or problems with Business Activity Statements]**

*[If there was a problem]*

- a) What happened?
  - b) Since you came inside, what have you been able to do about it?
  - c) *[If has done nothing]* Why was that?
  - d) Where did you go for any information/advice?
  - e) Did they/that help?
  - f) Is it still a problem?
14. Were you receiving any Centrelink benefits before you came in? *[If no, go to Q16]*

**[Prompts]**

Newstart	CDEP
Abstudy/Ausstudy	Disability pension
Youth allowance	Age Pension
Other	

15. *[If was receiving benefit]* What happened with your benefit when you came in here? (Was it stopped/is it still being paid/don't know?)
16. When you came inside, did you have any outstanding problems with Centrelink about your benefits? For example, eligibility, calculation of benefit level, breaches, review on change of circumstances, allegation of fraud

*[If there was a problem, ask:]*

- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?

d) Where did you go for any information/advice?

e) Did they/that help?

f) Is it still a problem?

17. *[If no job or governments benefits mentioned]* Had you applied for any Centrelink benefits in 12 months before you came inside?

*[If no]*

a) Was there any reason why you didn't apply?

*[If yes]*

b) And what happened with that?

### **CREDIT AND DEBT**

18. I just want to ask about any debts [except Centrelink — should have been dealt with above] you may have had before you came into jail or that have been building up since you have been here. Firstly, have you got any debts owing to companies or banks, or for things such as gas, telephone or mobile phone, electricity or any others? *[If no, go to Q22]*

*[Prompts]*

- ◆ A problem paying a bill, loan or debt where the lender took action against you, or threatened to do so
- ◆ A dispute about your Credit Reference Rating
- ◆ A problem as a guarantor for someone else's loan
- ◆ A problem with bankruptcy
- ◆ A problem people not repaying money they owe you
- ◆ A problem with a loan for housing/personal/car

*[If yes]*

19. Are they trying to get the money from you or your family? How are they doing that?

20. Have you sought any help with that?

21. Do you owe anyone money (friends, relatives, associates, etc.)?

*[If yes]*

- a) Are they trying to get the money from you or your family? How are they doing that?
- b) Have you sought any help with that?
22. Does anyone owe you any money?  
*[If yes]*
23. Are you trying to get the money from them? How are you doing that?
24. Have you sought any help with that?
25. Do you have any fines that are unpaid?  
*[If has unpaid fines]*
- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?
- g) Has this affected your driver license or car rego. *[Prompt to see if this was this related to their offence?]*

### **FAMILY**

26. Are you or have you been married or had a de facto partner?
27. Do you have any children?
28. Have you had legal problems related to your family since you have been inside?

#### ***[Prompts]***

- ◆ Divorce/settlement
- ◆ Residency/access to children
- ◆ Child(ren) taken into care or placed on the Child Protection Register
- ◆ Problem with paying or receiving child support

*[If there was a problem, ask]*

- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

29. *[If has child(ren)]*

- a) How are your kids being looked after while you are in here?
- b) Are you happy with that arrangement?
- c) If no, what can you do about that from here?

30. Do you have any arrangements/plans regarding the care of your children when you are released?

### **CRIME**

31. Just turning to the offence or offences that you are currently in jail for — what kind of legal help did you get/are you getting for this matter.

*[Prompts]*

- ◆ Legal Aid – duty lawyer
- ◆ Legal Aid – grant of legal aid (Barrister/solicitor)
- ◆ Private Lawyer
- ◆ Other
- ◆ None *[Go to Q35]*

a) Were you satisfied with the assistance you got with this matter?

*[If has lawyer]*

32. Do you have any trouble contacting your lawyer about this matter?

*[If no, go to Q34]*

33. *[If yes]* What makes it difficult?

