



**PO Box A147
Sydney South NSW 1235
president@alhr.org.au
www.alhr.org.au**

20 August 2018

Will Hodgman
Premier of Tasmania
Level 11, 15 Murray Street
HOBART TAS 7000

Dear Premier

Transgender People in Risdon Prison

Australian Lawyers for Human Rights (**ALHR**) has been alerted to an alarming incident involving Majorie Harwood, who was a transgender woman held in Risdon Prison, Tasmania.

In a report dated 4 August 2018, ABC News Tasmania revealed that Majorie was sentenced to a period of incarceration and placed in a male prison, despite identifying as female.¹

Majorie's mother, Rosemary Harwood, alleges that, whilst in Risdon Prison, Majorie was gang raped by a group of five men and hospitalised as a result. The injuries were so significant, Rosemary says, that Majorie required a colostomy bag. We understand that Majorie has since died of kidney disease.

The ABC reported that a spokesperson for the Tasmanian Prison Service (**TPS**) denied any knowledge of the incident and stated that, "*subject to security of the prison, transgender, transsexual and intersex prisoners are housed in the correctional facility appropriate to their gender identification*". The TPS spokesperson then referred to the TPS having a comprehensive

¹ Transgender prison rape claim prompts push for reform in Tasmania ABC 4 August 2018
<http://www.abc.net.au/news/2018-08-04/push-for-law-change-after-transgender-prison-rape-claim/10073500>

prison policy for transgender, transsexual and intersex people which prioritises safety and treats prisoners with dignity and respect.

ALHR writes to express our concerns regarding these reports and to call on your Government to investigate the circumstances leading to Marjorie Harwood being sent to a male prison and the circumstances under which she was then left vulnerable to sexual assault and physical violence.

People who identify as transgender, intersex and gender non-conforming experience disproportionate rates of violence, harassment and stigma.² Pursuant to international law State parties are obliged to prevent such violence and discrimination. People who identify as transgender are equally entitled without discrimination to all of the human rights expressed within the Universal Declaration of Human Rights³, and subsequently agreed international human rights treaties.

The International Covenant on Civil and Political Rights⁴ obliges your Government to safeguard fundamental human rights such as right to life, the right to be free from torture, cruel, inhuman or degrading treatment, and the right to security of person. It also imposes upon States a duty to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.

On 29 September 2015, twelve United Nations entities released an unprecedented joint statement calling for an end to violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (the Statement).⁵ The statement expressly confirms that failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitutes serious violations of international human rights law. It calls on State parties to put in place laws that protect lesbian, gay, bisexual, transgender and intersex (**LGBTI**) people from violence and discrimination. In so doing, it is particularly notable that the statement says,

“States should protect LGBTI persons from violence, torture and ill-treatment, including by:

- *Investigating, prosecuting and providing remedy for acts of violence, torture and ill-treatment against LGBTI persons; and*
- *Strengthening efforts to prevent, monitor and report such violence.”*

² Department of Health, Australian Government, National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy (2012), p 4.

³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

⁴ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

⁵ Joint UN statement on “Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People” https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

Regardless of sexual or gender orientation, all persons have an equal right to live free from violence, persecution, discrimination and stigma. Australia has signed up to be bound by the seven-core international human rights conventions and as such the Tasmanian Government is obliged to ensure that every Tasmanian, without distinction, can enjoy these rights.

ALHR requests that you conduct an investigation into Majorie's treatment by the TPS and her alleged assault in prison. We respectfully recommend that the investigation consider the following:

1. the circumstances under which Majorie came to be housed in a male prison;
2. the circumstances under which Majorie appears to have been left vulnerable to violence once housed in that prison;
3. whether there is evidence that Majorie was sexually assaulted, and if so whether any alleged perpetrator or perpetrators have been identified;
4. whether the hospital staff who treated Majorie reported the alleged assault to any person within the TPS and, if not, why there was no report of the alleged assault;
5. any other relevant identified failures regarding the policies and procedures of TPS;
6. recommendations that can be made as to actions that will prevent the recurrence of similar circumstances in the future.

ALHR also recommends a review of any existing policies for the allocation of transgender, gender nonconforming and intersex people in Tasmanian prisons. We ask that you review these policies in terms of their adequacy in protecting those persons when incarcerated, and measure the effectiveness of the policies against international human rights laws and standards.

We would be happy to meet with you to discuss the concerns raised in this letter.

Yours faithfully



Georgia Burke
LGBTI Subcommittee Co-Chair
lgbti@alhr.org.au



Nicholas Stewart
LGBTI Subcommittee Co-Chair
lgbti@alhr.org.au

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.