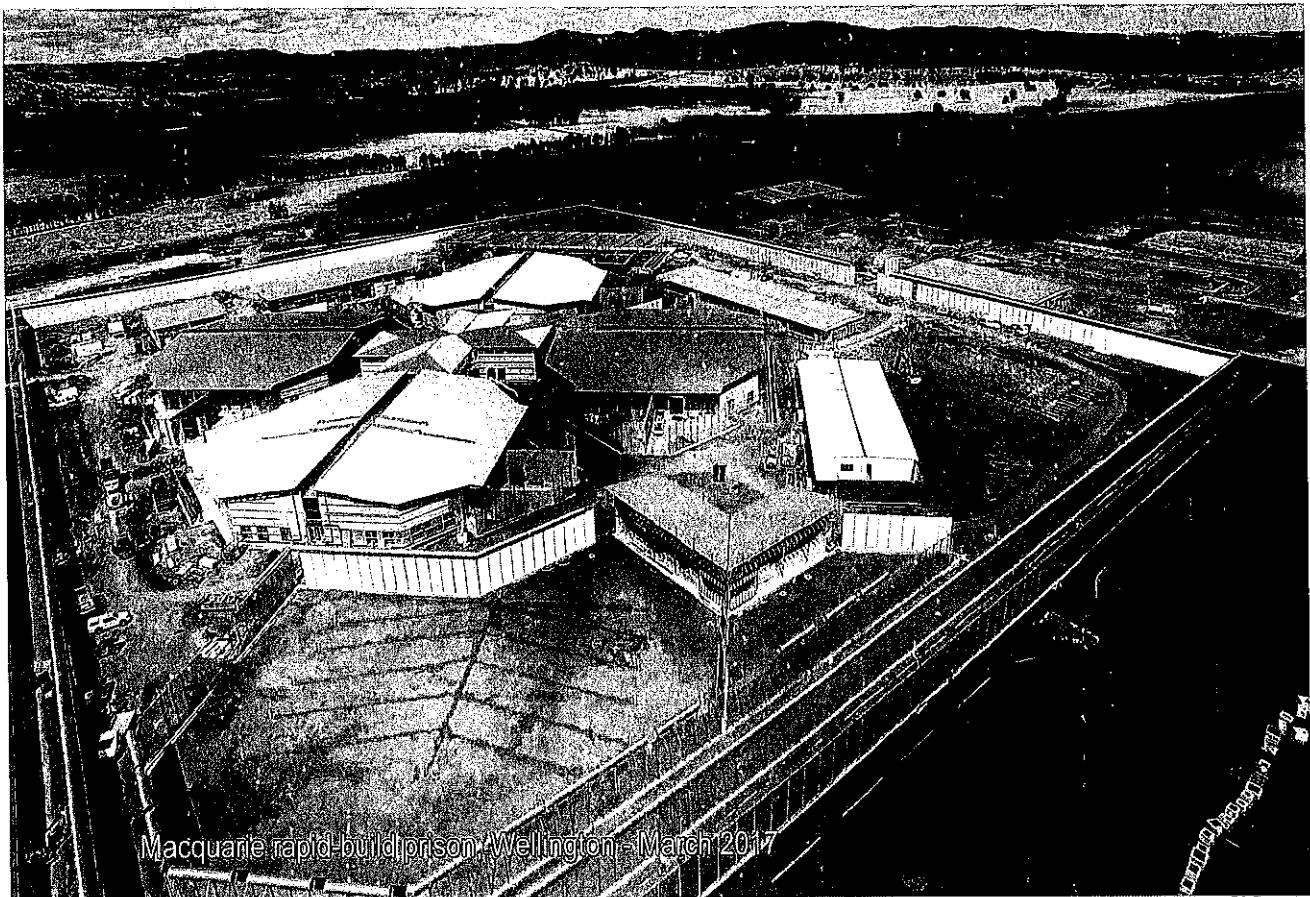




# RAPID BUILD DORMITORY PRISONS

An Unacceptable Pressure Cooker



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## 1.0 Executive Summary

This report looks into the construction of Rapid Build Dormitory Prisons in Wellington and Cessnock. This concept of prison accommodation adopts a 'dormitory style' approach, involving the housing of usually 25 maximum-security prisoners together, in order to accommodate a total of 400 additional people per prison. They will be housed in one room, with individual cubicles 3 m by 2 m with no doors and only 1.5 m high partitions in between them. As evidence has shown, these dormitory prisons will cause more violence, physical and sexual assault, mental disturbance and bullying.

Corrective services claim that this type of prison is the quickest option to address the failure to supply sufficient cells. The project costs over \$188 million for each prison, which is nearly half a million dollars per prisoner – the same cost as a normal prison. While these prisons are to be built for the same cost as a normal prison, they are "temporary", supposedly due to be demolished after 5-7 years.<sup>1</sup>

The dormitory prisons have been implemented with a lack of community consultation, especially with regard to the effects they will have on the prisoners, prison officers, and the public. Furthermore, the government has failed to justify their brief, despite numerous enquiries. The Australian Labor Party's corrections spokesperson, Mr Guy Zangari, stated that the Rapid Build prisons are "untested" and "will certainly put the health and welfare of staff at potential risk".<sup>2</sup> Legislative Council Portfolio Committee No. 4 will examine the dormitory prisons in the parliamentary inquiry, '*Parklea Correctional Centre and other operational issues*'.<sup>3</sup>

International experiences regarding the use of dormitory-style complexes have revealed significant problems for the security and safety of individuals inside them. In the United States and Romania, it has been reported that issues such as group and personal tension, increased assault against prisoners and staff, sexual assault and theft have increased within these prisons. The lack of privacy and personal space for prisoners in these facilities has exacerbated mental illnesses, which ultimately diminish a prisoners' capacity for reintegration upon release.

Dormitory-style accommodation fosters an atmosphere of bullying and abusive behaviours, which leave no refuge for victims. Gang violence is already a pervasive issue for the Wellington prison. The introduction of dormitory-style prisons will further increase gang formations and gang violence, as a way to respond to constant antagonism and fear.

The 24-hour official video surveillance of dormitory-style prisons leaves prisoners in a constant state of unease and suspicion of their surroundings. Many prisoners feel that they "belong" to someone else.<sup>4</sup> Jeremy Bentham's concept of the Panopticon showed

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<sup>1</sup> Community Justice Coalition, *Analysis of Wellington & Cessnock Dormitory Prison Environmental Impact Reports* <[http://www.communityjusticecoalition.org/images/environmental\\_impact\\_reports\\_pdf.pdf](http://www.communityjusticecoalition.org/images/environmental_impact_reports_pdf.pdf)>.

<sup>2</sup> Linda Silmalis, 'Games room proposed for maximum security jail to encourage good behaviour', *The Sunday Telegraph*, 21 Jan 2018 <<https://www.dailytelegraph.com.au/news/nsw/arcade-gaming-machines-part-of-incentivebased-scheme-to-encourage-good-behaviour-among-inmates/news-story/cb1fc8cf9a69d18c9b1432c85ece1a7c>>.

<sup>3</sup> Legislative Council Portfolio Committee No. 4 – Legal Affairs. Inquiry into Parklea Correctional Centre and other operational issues terms of reference

<sup>4</sup> William Bulow, 'Treating Inmates as Moral Agents: A Defense of the Right to Privacy in Prison' (2014), 33(1) *Criminal Justice Ethics* 9.

that a heightened sense of unease is created and exacerbated with the threat of being watched at any given moment.<sup>5</sup> The lack of privacy in prison cells and constant surveillance breeds a culture of suspicion that increases the hostility of a prison environment. Forcing individuals to share a dormitory and live in such close proximity while they sleep and eat inevitably increases tensions in an already volatile population. This gives rise to a number of significant health, safety and security concerns.<sup>6</sup>

At their core, dormitory prisons contradict existing standards and the institutional culture of Australian single cell prisons, which allow privacy and personal control. The construction of Rapid Build Dormitory prisons infringe upon the UN Standard Minimum Rules for the Treatment of Prisoners, which states that prisoners in dormitories must be “carefully selected as being suitable to associate with one another” and should “occupy by night a cell or room by himself”,<sup>7</sup> as well as articles 17 and 22 in the International Covenant on Civil and Political Rights.<sup>8</sup> Occupants should have a say in where they feel safe and whom they sleep beside.

Architectural reports reveal various problems within dormitory prisons. Careful analysis of design is vital in developing a positive and beneficial environment for prisoners. The research organisation, Matter Architecture, condemns the lack of personal space, overcrowding, high density, lack of privacy and lack of capacity for positive relationships within dormitory-style prisons<sup>9</sup> to lessen recidivism.

This report rejects the dormitory prison concept, as well as the recent NSW amendments that give power to the Commissioner to arbitrarily redefine minimum cell sizes. It calls for legislative protections to enforce a non-negotiable minimum cell size in accordance with the 1990 Standard Guidelines. The Community Justice Coalition recommends that dormitory prison areas be redesigned to incorporate the perspectives of occupants and staff. The CJC has also received news of prisoners protesting by hunger strike against being forcefully held within dormitory prisons. This confirms our concern that the proposed structure is unacceptable. It is imperative that the two existing Rapid Build Dormitory prisons are swiftly decommissioned and no further prisons of this nature are built.