34. When you want to speak to your lawyer, what do you have to do?

- 
35. Since you have been in jail, have you had any court hearings or other legal processes going on for this/these offence(s) *[Like appeals]*?
- a) Were you able to attend the court? *[If yes]* What happened? *[Explore process fully]*
- [If yes]*
- a) Have you tried to get information or advice for these hearings? *[Prompt for what information/advice]*
- c) *[If no]* Why was that?
- d) *[If yes]* Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?
36. Have you been before the parole board this time? *[If no, go to Q37]*
- [If yes]*
- a) Have you seen a lawyer about your parole hearing?
- b) *[If no]* Why was that?
- c) *[If yes]* Was that a legal aid lawyer, private lawyer, ALS?
- d) Did you have any trouble seeing your lawyer?
- e) Did you understand the advice they gave?
- f) Were you satisfied with the advice you received?
37. Have you had any legal problems related to other criminal matters since you have been inside?
- a) What is happening with them while you are inside?
- b) What have you done about them?
- c) *[If nothing]* Why was that?
- d) *[If something]* Did they/that help?
- e) Has it been sorted/is it still an issue for you?
38. Are you involved in any other legal matters — such as being a witness for someone else?
- [If yes]*

39. And what happened with that? Were you able to go to court/make a statement?

### **VICTIM OF CRIME ISSUES**

40. Before you came inside, had you recently been the victim of a crime?

*[If yes]*

- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

41. Have you had any serious threat to your personal safety (or) been the victim of a crime since being inside?

*[If yes]*

- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

### **HEALTH**

42. Have you had any other injuries [*i.e., apart from those discussed for Q41*] since you have been inside this time?

43. What happened there? What injuries have you got?

44. Did you or anyone else take any [legal] action about this?

*[If yes]*

- a) What happened?
- b) Where did you go for any information/advice?

- c) Did they/that help?
- d) Is it still a problem?

*[If no]*

45. Is there any reason for that?
46. While you have been in prison this time, have you had a serious difficulty with access to adequate medical treatment or any treatment you've received?

*[If yes]*

- a) What happened?
- b) What have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

### **OTHER LEGAL MATTERS**

47. Putting aside the things we have already talked about, did you have any other outstanding legal matters from before you came into jail? For example, a personal injury compensation claim, say from a car accident, medical negligence, something to do with wills or probate, an experience of discrimination, (on what basis?), any issues with the guardianship board?

*[If yes, for each ask]*

- a) What happened?
- b) Since you came inside, what have you been able to do about it?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

**That is just about the end of my questions about legal issues.**

48. Are there any other legal issues that you have/had that we haven't covered already?
49. Have you even been seriously unhappy with any legal advice you have received?
- [If yes]*
- a) What have you done about that?
- c) *[If has done nothing]* Why was that?
- d) Where did you go for any information/advice?
- e) Did they/that help?
- f) Is it still a problem?

### **ACCESS TO LEGAL ASSISTANCE**

50. If you want information about the law or legal processes, where do you go for help?
51. If you want legal advice for a particular problem, where do you go for help?
52. What do you personally think makes it difficult to get legal information when you are in prison?
53. What do you personally think makes it difficult to get legal advice when you are in prison?
54. Have you used the Audio Visual Link for getting any legal advice or for a legal hearing? How was that for you? *[Explore fully how they felt about it and how it affected their case or their interactions with their lawyer or the court process]*

### **DEMOGRAPHICS**

**Now I just wanted to ask you a few more questions just about your age and background and things like that.**

55. Which of the following age-bands do you fall into?  
18–24 25–34 35–44 45–54 55+
56. Aboriginal or a Torres Strait Islander?  
No Aboriginal TSI ATSI No answer provided/Don't know



57. Record gender  
Female   Male   Transgender
58. What is the highest level of education you have reached?  
Didn't finish primary  
Primary  
Some high school  
Year 10 (school certificate)  
Year 11  
Year 12 (higher school certificate)  
TAFE/Diploma  
University degree or higher
59. Were you born in Australia?  
Yes   *[If yes, go to Q61]*  
No   *[If not]*
60. Where were you born? When did you come to Australia?
61. What is your preferred language to speak? *[Record any communication issues that arose in the interview]*

**Now to finish off, can ask a bit about where you are in the system here.**

62. How long have you been at this Correctional Centre?
63. Where were you before that?
64. What is your current classification?
65. Is this your first time in jail?

