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## **Carl Williams' death – Victorian correctional authority's duty of care**

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Carl Williams' death at the maximum security Acacia Unit of Barwon Prison, 45 minutes drive west of Melbourne, raises issues about the liability of prison authorities for death or serious injury and whether or not a prisoner, or family member, could sue for death or injury caused, Australian Lawyers Alliance Director, Greg Barns, said today.

Mr Barns said it was important, at the outset, to realise all discussion was presently theoretical until the full facts, and what steps Corrections Victoria took to secure Mr Williams' safety, were known.

"The law in Australia requires prison authorities to protect those in their care, including Carl Williams," Mr Barns said.

"And if the vicious assault that caused his death, yesterday, could have been avoided through adequate prison systems, then it should be of great concern to the Victorian taxpayer who may ultimately be forced to foot the bill for any successful claim made by Williams' daughter or other family members," he said.

Mr Barns said the High Court had examined the extent of the duty of care owed by prison authorities to protect prisoners from violence in a 2005 case involving a NSW prisoner - Peter Bujdoso.

"Mr Bujdoso was a prisoner in Sydney's Silverwater prison who had informed prison authorities of threats against himself by fellow inmates. One 1991 evening, he was bashed by four other prisoners and received severe injuries, including a fractured skull. Bujdoso sued the NSW government for damages and was successful in the NSW Court of Appeal.

"The High Court upheld the damages award in a unanimous decision of five judges, lead by the then Chief Justice Murray Gleeson, and including Michael Kirby."

Mr Barns said the High Court confirmed the long-held view of courts in Australia, the UK and the US that correctional authorities had a duty to take reasonable care for the safety of prisoners.

"While the law acknowledges that prisons are sometimes violent places, in a case where the risk to a prisoner, 'had actually been expressly threatened', and 'the risk, if it were to be, realised',

was of 'considerable physical injury to the respondent', then prison authorities must adopt 'measures to prevent it'.

"In other words, if (and it is no more than an 'if' on what we know so far) those who run Corrections Victoria, particularly those in charge of Barwon Prison knew that Williams' was at risk of sustaining serious injury or death, and they did not take measures to prevent it, then they may be liable for damages in any action brought by a member of Williams' family," Mr Barns said.

"No doubt some critics would regard it as outrageous that the Victorian taxpayer should be exposed, by way of a legal action, to a claim arising out of Williams' death in prison. Such outrage, however, ignores the fact that it is the deprivation of liberty for more than three decades that was Mr Williams' punishment. Once inside prison he was as entitled, as every single prisoner in Victoria is, to prison authorities taking appropriate steps to ensure his physical and mental safety are properly protected," Mr Barns said.

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