The CJC has also received news of prisoners protesting by hunger strike against being forced to be held in dormitory prisons. This confirms our concern that the structure is unacceptable.

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<sup>5</sup> Unknown Author, *The Panopticon* (2017) Bentham Project, <<http://www.ucl.ac.uk/bentham-project/who/panopticon>>.

<sup>6</sup> Appendix 2; Community Justice Coalition, *Standardisation of Cell Sizes*

<sup>7</sup> United Nations, *Standard minimum Rules for the Treatment of Prisoners*, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>>

<sup>8</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17, 22.

<sup>9</sup> Matter Architecture, *Wellbeing in Architecture - A Guide*, <http://matterarchitecture.uk/latest/>

## 2.0 Overview

Rapid-Build Prisons are a new concept for Australia. According to NSW official statements, they are secure, dormitory style facilities chosen due to their speed and efficiency in regards to the building process.<sup>10</sup> The rapid nature of construction will reduce the time it takes to build traditional prisons by two years. This policy has been established in response to the prison population of NSW reaching a record high of nearly 13, 000 inmates, a rise of 16% over the last two years.<sup>11</sup> The correctional services of NSW are constructing the first two Rapid-Build Prisons that will house 400 maximum-security inmates each. These Rapid-Build prisons are the Macquarie Correctional Centre at Wellington and Hunter Correctional Centre at Cessnock.

The Rapid-Build prisons are part of a \$3.8bn NSW government policy to provide new facilities built on the ground of existing correctional centres, along with the re-opening of some centres.<sup>12</sup> The Rapid-Build facilities at the Macquarie Correctional Centre were scheduled to open in December 2017 and the Hunter Correctional Centre in Cessnock was scheduled to open on the 30<sup>th</sup> January 2018.

### 2.1 Rapid-Build Promotional Material sets out the following features:

- 400 bed dormitory-style accommodation that will have 16 dormitory pods, and 25 cubicles in each pod;
- Individual cubicles which will have interactive TV for inmates to take greater control;
- Sufficient industries, programs and recreational capacities to ensure all inmates have a balanced routine;
- 'State-of-the-art' security systems and surveillance to ensure safety and security;
- A focus "on rehabilitation to help reduce the rate of reoffending without compromising safety and security"<sup>13</sup>

<sup>10</sup> Department of Justice, *Cessnock Correctional Centres*

<<http://www.correctiveservices.justice.nsw.gov.au/news-prisons/facilities/cessnock>>

<sup>11</sup> Joanna Woodburn, 'NSW prison expansions to deal with overcrowding could 'create new problems', union warns', *ABC News* (online), 18 Jan 2017 <<http://www.abc.net.au/news/2017-01-18/prison-overcrowding-rapid-build-plans-risk-heightening-tension/8192072>>

<sup>12</sup> Department of Justice, *Better Prisons* <

<http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/Better-prisons-overview.pdf> >

<sup>13</sup> Ibid.

## **3.0 Concerns regarding Rapid Build Prison Models**

### **3.1 Overcrowding**

According to the Victorian Auditor-General, the 'nationally acceptable limit for the safe and efficient operation of the prison system' is a 95% utilisation rate.<sup>14</sup> This allows for flexibility to ensure prisoner welfare and the adherence to human rights standards. Prisons in NSW are currently operating at 109.4% capacity in the current prison system. With the Rapid-Build Prison increasing the number of prisoners in each area or pod, the issue of overcrowding will potentially increase as well.<sup>15</sup>

Overcrowding can stimulate negative psychological effects such as stress responses, elevated blood pressure, adrenal hypertrophy and a corticosteroid production.<sup>16</sup> These could possibly lead to more serious conditions such as higher blood pressure, the increased prevalence of physical, mental illness and death.<sup>17</sup>

The quality of life for prisoners in the Rapid-Build system is potentially further reduced by the lack of private cells affecting the inmates' control over their personalised space. The nature of open-space cell design and exclusion of a door allows inmates to observe one another's activities and foregoes a sense of space and privacy, alluding to the feeling of overcrowding. This then reduces a prisoner's freedom of movement, access to recreational and learning facilities and increases health-care waiting times.<sup>18</sup> Hence, consequences of the Rapid-Build Prison model epitomise the notion that 'small additional pressures can make the difference between conditions that are uncomfortable and those that are intolerable'.<sup>19</sup>

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<sup>14</sup> Anita Mackay, 'Overcrowding in Australian Prisons: The Human Rights Implications' (2015) 37(128) *Precedent* 37, 38.

<sup>15</sup> Community Justice Coalition, See Appendix 2.

<sup>16</sup> Marc Shaeffer et al, 'Architecturally mediated effects of social density in prison' (1988) 20(1) *Environment and Behavior* 3, 5.

<sup>17</sup> Verne C. Cox, Paul B. Paulus and Garvin McCain, *Prison Crowding Research: The Relevance For Prison Housing Standards And A General Approach Regarding Crowding Phenomena*. (2018).

<sup>18</sup> Inspector of Custodial Services, Full House: The growth of the inmate population in NSW (April 2005) Department of Justice <<http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>>

<sup>19</sup> *Ibid.*

## **3.2 Protection of fundamental Human Rights**

### **3.2.1 Shared cells and the right to privacy:**

The physical layout of the dormitory cell constitutes a human rights violation. Multiple inmates in one dormitory cell, given the design layout, can abrogate the individual's right to privacy and limit the availability of living space. This environment also increases the risk of offender-based violence, intimidation, assault and bullying.

It is important to consider the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP). Rule 9.1 states that "each prisoner shall occupy by night a cell or room by himself" and if "special reasons" exists for which this cannot occur, that it is "not desirable to have two prisoners in a cell or room". Definitional complexities arise when considering each cubicle lacks a door and has only 1.5 m walls to separate rooms; it can be argued that these dimensions do not provide feelings of a personal, individual room. Article 9.2 of the same document also states "dormitories shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions"<sup>20</sup> as has been previously mentioned. This is similar to Section 2.5 of the Standard Guidelines for Corrections in Australia.

Rule 13 also states that "... due regard must be paid to the climatic conditions and cubic content of air, minimum floor space, lighting, heat and ventilation"<sup>21</sup>. Though it is difficult to tell given the intentional silence of the government, it is unclear whether these conditions have been considered or met.

### **3.2.2. Overcrowding and the deprivation of liberty**

When prisoners are deprived of their liberty they become particularly susceptible to human rights violations. In March 2014, the Victorian Ombudsman described prisons as overcrowded, underfunded and more dangerous than they have been in a decade.<sup>22</sup> It also found that the "likelihood of prisoners being physically or sexually assaulted or self-

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<sup>20</sup> United Nations Office on Drugs and Crime art 9.

<sup>21</sup> Ibid.

<sup>22</sup> Alison Savage, *Victoria's dangerous prisons overcrowded, underfunded: ombudsman's report* (26 March 2014) ABC News <[www.abc.net.au/news/2014-03-26/victoria27s-27dangerous27-prisons-overcrowded2c-underfunded/5346040](http://www.abc.net.au/news/2014-03-26/victoria27s-27dangerous27-prisons-overcrowded2c-underfunded/5346040)>

harmed leading to deaths is greater now than at any time in recent years”.<sup>23</sup> This is particularly relevant given the cell design and greater possibilities of accessing victims when there are no closed cells, especially at night. Similarly, the Northern Territory Prison Officers’ Association cited that because of overcrowding, prisoners in the Northern Territory are living in “third world conditions”.<sup>24</sup> Prison conditions in New South Wales and South Australia have also been described as “inhumane”, due to overcrowding.<sup>25</sup>

Equally, the Rapid-Build Prisons that will house 400 maximum-security inmates are likely to fail in providing measures to mitigate their intolerable and inhumane conditions, as a consequence of overcrowding. Overcrowding is the root cause of violations of the above legal framework that protects the human rights of prisoners.

### **3.3 Psychological wellbeing of prisoners under constant surveillance**

#### **3.3.1 Constant surveillance**

There are two predominant matters of concern, firstly the psychological effects of constant surveillance in prisons, and secondly the effects of a lack of privacy in cells. As Craig Haney states, “few people are completely unchanged or unscathed by the experience [of incarceration]. At the very least, prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others”.