**That is all I wanted to ask you. Thank-you and is there anything you would like to ask me?**

## 4.2 Interview schedule for DCS staff

### INTRODUCTION

*[Where appropriate, try and get examples that they have actually seen/experienced themselves — this helps to flesh out their opinions/experiences]*

### YOUR ROLE

1. Can you tell me about your role in DCS/this correctional centre?
  - a) What is your role when:

#### *[Prompts]*

- ◆ An inmate has a legal problem
- ◆ Needs legal information
- ◆ Needs legal advice
- ◆ Wants to contact a lawyer (when they don't already have one)
- ◆ Wants to contact their own lawyer
- ◆ Has a matter/legal process underway that they have to go to court for?

b) Are these a formal or recognised part of your role?

2. About how often would a prisoner approach you for help with a legal problem (this includes family issues such as child custody, housing, debt issues, etc.)?
3. What types of legal problems do inmates seek your help about?
4. What type of help do they ask for/what do they ask you to do?
5. What difficulties do you have trying to assist them with these problems?

#### *[Prompts]*

- ◆ Understanding the problem/sorting out what it is
- ◆ Getting them to deal with the issue
- ◆ Getting documents/evidence
- ◆ Knowing where to get help for the inmate for that issue
- ◆ Getting in contact with a/the lawyer
- ◆ Getting the lawyer to see the client
- ◆ Volume of clients to support
- ◆ other

6. What additional support/information (from legal and non-legal services) would help you to assist inmates with these problems?

### **PRISONERS' LEGAL NEEDS**

7. In your experience, what types of legal problems do inmates come into prison with?
8. What types of legal problems tend to come up for inmates once they are inside?

### **AWARENESS OF LEGAL NEEDS**

9. When inmates come in, do they tend to:
  - a) Be aware of their legal issues that may be occurring outside of the jail?
  - b) Be anxious about their legal problems outside of the jail?
  - c) Want help with these issues?
10. When legal problems arise once they are here (such as debts, family issues):
  - a) Are prisoners generally aware when these problems arise?
  - b) How do they/can they find out about legal problems that might have come up?
  - c) What might prevent this information getting through to them?
  - d) Do inmates seek help with these issues?
11. Are there any processes in this prison to help incoming prisoners with keep their affairs outside prison in order while they are inside?

### **SEEKING ASSISTANCE AND BARRIERS**

12. What sort of problems do inmates tend to try to deal with and what problems do they let slide?
13. If an inmate has a legal problem, technically what choices do they have for getting assistance for:
  - a) Legal information,
  - b) Legal advice,
  - c) Legal representation) in this prison that you know of? [*e.g. Legal Aid, regular visits*]

14. In your experience, do they have access to *[each resource named]* in practice?
15. What do you think are some of the barriers that inmates encounter in dealing with accessing those resources?
16. *[If not already discussed]* Do you think that many of the prisoners know of LawAccess? Is there anything done to promote LawAccess (such as notices giving the telephone number around the prison) in this prison?
17. What is the situation regarding legal visits in this prison? *[That is, what are the formal arrangements regarding legal visits?]*
  - a) Do you think it happens like that in practice or are there things that change that situation? *[Try elicit whether there any differences between the formal rules that govern legal visits, and how the operation of the prison in practice may cut across access.]*
18. When a prisoner has a legal problem do they tend to remain unresolved when they leave?  
*[If yes]*
  - a) Why is that?

