

By Jonathan Tyne

Dostoevsky wrote that a 'society should be judged not by how it treats its outstanding citizens but by how it treats its criminals'. This edition of *Precedent*, focusing on prisons, examines prisoners' treatment and living conditions, their rights, and their access to justice. The prison system, many contributors conclude, delivers no quick fix to society's problems; often, it compounds them.

Retribution, deterrence, incapacitation and rehabilitation are traditionally cited as the objectives behind state-sanctioned punishment. But, as Professor Eileen Baldry argues in her topical article on recidivism, far from deterring re-offending, prisons greatly increase its likelihood.

Another urgent and frequently overlooked issue is the treatment of women in prison. Although comprising only a small percentage of the prison population, women experience far higher rates of re-offending, mental health problems, and abuses of their rights than men. Amanda George and Claire O'Connor both cover specific problems faced by women inside, and suggest strategies for reform.

Our treatment of prisoners should also be judged against international human rights standards. Beth Midgely assesses Australia's record in terms of the ICCPR, while Sean Moysey and John Paget argue that a new prison designed to comply with the ACT *Human Rights Act* will address some of the failings evident elsewhere.

Three articles address prisoners' access to civil compensation and other legal remedies. Dr Andrew Morrison SC examines the duty of care owed to prisoners, which has been seriously curtailed, in NSW at least, by tort reform; Verity McWilliam analyses the mechanism for judicial review of prison conditions; and Tom Percy QC discusses the arbitrariness of *ex-gratia* payments for wrongful convictions.

As well as limited rights to take civil action, prisoners (and the lawyers who represent them) face serious practical barriers to litigation. Hugh de Kretser describes some of these difficulties and suggests a broad range of tactics for overcoming them. A national contact list of prisoner support and advocacy organisations that provide advice to prisoners, ex-prisoners, and their legal representatives is also included.

In this edition's migration law column, John Gibson and Anna Samson focus on another form of state-sanctioned imprisonment – immigration detention. The High Court's attitude to executive power in recent challenges to mandatory detention is particularly disturbing.

Finally, we welcome new Australian Lawyers Alliance national president Ian Brown, and thank former president Simon Morrison for his dedication over the past year. ■

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