Constant surveillance leaves prisoners feeling uneasy, continually suspicious of their surroundings and manifests the assumption that they “belong” to someone else.<sup>26</sup> This plays on the idea of Bentham’s Panopticon, which found that a heightened sense of unease was caused by prisoners being unaware of whether they were being watched or not.<sup>27</sup> As it is with the case of a lack of privacy in prison cells, constant surveillance breeds a culture of suspicion that exacerbates the hostility of a prison environment. Lippke argued that the physical and psychological space for pro-social and responsible behaviour is only achieved when inmates are not being subject to constant surveillance

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<sup>23</sup> G E Brouwer, *Investigation into deaths and harm in custody* (March 2014) Victoria Ombudsman <https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921/reports-publications/parliamentary-reports/investigation-into-deaths-and-harm-in-custody.aspx>

<sup>24</sup> Lindy Kerin, *NT prisons described as third world* (24 April 2012) ABC News [www.abc.net.au/news/2012-04-23/nt-prisons-described-as-third-world/3967114](http://www.abc.net.au/news/2012-04-23/nt-prisons-described-as-third-world/3967114)

<sup>25</sup> *Claims of Overcrowding in SA Prisons* (10 March 2008) ABC News [www.abc.net.au/news/2008-03-10/claims-of-overcrowding-in-sa-prisons/1067696](http://www.abc.net.au/news/2008-03-10/claims-of-overcrowding-in-sa-prisons/1067696); Greg Kelton, ‘Overcrowding Pressures Prisons’, *The Advertiser* (online), (16 February 2008) [www.adelaidenow.com.au/news/south-australia/overcrowding-pressures-prisons/story-e6frea83-1111115573713](http://www.adelaidenow.com.au/news/south-australia/overcrowding-pressures-prisons/story-e6frea83-1111115573713); *Juvenile prisoners sharing one-person cells* (7 April 2008) ABC News <http://www.abc.net.au/news/2008-04-07/juvenile-prisoners-sharing-one-person-cells/2395192>

<sup>26</sup> William Bulow, ‘Treating inmates as Moral Agents: A Defense of the Right to Privacy in Prison’ (2014) 33(1) *Criminal Justice Ethics*, 9

<sup>27</sup> Unknown Author, *The Panopticon* (2017) Bentham Project <<http://www.ucl.ac.uk/bentham-project/who/panopticon>>



and monitoring.<sup>28</sup> Unending surveillance, unannounced cell searches, CCTV monitoring and dormitory-style open bunks increase the risk of stressful crowding. Competition for resources, space and personal freedom “creates atmospheres that impede adaptation to prison life” and increase the likelihood of self-harm, PTSD, hierarchal relationships, assault and mental trauma.<sup>29</sup>

### **3.3.1 Lack of privacy in cells**

The concept of control is central to understanding privacy. Whilst privacy may be argued as the practice of being left alone, prison inmates are often left alone (through solitary confinement) yet still lack sufficient privacy. Therefore, privacy involves the ability for inmates to control access and practice their own moral agency. ‘During the process of control, prison inmates’ are unable to control others’ access to themselves<sup>30</sup> and are unable to control access to their own bodies, personal space and belongings.

Inmates living in open dormitory-style prisons, such as those being built in Wellington and Cessnock will experience little visual privacy. Yet, the right to privacy as experienced by inmates in prison has received little attention due to public perceptions of imprisonment as a criminal sanction. The removal of privacy is often held as a deterrent for potential crimes, yet crime reduction is largely achieved through respect for inmate’s moral agency and the respect for sufficient privacy.<sup>31</sup> Especially in overcrowded prisons and those with barrack-style architecture, prison facilities fail to provide their inmates with psychological and physical privacy. Gaes contends two main points: (a) open-dormitory prisons correlate with the higher use of prison-clinics and the elevated blood pressure of inmates, and (b) prisons that were found to operate frequently at excessive capacity, or utilized a dormitory layout, experienced higher assault rates.<sup>32</sup>

The extreme proximity with which prisoners reside from one another becomes taxing, and as Haney discusses, this lack of privacy evokes distrust of fellow inmates. Essentially, this leads to the inability of prison authorities to recognize the moral agency and autonomy of the inmate. The invasive noise, deterioration of control and duress associated with overcrowding causes considerable stress and behavioural issues. It is also argued that such harsh conditions create the need for inmates to associate within and solidify antisocial subcultures. Prison officers and other staff lose their legitimacy and control of the overcrowded, noisy barracks,<sup>33</sup> creating significant ramifications once prisoners are released. As Dumont notes, inmates that maintain that previous level of distrust outside of

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<sup>28</sup> J. Reiman, *Should We Reform Punishment Or Discard It?: Rethinking Imprisonment*, Richard L. Lippke. New York: Oxford University Press, 2007. *The Problem Of Punishment*, David Boonin. New York: Cambridge University Press, 2008 (2018).

<sup>29</sup> Terry A Kupers, ‘Trauma and its Sequelae in Male Prisoners: Effects of Confinement, Overcrowding and Diminished Services’ (1996) 66(2) *American Journal of Orthopsychiatry* 189.

<sup>30</sup> William Bulow, ‘Treating inmates as Moral Agents: A Defense of the Right to Privacy in Prison’ (2014) 33(1) *Criminal Justice Ethics* 7.

<sup>31</sup> *Ibid.*

<sup>32</sup> Gerald Gaes, ‘Prison Crowding Research Reexamined’ (1994) 74(3) *Prison Journal* 1.

<sup>33</sup> Bieri, D, ‘Is Tougher Better? The impact of Physical Prison Conditions on Inmate Violence’ (2011) 56(3) *International Journal of Offender of Physical Prison Conditions on Inmate Violence* 339.

prison, adversely affect the lives of individuals around them as they become more prone to respond with violence.<sup>34</sup>

Although the size of personal space an individual requires for his or her own comfort zone varies, the average boundary ranges from 20 to 40 centimetres.<sup>35</sup> According to a study published in the *Journal of Neuroscience*, individuals more prone to anxiety tend to require a larger personal space. As neuroscientist Giandomenico Lannetti at the University College London confirmed, "there is a robust correlation between the size of the personal space and the level of anxiety of the subject."<sup>36</sup> In fact, those who project their personal space too far beyond the standard of arm's reach are more likely to experience claustrophobia.<sup>37</sup>

To be imprisoned is to experience a primal form of anxiety as it restricts an individual's freedom. This form of anxiety is known to be at the root of claustrophobia.<sup>38</sup> As such, claustrophobia is an unfortunate reality that many prisoners are likely to experience in the course of their incarceration.

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<sup>34</sup> Dumont, Brockmann, Dickman, and Alexander (2012) 33 *Public Health and the Epidemic of Incarceration*, 333.

<sup>35</sup> Douglas Main, *Live Science* (27 August 2013) <<https://www.livescience.com/39229-personal-space-anxiety.html>>

<sup>36</sup> *Ibid.*

<sup>37</sup> Rick Nauert, *Live Science* (14 April 2011) <<https://www.livescience.com/13709-claustrophobia-distorted-personal-space.html>>

<sup>38</sup> *Practical Intelligence: The Art and Science of Common Sense*, Karl Albrecht, Wiley Publishers

## **4.0 Architectural Principles**

### **4.1 Public Interest**

Architects have an obligation to consider the level of moral and ethical standards held against their work. It would be a violation of Ethical and of Architectural Code of Conduct for an architect to condone the building of such prison cells that essentially deny prisoners their basic rights of privacy, and which have been proven to increase levels of violence, sexual assault and mental disturbance.

As outlined in the Architects Model Statutory Code of Professional Standards and Conduct [3.1.2] “An Architect has a responsibility, where possible, to contribute to the quality and sustainability of the natural and built environment and the health and safety of the general public and in particular, to give proper consideration to the: public interest.<sup>39</sup>” Similarly, the NSW Architects Code of Professional Conduct reflects the natural understanding that all professions, including that of an Architect has an overriding obligation to serve and promote the public interest.<sup>40</sup> Their professional judgement is relied upon to ensure the fair treatment of clients both current and future.

Recent recipient of the Sulman awards, TAG Architect Group, elaborate the possibility and sustainability of building ethical and effective prisons. The Minimum Security Unit & Health Upgrade of the Bunbury Regional Prison promotes principles of a normalised community environment and demonstrates planning that prioritises prisoner rehabilitation and reduction of recidivism. As opposed to a traditional panopticon layout, the Bunbury Regional Prison has informally arranged clusters of self-care housing units with sightlines into central recreation areas, as well as ready access to social and educational services. Adopting ethical design methods not only benefits prisoner rehabilitation, but also the community by preparing reformed prisoners with skillsets necessary to contribute in society. This promotes integration rather than an inherent “revolving door” and proposes necessary changes to the issue of overcrowding.

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<sup>39</sup> Architects Model Statutory Code of Professional Standards and Conduct [3.1.2], accessed online at: <http://www.aaca.org.au/wp-content/uploads/2010/09/JCOC2003.pdf>>

<sup>40</sup> Architects Regulation (2012), NSW Architects Code of Professional Conduct, accessed online at <https://architects.nsw.gov.au/download/NSW%20ARCHITECTS%20CODE%20OF%20PROFESSIONAL%20CONDUCT%20200912.pdf>>

#### **4.1.1 Construction Obligations on Building Codes**

All building work in Australia must comply with the National Construction Code (NCC) by virtue of enabling legislation in each State and Territory. Volumes I and II of the NCC are the Building Code of Australia, whose supporting legislation is the Environmental Planning and Assessment Act 1979.