### **LEGAL PROCESSES**

19. What problems do inmates face in participating in legal processes (e.g. court matters, or as defendants in matters that may be running outside (e.g. civil and family))
  - a) What happens when an inmate needs to go to court?
  - b) What are the difficulties in getting an inmate to court?
  - c) What types of difficulties do inmates have preparing their cases for court?
  - d) What kind of difficulties do inmates face when they go to court?
20. Is Audio Visual Link for legal matters used in this prison?
  - a) How well do you think that works?
  - b) What problems do you think it avoids?
  - c) What problems do you think it raises?

21. Are there any other particular strategies, programs, initiatives relevant to meeting legal needs of prisoners/ex-prisoners in this prison that you know of?
- a) Is every inmate eligible for them/reached by them?
- [If no]*
- b) Who misses out and why?
22. Do you have any ideas for some strategies that might help prisoners avoid or deal with legal issues more effectively?
23. In your experience, what difference to dealing with legal issues does it make depending on:
- ◆ Classification
  - ◆ Location of the prison
  - ◆ Remand versus sentenced
  - ◆ Male vs female
24. In your experience, do indigenous prisoners have any particular difficulties with legal issues?

### **TRANSITION FROM PRISON TO RELEASE**

25. *[If relevant]* What kind of pre-release programs are there for prisoners here? Who is eligible for them and who is not? Does Centrelink visit inmates before they are released? Are there any problems with inmates accessing these pre-release services?
26. What kinds of legal issues do you think prisoners face when they are released?

### **QUESTIONS FOR PAROLE OFFICERS AND THROUGH-CARE STAFF**

27. What do you think are some of difficulties released prisoners have to trying to meet their parole conditions?
28. What are they most commonly breached for?

29. What are the major barriers to ex-prisoners do you think in addressing their legal issues in terms of:
- ◆ Getting legal information
  - ◆ Getting legal advice
  - ◆ Finding legal representation
30. Which services (legal and non-legal support) are ex-prisoners usually in contact with? What are some of the reasons some ex-prisoners may not make contact with these services?
31. That's all the questions I have. Is there any thing else that you think is important to understanding the legal needs of prisoners and ex-prisoners that we haven't covered?

**Thank-you for your time.**

### **4.3 Sample interview schedule: other stakeholders**

#### *Areas for discussion:*

- ◆ What are the types of legal problems of prisoners/ex-prisoners face? Can we start with those who are currently in prison first? [Then follow with those released from prison.]
- ◆ What do you think prisoners/ex-prisoners need to address their legal problems effectively?
- ◆ What issues do prisoners/ex-prisoners have in accessing legal advice and information?
- ◆ What problems do you see prisoners/ex-prisoners having to participating in legal processes?
- ◆ What do you do to assist prisoners/ex-prisoners to address/avoid legal problems?
- ◆ What support do you need to assist prisoners/ex-prisoners with legal issues?
- ◆ What initiatives do you think have helped prisoners/ex-prisoners to address/avoid legal problems?

## Appendix 5: List of agencies consulted

### **Legal**

Coalition of Aboriginal Legal Services (now Aboriginal Legal Service NSW/ACT)

Criminal Justice Support Network

Homeless Persons Legal Service

Inner City Legal Centre

Intellectual Disability Rights Service

LawAccess NSW

Law Society, Community Referral Service

Law Society, Criminal Law Committee

Legal Aid NSW (head office and regional offices)

Prisoners Legal Service

Public Interest Advocacy Centre

Public Defenders Office

Member NSW Bar

Welfare Rights Legal Centre

Women's Legal Services

### **Non Legal**

Eileen Baldry, UNSW

Centrelink Prison Servicing Unit

Community Restorative Centre

Indigenous Social Justice Association

Justice Action

Micha House

Parramatta Mission

People with Disabilities

Prisoners' Aid Association of NSW



Regional SAAP service

Shine for Kids

Marrickville Council, STAMP project

Independent Community Living Association

**Department of Corrective Services**

Corporate Research, Evaluation and Statistics

Head office, policy and programs staff

Library staff

Welfare, program and custodial staff at five correctional centres

Community Corrections staff at three offices

Official Visitors

Chaplain at one Correctional Centre

Financial counsellor