The Code classifies a detention centre, which includes prisons and youth detention centres, as a “Class 3” building that provides for the secure detention of individuals.<sup>41</sup> However, it only maintains a few provisions pertinent to detention centres, such as that exit doors must be able to be immediately unlocked, possessing either failsafe, manual override, or automatic latches. Other mandatory provisions include a car park for staff who have disabilities and that a heated water supply equivalent to 50 litres per person must be provided for prisoners.<sup>42</sup>

There is no statutory obligation in NSW for Rapid-Build Prisons to conform to anything more than the few provisions in the Building Code of Australia. By contrast, Victoria, under the *Corrections Act 1986* (VIC), imposes an obligation on the Secretary to prepare a written statement setting out the minimum standards to be met by a contractor (s 9E(1)) when building work is undertaken (s 8B(1)(a)). Prison building is generally immunized from the operation of the *Building Act 1993* (VIC) however, as is the case with NSW, there is no mention of minimum standards of bedding, privacy, or other aspects of prison life (see, *Corrections Act* s8G(2)).

#### **4.1.2 Analysis of Wellbeing in Prison Design: Guidance from the UK**

The UK “Wellbeing in Prison Design Guide” provides insight into prison design from the perspective of environmental psychology.<sup>43</sup> The correlations between the built environment and individuals’ wellbeing are revealed by the report of Matter Architecture et al., highlighting the issue of prison overcrowding, an issue manifested in the Rapid-Build Project.

A vast body of experimental evidence in the report demonstrates that the design of a correctional institution holds a vital relationship with prisoners’ wellbeing.

Four issues outlined in the report are most relevant to the Rapid-Build Project:

- **High density of population:** Prison crowding can lead to a number of negative psychological and behavioural outcomes, including social withdrawal, reduced pro-social behaviours and increased aggression. The study by Beijersbergen et al. revealed prisoners were more positive when they were not forced to dwell in

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<sup>41</sup> Australian Building Codes Board, Issuing Body. *National Construction Code Series*. 2011. Pg 21.

<sup>42</sup> Australian Building Codes Board, Issuing Body. *National Construction Code Series*. 2011. Pg 198

<sup>43</sup> *Wellbeing In Prison Design A Guide* (Matter Architecture, 2017). , accessed online at: <[http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02\\_MatterDesignGuide.pdf](http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02_MatterDesignGuide.pdf)>

panopticon layouts, with prisoner-officer relationships also more positive when prisoners were housed in single rather than double rooms.<sup>44</sup>

- **Small personal space:** An important aspect of wellbeing relates to the ability to possess adequate interpersonal distances. The desire for personal space increases in smaller areas i.e. narrow rooms with low ceilings. Larger personal space 'bubbles' are preferred by incarcerated men who are more aggressive; limited amounts of personal space may have negative consequences on such personalities.
- **Lack of privacy:** Personal space and territory relate closely to privacy, which is more accurately defined in this instance as "the ability to control access to oneself".<sup>45</sup> The lack of privacy in prison, therefore, becomes one of the defining concepts of incarceration. More aggressive behaviour in public areas of institutional facilities has been a result of a lack of private space.
- **Interpersonal relationships:** The report suggests the allocation of space in a correctional institution where private and communal conversations can be engaged in can lead to positive change. The positive change would result due to the opportunity for forming good relationships between staff and peers.

The Wellbeing in Prison Design Guide encourages the design of prison to give both prisoners in custody and individuals working in prison privacy and adequate personal space. Clearly stated in the report, "overcrowding is highly likely to be a strong impediment to rehabilitation".<sup>46</sup> Unfortunately, the Rapid-Build Project has failed to be consistent with the design guidance. On the contrary, the dormitory style approach adopted in Wellington and Cessnock has completely failed to create environments that support rehabilitation and foster positive interpersonal relationships.

## **4.2 Environmental Impact Report Analysis**

### **4.2.1 Analysis of Wellington & Cessnock Dormitory Prison Environmental Impact Reports - Dated July/October 2016**

From an examination of the Environmental Planning documents<sup>47</sup> submitted by the Department of Justice, there are some surprising and inconsistent statements made regarding the government's intention to demolish the Rapid-Build Projects after a period of 5-7 years, having spent enormous money on the facilities. Almost half a million dollars a prisoner in a dormitory! Whilst the Wellington report makes consistent reference to the

<sup>44</sup> Karin A. Beijersbergen et al, "A Social Building? Prison Architecture And Staff-Prisoner Relationships" (2014) 62(7) Crime & Delinquency.

<sup>45</sup> *Wellbeing In Prison Design A Guide* (Matter Architecture, 2017).  
, accessed online at: <[http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02\\_MatterDesignGuide.pdf](http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02_MatterDesignGuide.pdf)>

<sup>46</sup> *Wellbeing In Prison Design A Guide* (Matter Architecture, 2017).  
, accessed online at: <[http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02\\_MatterDesignGuide.pdf](http://www.matterarchitecture.uk/wp-content/uploads/2018/01/421-op-02_MatterDesignGuide.pdf)>. Pg 150.

<sup>47</sup> <https://www.dropbox.com/s/uv4ep3paj5vjy5e/Wellington%20REF.pdf?dl=0>  
<https://www.dropbox.com/s/tof0mht8vo7eoes/Cessnock%20Correction%20Centre%20Expansio>

temporary nature of the facility, we could only locate one reference within the Cessnock report on this point. Both cost the same per occupant.

In addition, the information about the temporary nature of the Rapid-Build Projects was not confirmed in any meeting or email with members of the Corrective Services NSW (CSNSW), and thus could have been used to allay concerns. Thus, it may be a basis for a legal challenge should there be any findings that the original proposal was misleading. According to the reports, community consultations were made regarding the RBP, however the findings of such consultations are unclear, and in Wellington were based upon the temporary nature of the prison.

Breaches of the Act giving misleading information have fines of \$1 million dollars under s.148b of the Act, and would result in the invalidation of granted permission.

Early in this examination we sourced a phone number from the CSNSW website on the Wellington and Cessnock Prisons under the heading "Community Consultation". We called this number on the 20<sup>th</sup> October 2017 and a representative advised us to contact an email address for any questions or concerns. It was also expressed that no information regarding community consultations could be given, as this information was confidential. We sent an email requesting further information regarding the facility on the 20<sup>th</sup> October 2017.

On the 10<sup>th</sup> of November we received an email response from Jade Heng; the Principal Engagement Officer at CSNSW containing two Reviews of Environmental Factors required under the Environmental Planning and Assessment Regulation 2000. Assessments on Cessnock<sup>48</sup> and Wellington<sup>49</sup> were prepared by GHD Pty Ltd.

#### **4.2.2 Wellington Review**

The Wellington Review that we are currently examining denotes some suspicious behaviour with the possible intention to circumvent permission. It is possible that a breach of obligations under the Act has occurred. Also important is a lack of evidence of community consultation and a general sense of secrecy. On pages 76-77, there is a vague reference to consulting with community members of Wellington; that being said, there is no concrete evidence.

#### **4.2.3 Statutory Considerations**

The proposal for the Wellington Correctional Centre is one of temporary accommodation, with an intention to demolish the facility in the future, estimated to occur in 2023. As it is a temporary facility, it is anticipated that structures will be removed 5-7 years once the facility is no longer required. Under the State Environmental Planning Policies (SEPP's); Clause 26 allows for the demolition of the temporary buildings without consent. The demolition would be undertaken in accordance with a demolition environment

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<sup>48</sup><https://www.dropbox.com/sh/05phjr5zfq87pnf/AAD0AIIWv6PJDwWCAA66dHA0a?dl=0&preview=Cessnock+Correction+Centre+Expansion+REF+Approved+Final.pdf>

<sup>49</sup> <https://www.dropbox.com/s/uv4ep3paj5vjy5e/Wellington%20REF.pdf?dl=0>

management plan to be prepared by a contractor and approved prior to commencement.

Furthermore, Minister David Elliott in the Estimates Committee on the 5<sup>th</sup> September 2017 stated that: "we are spending \$188 million on the one in Wellington and \$199million on the one in Cessnock." This raises multiple concerns, including:

- Extensive costs for a temporary project
- The need to consider that maximum-security sentences span longer than 5-7 years. There is a need to assess how this accommodation is relevant as a temporary fix as it fails to address the issue from the perspective of individuals who obtain sentences longer than 7 years.
- Concerns of families moving into the location for a 5-7year time period. The issue of temporarily displacing numerous families of prisoners needs to be addressed, in addition to factors such as how it will affect movement out of the town at the end of the period would have.

#### **4.2.4 Environmental Assessment**

The construction and demolition of the temporary facility will result in negative implications on the surrounding environment. Impacts associated with noise and vibration, traffic and air quality are of serious long-term concern.

Refer to the Index of Environmental Impact Report, 'Demolition' as per Demolition of Buildings Without Comment (Clause 26);

- Page 20 – Demolition would be undertaken in accordance with a demolitions environment management plan prepared by contractor.
- Page 41 – Demolitions estimated to occur in 2023
- Page 73 – Temporary facility - anticipated that structures will be removed in 5-7 years when facility is no longer required.
- Appendix C – Construction of 400 Bed Temporary Correctional Accommodation.

#### **4.2.5 Socio-Economic Impacts**

The local government; Western Plains Regional Council (formerly known as Wellington Council) has released the Wellington Strategic Plan (2012) outlining the vision for the surrounding area. The GHD has not undertaken any formal consultation with the Council; the reason for this may be as a result of the social economic impacts that arise from the construction of this facility.

The Wellington Strategic Plan states that not only is there a negative perception about Wellington's reputation as a safe place to live, but also GHD has outlined several potential risks that will have social impacts on the Wellington area. These include communal concerns and the risk of investment through tourism and business opportunities slowing down as a direct result. Another factor of concern is how the Rapid Build Projects will affect crime in the community, which is already of concerning levels. There is potential that the community may perceive that the Rapid Build proposal may result in an increase in crime due to prison escapees.

Refer to 'Impact' at pages 73-76 and 'Mitigation' at pages 76-77 of Wellington

#### **4.2.6 Community Consultation**

On page 76-7 it refers to a proposed means of mitigating the risks involved in the above issues by means of community engagement and continued communication. We are concerned that this engagement has not occurred and the intention to do so is only included as a means of reducing accountability.

#### **4.2.7 Observations**

- Upon reading the Environmental Impact report of Wellington Correction Centre there appears to be false and misleading information regarding the planned demolition of the facility.
- Under clause 26 of the report – a contractor would undertake demolition in accordance with a demolition environment management plan.
- It was estimated in page 41 of the report that the demolition would occur in 2023 or 5-7 years from now
- Appendix C outlined the construction of 400 bed temporary correctional accommodation
- This information is false and misleading based on the interactions that Justice Action has had with the facility.
- The penalty for false and misleading information under the *Environmental Planning and Assessment Act 1979* (NSW) s148B can carry a maximum penalty of \$1 million.

#### The Environmental Planning and Assessment Act 1979

- An Act to institute a system of environmental planning and assessment for NSW
- Provides the framework for environmental planning and development approvals and includes provisions to ensure that the potential environmental impacts of a development are assessed and considered in the decision making process

#### Section 111: Duty to consider environmental impact

1. For the purposes of attaining the objectives of the Act, a determining authority in its consideration of an activity shall examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity
2. A determining authority means a public authority and, in relation to any activity, means the public authority by or on whose behalf the activity is to be carried out

#### Section 123: Breaches of this Act

1. Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach



2. Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons, a body corporate or unincorporated, having like or common interests in those proceedings
3. Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings

The Environmental Planning and Assessment Regulation 2000  
 Made under the *Environmental Planning and Assessment Act 1979*

Clause 228(2): What factors must be taken into account concerning the impact of an activity on the environment?

- The factors are as follows:

- a) Any environmental impact on the community,
- b) Any transformation of a locality,
- c) Any environmental impact on the ecosystems of the locality,
- d) Any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
- e) Any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
- f) Any impact on the habitat of protected animals,
- g) Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
- h) Any long-term effects on the environment,
- i) Any degradation on the quality of the environment,
- j) Any risk to the safety of the environment,
- k) Any reduction in the range of beneficial uses of the environment,
- l) Any pollution of the environment,
- m) Any environmental problems associated with the disposal of waste,
- n) Any increased demands on resources (natural or otherwise) that are, or are likely to become short in reply,
- o) Any cumulative environmental effect with other existing or likely future activities,
- p) Any impact of coastal processes and coastal hazards, including those under projected climate change conditions

**4.2.8 Potential Environmental Impacts**

Impacts to land during construction (6.1.2) Clause 228 (2)(o)

- Changes to overall land use of the site (6.1.3) Clause 228(2)(b)
- Facility is being built in a rural area with low background noise levels BUT would still affect residential area to the south (6.2.1) Clause 228 (2)(e)
- Any complaints from locals regarding noise? Clause 228 (2) (e)
- Storm water and waste management? Clause 228(2)(m)

Penalties for Breach:

Section 125D – This section applies to offences against regulations under s 125(2)

- A person who is guilty of an offence this section is liable to a penalty not exceeding \$110000

- Subject to a provision of regulations that prescribes a different max penalty

S125A – penalty for tier 1 offences – causing harm to the environment or causing death or serious harm to a person – criminal standard of proof. Corporation - \$5million max penalty and \$50000 for each day the offence continues

For the individual there is a max penalty of \$1 million and \$10 000 or continuing offence for each day'

S125B – tier 2 max penalties – applies to 125(1) other than an offence to which s 125A applies for which a tier 3 max penalty applies. CORPORATIONS - \$2 million and \$20000 for each day of continuing offence and \$500000 and \$5000 for individuals.

S125C – Tier 3 Max penalties – applies to certificate related offences and any other offence against the act under s125(1) for which the tier 3 penalty by this act to apply. \$1million for corporations and a further \$10000 per day for counting offence and \$250000 and \$2500 for individuals respectively.

S148B – False or misleading information – tier 3 max penalty – this is where a person must not provide information in connection with a planning matter that the person knows, or ought to reasonably know is false or misleading in a material particular. A person provides information in connection with a planning matter if:

- Person is an applicant for a consent or approval for certificate
- The person is engaged by such applicant and the information is provided by that person for the purposes of the application or,
- The person is a proponent of a proposed development and the information provided in or in connection with a formal request to an authority
- Person provides info in connection with any other matter or thing under this act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section

#### **4.2.9 Cessnock**

The construction cost for the expansion of the Cessnock Prison is currently \$199 million as per Estimates Committee evidence (050917 page 619). The conclusions in the Cessnock report are largely similar to that contained in the Wellington Report as detailed above. We wish to draw your attention to page 12 of the report, under clause 3.5 'Rapid Build Prison', which states that the RBP "is intended to address an immediate short-fall in bed capacity and is only expected to operate between 5-7 years"

#### Legislative Assembly Committee on Law and Safety

Re: Zangari, question posed to Minister for Counter-Terrorism, Minister for Corrections and Minister for Veterans Affairs

On 16 Nov. 2017, Guy Zangari asked the Legislative Assembly:

1. 'Have all building materials used to construct Rapid Build Prisons met the NSW building standards?
2. 'What building codes must the RBP adhere to?

Answer:

I am advised:

1. All Rapid Build Prisons must adhere to The Building Code of Australia.
2. The Building Code of Australia.

Per the 'EPA Regulation 2000 cl. 7' the BCA, and the standards it prescribes have the force of law in NSW as they stand from time to time (see, cl. 7(1)(a)-(b)),  
Further regulations: F.23 (P. 299 BCA), sanitation requirements  
F4.1 – class 3 buildings MUST allow for natural light in all bedrooms and dorms  
F4.8©, you cannot have a urinal directly near a dorm room  
VICTORIA – F3.102 – minimum floor area for habitable room 7.5m<sup>2</sup> or less than 7.5m<sup>2</sup> if it has as much light and ventilation as a 7.5m<sup>2</sup> room.

## **5.0 International Experience with Dormitory Prisons**

### **5.1 United States**

Within the US, dormitory style prisons have been implemented as a means to save construction money and to cut prisoner costs. Research shows that housing people in dorms lowers the cost per prisoner by almost a third.<sup>50</sup> The main countrywide issue associated with prisons in general; whether they have dormitory style prisons or have cell format seems to be the problem of insufficient bed space. Dormitory style prisons further worsen the severity of this issue and the results of this have not been positive, with prison strikes recorded in over 20 states.

South Carolina is one of the many states within the US to implement dormitory style prisons, with many of its prisoners subject to “communal living” known as dorms. Dorms are usually used in lower security institutions such as federal prison camps and low security federal prisons.<sup>51</sup> They tend to vary in size, either having as few as 50 inmates with 25 bunk beds or as many as 200 inmates with 200 bunk beds,<sup>52</sup> noise and a lack of privacy common issues within this setting.

Typically, in the more populated dorms there are rows and rows of bunk beds within a close proximity to one another, making it extremely difficult to maintain a quiet space. The other main issue, being the lack of privacy, means that everything an inmate does is seen by fellow inmates, whether it be showering, changing clothing, and even sleeping. This also means that theft is more common within a dorm setting as access to personal property is easily gained.<sup>53</sup> The conditions present within dormitory style prisons means that any sense of personal security is destroyed.<sup>54</sup> Personal security is extremely important, especially in the case of prisoners with diseases and the discretion these prisoners might wish to maintain. A violation of this discretion may lead to unnecessary violence, which in turn may cause on-going psychological consequences.

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<sup>50</sup> R.E. Bichell (2015) 'In Finland's 'open prisons,' inmates have the keys' <<https://www.pri.org/stories/2015-04-15/finlands-open-prisons-inmates-have-keys>>

<sup>51</sup> C. Zoukis (2013) 'Inmate Housing in the Federal Bureau of Prisons' <<http://www.prisonerresource.com/inmate-housing/inmate-housing-federal-bureau-prisons/>>

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

Maryland is another US state that has implemented dorms into their prisons. The main issue in Maryland is the housing of maximum-security inmates, and the state has dealt with this through the construction of the Maryland House of Correction (MHC) in 1878, which has a population of 1200 inmates and 537 dormitory beds.<sup>55</sup> As the MHC houses maximum-security inmates, many of the inmates have committed violent crimes, thus making violence within the dorms the main concern. In a dorm setting the inmates are able to use their skills to conduct illicit activities in the common areas, the large population within the dorms only worsens this, as it becomes easier to conceal their activities from the officers.<sup>56</sup> Violence involving not only inmate-on-inmate assaults but also attacks on the staff is a common problem that arises from this style of prison.<sup>57</sup>

## **5.2 Romania**

The implementation of dormitory style prisons and violence comes hand in hand. In Romania, prison directors have identified security issues as a serious problem, and dormitory rooms are a contributing factor to the security problem.<sup>58</sup> When there are as many as forty to sixty inmates locked into one room at night without a guard, a lack of a safety is evident.<sup>59</sup> The lack of legitimate security within the prison has meant that inmates within each cell act as security guards for their own cell.

As a result of the lack of security, there have been numerous reports from inmates about beatings that occur within prisons, and prison directors have also admitted that sexual assault within prisons is also a concern. There have been many cases of forced sexual relations within Romanian prisons, statistics however are difficult to find as there is perceived stigma attached with reporting sexual assault, the victims are often afraid or ashamed, and prefer not to say anything.<sup>60</sup>

## **5.3 Finland**

Finland adopts a drastically different approach from other countries, instead opting to have 'open prisons', as a last step of a prison sentence before inmates make the transition back to their regular lives.<sup>61</sup> There are no gates, lock or prisons and prisoners are either able to earn a wage by working or they may choose to study instead. Prior to the 1960's Finland had one of the highest rates of imprisonment in Europe and after

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<sup>55</sup> Peguese, James, and Koppel, Robert. "Managing High-risk Offenders in Prison Dormitory Settings." *Corrections Today* 65, no. 4 (2003): 82.

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*.

<sup>58</sup> A Helsinki Watch Report, "Prison Conditions In Romania" (Human Rights Watch, 2018) <<https://www.hrw.org/sites/default/files/reports/ROMANIA926.PDF>>.

<sup>59</sup> *ibid* 29.

<sup>60</sup> *ibid* 29.

<sup>61</sup> *In Finland's 'Open Prisons,' Inmates Have The Keys* (2018) Public Radio International <<https://www.pri.org/stories/2015-04-15/finlands-open-prisons-inmates-have-keys>>.

researchers across the Nordic countries concluded that punishment does nothing for reducing crime. As a result of policy changes, Finland now has one of the lowest rates of imprisonment in Europe.

#### **5.4. Future Research**

Dormitory style prison accommodation is used in America and is referenced as a pod. It has been employed as a method for incarcerated war veterans, and has successfully proven to lower recidivism rates.<sup>62</sup>

Proposed safeguards:

- Elevated observation units
- Staffed by about 200 officers
- An additional 400 beds will be built at the Macquarie Correctional Centre, creating some 220 new job opportunities – NSW government<sup>63</sup>

#### **5.5 Applicable case law**

Russia – Babuskin v Russia (2007) case (Dormitories are common in Russian prisons)

Denmark, Norway, Sweden, Netherlands v Greece (1969)

Bangkok Hilton (Judith Payne interview esp.)

Death rates due to overcrowding in Puerto Rican prisons (dorm-style)

Cases of “goal-fever” in French prisons

USA Prisons – (HIV/tuberculosis in South Carolina; violence in Maryland)

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<sup>62</sup> Tracy Connor, *NBC News* (26 February 2017) <<https://www.nbcnews.com/news/us-news/prisons-experiment-cell-blocks-military-veterans-n721306>>

<sup>63</sup> The Daily Telegraph (19 February 2017) <<http://www.dailytelegraph.com.au/news/nsw/the-macquarie-correctional-centre-new-jail-will-open-midyear-and-house-400-inmates/news-story/803679953c9a71811912a17d7a75a7df>>

## **6.0 Violence in Wellington Prison**

### **6.1 Comments in Reports from Prisoners**

Wellington Correctional Centre (WCC) was built, in Sector 1 each unit had seventeen multiple occupancy cells and twenty five single occupancy cells providing a design capacity of 456 beds, by 2014 this number had been reduced to 18 single occupancy cells in each unit of sector one, and by the end of 2015 it was reduced again to only seven single occupancy cells (or 594 operational capacity beds), by the end of 2016 eighty-six prisoners were being crammed into a unit designed for fifty six prisoners, by August 2017 the operational capacity was approximately 750 beds or 40% over design capacity.

The last time CSNSW crammed ninety-two prisoners into the units, in the first three years of operations of the WCC, there were a myriad of problems. There has not been opening windows, an increase in the ventilation system, extra facilities such as chairs or tables to sit on or at, extra shelf space (or in fact any shelf space at the WCC) or places to put clothes. In fact the cells are no bigger, CSNSW just crams more prisoners into cells specifically designed for one person, and to be the smallest space considered suitable before an individual adult starts to experience psychological effects.

The Inspector of Custodial Services calls the practice of turning single occupancy cells into double occupancy cells "a longstanding and thoroughly institutionalised practice in CSNSW and not simply a response to recent growth of the inmate population". An inmate can confirm this statement as, as soon as the WCC opened for operations CSNSW went through and effectively increased the operational capacity by 50%. This occurred by putting bunks in every cell and housing in excess of 750 prisoners, until the practice was halted by the Health Department after numerous complaints by prisoners and staff.

In the WCC Sector One maximum security, the use of classification has become irrelevant with prisoners of A, B and C classification commonly housed in the same unit. Classification is wholly subjective, the primary criteria for classification being a fixed number of years before release. This provides no motivation for prisoners to abide by CSNSW regulations. Placing strain on the credibility of CSNSW policies and the functioning of the Justice system as a whole.

## **6.2. Case Study: September – November**

In a three-month period between September 1<sup>st</sup> 2015 and November 30<sup>th</sup> 2015 the following was observed/heard by a prisoner within 'A' unit of the WCC

- Fight/s in multiple occupancy notes (22)
- Fight/s in the Yard/Unit (2)
- Rape (1)
- Stabbing (3)
- Shivs made (3)

The guards observed none of these; it must be kept in mind that there are six units like 'A' unit in Sector One of the WCC.

The following also happened in Sector One of the centre. The prisoner did not observe or hear these incidents. They occurred during the same period and were seen by guards.

- Melee in E unit, between Aboriginal and Islander prisoners (16/10/15)
- Drug overdose in B unit, Inmate Ian Mackie died (3/11/15)
- Fight in Bakery between two A unit prisoners, a young Islander assaulted a young Aboriginal man (11/11/15)
- Assault of a female guard in the Print Unit by prisoner, prisoner formally charged (11/11/15)
- Assault of a Prisoner in the CSI Print Unit Office (16/11/15)
- Stabbing in D Unit (16/11/15)

## **6.3 Case Study: Alex**

This was Alex's first time in Jail. He was married with two young children and was on remand on one charge of negligent driving causing death and had been in the WCC for only a short time. Alex was being stood over for buy-ups etc. in E pod so he was moved to D pod. A small group of prisoners led by one who was a known member of the notorious Islander gang, The Outcasts, operating within NSW prisons with the knowledge of CSNSW, came to the conclusion that the person who died in Alex's case belonged to their minority group, so they decided to exact their own justice. This prisoner assaulted Alex in his cell and left him there to die.

As the guards do not make rounds nor come out of their isolated office they did not notice what had transpired. When they eventually did find Alex, the prison authorities made arrangements so that the care that Alex did receive, and his subsequent hospitalization, would not reflect badly upon Corrective Services.

Having as many as 90 prisoners in a unit creates an ideal condition for multiple gangs to form in the same unit. As the cells are multiple-occupancy, an individual who does not wish to participate in the gang's forming is forced to join to ensure personal safety. There is no escape.

Gang members may use a responsible, mature prisoner as a shield – hiding phones, drugs or weapons in the property of the non-gang member in the multiple occupancy cell – as they are seen by the gang as having a lower risk of being searched by guards. The non-gang member may even be the patsy who takes the fall, being charged for breaches of Centre rules for having those items amongst their property. Thus, removing protection to prisoner health may constitute a breach of CSNSW duty of care to prisoners, through negligence. CSNSW use of multiple occupancy cells causes undue stress and may shorten the life span of prisoners, and as such is a breach of their duty of care.

Every prisoner is at risk of assault when placed in a multiple occupancy cell, all prisoners who are placed in multiple occupancy cells against their will are put at risk by CSNSW policy and action and the multiple occupancy cells are breeding increased violence in the States prison population. The prisoner in the multiple occupancy cell are at risk which may result in that prisoner having their sentence extended or their life forfeit or ruined further by other prisoners who wish to deflect blame from themselves.

The prisoner, being a non-drug user, as well as other non-drug using prisoners, is placed at risk by the loss of sufficient single occupancy cells. As CSNSW is aware of the narcotics in the jails (hence the regular random and targeted urine testing) the multiple occupancy cells are a breach of the duty of care and may constitute negligence on behalf of CSNSW.



## **7.0 Rapid Build Prisons – Possible Legal Challenges**

The following is an examination of possible legal challenges to the occupation of the new rapid-build dormitory prison at Wellington, which is to be occupied from 16 December 2017. The upper house inquiry has been extended to incorporate these challenges, however the issue will not be heard until February 2018.

Key legal concerns correspond but are not limited to discretionary injunctions, which may be available pursuant to the Administrative Decisions (Judicial Review) Act 1977.

### **7.1 Causes of Action:**

#### **7.1.1 Improper exercise of administrative discretion**

Under the Public Health Regulation 2012 s 44b (1), the Commissioner has discretion to determine the standards and sizes of rooms and cubicles required at correctional centres. In 2016, Assistant Commissioner Luke Grant stated that prison authorities were 'experts' in 'designing...managing' prisons. However, this correctional facility is the first of its kind, and the Rapid Build Prison contradicts basic humane standards and thus constitutes an inappropriate use of discretion in regards to the nature of prison cells. These cells are also contrary to pre-existing federal and international Prisoners Regulations.

#### **7.1.2 Breach of the Environmental Planning Act**

Due to the rapid build nature of the prison, the government has not undertaken the usual level of community consultation. This is a possible breach of the Environmental and Planning Regulations. Notably, construction and operation of the facility may result in:

- Impacts to land during construction (Clause 228 (2)(o))
- Changes to overall land use of the site (Clause 228 (2)(b))
- The government has not accounted for the residential area to the south, which may be affected by background noise levels (Clause 228 (2)(e))
- Potential complaints from locals regarding noise (Clause 228 (2)(e))
- Improper storm water and waste management (Clause 228 (2)(m))

#### **7.1.3 Repercussions attracted from the propagation of false and/or misleading**

## information

It may be argued that the construction of rapid-build prison facilities may be a breach of s 148B, *Environmental Planning and Assessment Act 1979* (NSW) which provides for the consequences of providing false and misleading information in connection with a planning matter.

Inferences may be argued that the temporary nature of the Cessnock Prison is false or misleading through an analysis of associated costs of constructing the facility. The construction cost of the expansion is currently \$199 million as per Estimates Committee evidence (050917, p. 619). Such conclusions as stipulated in the Cessnock report are similarly mirrored in analysis relating to the Wellington facility evinced in the Wellington report. We wish to draw your attention to page 12 of the report, under clause 3.5 'Rapid Build Prison', which states that the rapid Build Prison "is intended to address an immediate short-fall in bed capacity and is only expected to operate between 5-7 years."

S148B(1) of the *Environmental Planning and Assessment Act 1979* (NSW) affords a prohibition on providing information in connection with a planning matter that the person knows, or ought reasonably to have known, is false or misleading in a material particular. S 148B(2) provides a tier 3 maximum penalty under s 125.

A person provides information in connection with a planning matter if: (s 148B(3)):

- a) The person is an applicant for a consent, approval or certificate under the Act (or modification thereof) and the information is provided by the applicant in or in connection with the application, or
- b) The person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
- c) The person is a proponent of a proposed development and the information provided in or in connection with a formal request to an authority
- d) Person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.

Further, the Review of Environmental Factors document states, "given the temporary nature of the facility...all risks and benefits associated are also temporary." It must be noted that the *Environmental Planning and Assessment Act 1979*, s111 stipulates a duty to examine all matters of the environment to the fullest extent possible.

### 7.1.4 Breach of UN Conventions and Treaties

It may be argued that the conditions precipitating from the shared dormitory space, such as potential increased aggression, volume resulting in inability to sleep, the potential spread of illnesses owing to the large volume of adults in a confined area may qualify for breaches accepted international conventions. The provisions below may help form the basis of such an argument.

### *Universal declaration of Human Rights (UDHR)*

The UDHR are included in human rights documents because “everyone is entitled” to rights and freedoms and to the “equal protection of the law”.<sup>64</sup>

- **Article 5** of the Universal Declaration of Human Rights (UDHR) and **Article 7** of the International Covenant on Civil and Political Rights (ICCPR) states that “*no one should be subject to torture, or to cruel, inhuman or degrading treatment or punishment*”.
- **Article 25** of the UDHR states that “*everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing and medical care*”.
  - A Rapid-Build Prison breaches Article 25 as its failure to provide adequate housing, given the overcrowded circumstances, prevents a prisoners’ right to a standard of living that is adequate to a person’s health and wellbeing.
  - It also establishes an environment conducive to excessive bullying, overcrowding and the facilitation of characteristics such as excessive dominance.

### *International Covenant on Civil and Political Rights (ICCPR)*

The ICCPR mandates the inherent dignity of the human person.

- Article 7 prohibits any person’s subjection to torture or to cruel, inhuman or degrading treatment or punishment.
- **Article 9** of the ICCPR also determines the right to security of a person imposing a duty on the State to protect one from known threats of attack.
- **Article 10(1)** of the ICCPR asserts “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*”.
- **Article 17** of the ICCPR determines that “*no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...*”.

### *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

The ICESCR establishes in Article 12(1) that State Parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. As such, States must take active steps to realise this (Article 12(2)) including:

- a) The improvement of all aspects of environmental and industrial hygiene
- b) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- c) The creation of conditions which would assure to all medical service and medical

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<sup>64</sup> *Universal Declaration Of Human Rights* (2018) Un.org <<http://www.un.org/en/universal-declaration-human-rights/>>.

attention in the event of sickness

*Case note:*

In *Peers v Greece*, the appellant was sharing an isolation cell, designed for one person, with another prisoner and an open toilet which often failed to work; especially in hot, cramped conditions with little natural light and ventilation. The European Court of Human Rights held that Greece was in violation of Article 3 of the European Convention of Human Rights, which prohibits inhuman or degrading treatment. Although it does not give rise to legal cause of action, governments that enter into treaties have an obligation, moral or political, to comply with them.

### **7.1.5 Prisoner's rights issues**

Whilst there is insufficient information given by the complainants to determine a breach of most of these regulations, it is clear that they present significant moral and ethical dilemmas concerning the treatment of prisoners in Wellington Correctional Centre, and should be further investigated.

In NSW, whilst there is no express recognition of prisoner rights, certain provisions within the Crimes (Administration of Sentences) Regulation 2014 (NSW) aim to ensure that certain standards and protocols are adhered to with regard to the use of gas, drug use, education, correctional officer training, rehabilitation, cell size, food quality and daily exercise. Many of these standards have the effect of affording prisoner's basic rights.

Consideration of possible violations of prisoners' rights should include:

- Cell size. Correctional centres are exempt from minimum floor area requirements for rooms and cubicles in premises to be used for the purposes of sleeping accommodation (Public Health Amendment (Correctional Centres) Regulation 2016). However, the proposed sleeping quarters are not enclosed and will only be 3 by 2 metres, thus posing several significant risks. Firstly, the quality of life for prisoners will be significantly reduced by the lack of privacy, resulting in no control over their personalised space.
- The physical layout of the dormitory cell will also limit the availability of living space. It will also likely serve as a catalyst for increased offender-based violence, intimidation, assault, and bullying. This will all have serious ramifications for prisoner safety and health.
- In the event of an outbreak of infectious disease, the nature of the sleeping quarters will also pose a substantial health risk.

## ***Appendixes***

### **Appendix 1 – Terms of Reference for the Parliamentary Inquiry**



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS

**Inquiry into Parklea Correctional Centre and other operational issues**

**Terms of reference**

That Portfolio Committee No. 4 - Legal Affairs inquire into and report on the current operations of Parklea Correctional Centre, and in particular:

- (a) the adequacy of staffing levels and staff safety,
- (b) the inflow of contraband,
- (c) the security at the facility, including access to gaol keys,
- (d) any possible contraventions of the contract between the NSW Government and the GEO Group,
- (e) the appropriateness and operation of private prisons in New South Wales,
- (f) Rapid-Build dormitory prisons; and
- (g) any other related matter.

**Committee membership**

<b>The Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>(Chair)</i>
<b>Mr David Shoebridge MLC</b>	The Greens	<i>(Deputy Chair)</i>
<b>The David Clarke MLC</b>	Liberal Party	
<b>The Hon Scott Farlow MLC**</b>	Liberal Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Adam Searle MLC*</b>	Australian Labor Party	
<b>The Hon Lynda Voltz MLC</b>	Australian Labor Party	

\* The Hon Adam Searle MLC substituted for the Hon Shaoquett Moselmane MLC from 22 November 2017 for the duration of the inquiry

\*\* The Hon Scott Farlow MLC substituted for the Hon Catherine Cusack MLC from 28 November 2017 for the duration of the inquiry.



# Standardisation of cell sizes

## **Appendix 2 – Standardisation of Cell Sizes**

*Community Justice Coalition Discussion Paper: 30 November 2016. Comments to:  
info@communityjusticecoalition.org, P.O. Box 345, Broadway, NSW 2007,  
[www.communityjusticecoalition.org](http://www.communityjusticecoalition.org).*

*Disclaimer: This discussion paper does not necessarily represent the views of the CJC.*

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## Executive Summary

This report examines the standards and effects of reduced cell size for prisoners. It was triggered by recent NSW amendments that bypassed parliamentary scrutiny to give total discretion to NSW Corrective Services on determining cell size. The rapid growth of the NSW prison population over the last two years has prompted prisons to house up to three inmates in single occupancy prison cells housing. This has attracted public, political and media attention, and provoked the 2015 Inspector of Custodial Services' report, *Full House: The Growth of the inmate population in NSW*. In this report, the former inspector J. R. Paget affirms 'the state treats inmates in a way that denies them a modicum of dignity and humanity'.<sup>65</sup>

The *Standard Guidelines for Corrections in Australia 2012*<sup>66</sup> adopted the *Standard Guidelines for Prison Facilities in Australia and New Zealand 1990*, which specifies **8.75m<sup>2</sup>** as the standard size for a single occupancy cell.<sup>67</sup> The NSW Inspector of Custodial Services' recommended that the prison cell size prescribed in the 1990 *Standard Guidelines* be codified in legislation and reflected in operational practice,<sup>68</sup> as the current standards are mere guidelines and not legally enforceable.

Until July 2016, the *Public Health Regulations 2012* lawfully protected inmates from being detained for prolonged periods in a room which has a floor area of less than **5.5m<sup>2</sup>** for each occupant,<sup>69</sup> which is in accordance with boarding house standards for rooms that occupants can leave at will. However, following the *Public Health Amendment (Correctional Centres) Regulation 2016*, these minimum standards no longer apply to prisoners and total discretion regarding the size of cells is given to the Commissioner of Corrective Services. As the amendment concerns a regulation rather than legislation, it was not subject to parliamentary scrutiny, and has therefore been criticised as a move to legally entrench cramped and damaging conditions.

One of the most significant issues for prisoner accommodation is the lack of privacy. Every prisoner should be entitled to their own personal space where they can feel safe and their right to privacy is actualised. The *Standard Guidelines for Corrections in Australia 2012* emphasises that 'accommodation should respond effectively to the actual needs and risk

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<sup>65</sup> NSW Inspector of Custodial Services, Department of Justice, *Full House: The Growth of the inmate population in NSW* (Justice NSW, April 2015).

<<http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>> 10.

<sup>66</sup> Australian Institute of Criminology, *Standard Guidelines for Corrections in Australia* (2012) Australian Government Institute of Criminology.

<[http://aic.gov.au/media\\_library/aic/research/corrections/standards/aust-stand\\_2012.pdf](http://aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2012.pdf)>.

<sup>67</sup> Victorian Office of Corrections, *Standard Guidelines for Prison Facilities in Australia & New Zealand* (1990) Corrections, Prisons & Parole 31. <[http://assets.justice.vic.gov.au/corrections/resources/86bad68c-de78-44ef-b06f-20f4c7844e18/standard\\_guidelines\\_prison\\_facilities\\_1990small.pdf](http://assets.justice.vic.gov.au/corrections/resources/86bad68c-de78-44ef-b06f-20f4c7844e18/standard_guidelines_prison_facilities_1990small.pdf)>.

<sup>68</sup> NSW Inspector of Custodial Service, above n 1, 30.

<sup>69</sup> *Public Health Regulation 2012* (NSW) reg 46(1)(a), as amended by *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW) sch 1 item 3.

status of a prisoner'.<sup>70</sup> Sharing a cell and choosing your fellow occupant should be an option for prisoners, not mandated. Forcing individuals to share a cell and live in such close proximity whilst they sleep, eat and defecate inevitably increases tensions among an already volatile population. This gives rise to a number of significant health, safety and security concerns.<sup>71</sup>

Overcrowding has led to an increase in the risk of assault, self-harm and an escalation of general prison disorder.<sup>72</sup> The severity of these conditions on the physical, emotional and mental health of prisoners is exacerbated by the fact that NSW inmates have the lowest number of out-of-cell hours each day.<sup>73</sup> This affects their mental health, resulting in degradation and difficulty in resettling inmates safely.

This report rejects the recent NSW amendments that give power to a single Commissioner to arbitrarily redefine minimum cell sizes. It calls for legislative protections to enforce a non-negotiable minimum cell size in accordance with the 1990 Standard Guidelines. As it stands, new prisons in NSW will not provide cells large enough to facilitate effective rehabilitation, nor facilitate the privacy and supply of safe spaces for inmates.

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<sup>70</sup> Australian Institute of Criminology, *Standard Guidelines for Corrections in Australia* (2012) Australian Government Institute of Criminology 24

<[http://aic.gov.au/media\\_library/aic/research/corrections/standards/aust-stand\\_2012.pdf](http://aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2012.pdf)>.

<sup>71</sup> Fiona Campbell, 'Overcrowding in Queensland Prisons' (2012) 7(28) *Indigenous Law Bulletin* 12.

<sup>72</sup> *Ibid.*

<sup>73</sup> Australian Institute of Criminology, above n 2.

## Overcrowding in NSW

The NSW adult prison population has experienced a massive growth of 21% throughout the last two years,<sup>74</sup> resulting in significant overcrowding in NSW correctional centres.<sup>75</sup> While long-term trends show a consistent rise in prison population, the rapid increase during 2014 prompted a report by the Inspector of Custodial Services. The report titled *Full House: The Growth of the Inmate Population*, found that in 2015, 21 of 44 correctional facilities in NSW were operating over design capacity.<sup>76</sup> This led the Inspector of Custodial Services to conclude that 'the state treats inmates in a way that denies them a modicum of dignity and humanity, it should not be surprised if they respond accordingly, with individual acts of non-complaint behaviour escalating into collective disorder, such as riots'.<sup>77</sup>

The result of the increasing prison populations and subsequent overcrowding is double to triple bunking in each cell. It was found that this was not simply an interim response to the recent prison population growth, but a "longstanding and thoroughly institutionalised practice" across Corrective Services in NSW.<sup>78</sup> Overcrowding in prison cells increases tension between inmates, directly compromising the security and safety of prisoners, and raises concerns about the psychological anguish among inmates.<sup>79</sup> David Shoebridge, Member of Parliament in the NSW Legislative Council, expressed concern for public health in situations of chronic overcrowding, such as in NSW prisons.<sup>80</sup> Mr Shoebridge anticipates the current trend will see the overcrowding of prison cells systematically "entrenched" into the prison system.<sup>81</sup>

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<sup>74</sup> NSW Bureau of Crime Statistics and Research, *New South Wales Custody Statistics Quarterly Update* (28 June 2016) NSW Bureau of Crime Statistics and Research.  
<[http://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2016/MR\\_NSW\\_Custody\\_Statistics\\_Jun2016.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2016/MR_NSW_Custody_Statistics_Jun2016.aspx)>.

<sup>75</sup> NSW Inspector of Custodial Services, above n 1, 10.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, 6.

<sup>78</sup> Ibid, 35.

<sup>79</sup> Ibid 36.

<sup>80</sup> Penny Timms, 'NSW Government accused of sneaking through changes to prison cell sizes 'in the deep of the night,' ABC News (Online) 7<sup>th</sup> October 2016 [2-3] <<http://www.abc.net.au/news/2016-10-07/nsw-government-accused-of-sneaking-prison-cell-changes-through/7914498>>.

<sup>81</sup> Ibid 3.

## National and International Cell Size Guidelines

### National Guidelines

The '2012 Standard Guidelines for Corrections in Australia' specifies that cells should be consistent with standards relating to size, light and ventilation etc. as set out in the *Standard Guidelines for Prison Facilities in Australia and New Zealand (1990)* or as later modified.<sup>82</sup> The original guidelines stipulate that each cell should provide a prisoner with the functions of sheltering, sanitation and relaxing and these functions should be able to be executed without the interference of other prisoners. Furthermore, the guidelines specified minimum measurements for a cell: **8.75m<sup>2</sup>** for a single cell (7.5 floor space + 1.25 for WC facilities), and **12.75m<sup>2</sup>** for double room (including WC facilities, a 'wet cell') or **11.5m<sup>2</sup>** (not including separate washing facilities, a 'dry cell').<sup>83</sup>

### International Guidelines

The International Committee of the Red Cross (ICRC), while not establishing binding standards, provides minimum guidelines for living quarters and capacity.<sup>84</sup> It is also important to note that the Red Cross statistics take the conditions of developing countries into account, and thus is not strictly applicable to the situation in NSW. The ICRC has calculated the space needed for sleeping on a bed as **1.6m** and toilet and shower space as **1.2m**. It is recommended a single cell measure **5.4m<sup>2</sup>** (excluding toilet).<sup>85</sup>

### New South Wales Guidelines

The *Full House* Report noted the States' varying minimum standards for cell dimensions:

Custodial Services NSW's Facility Assets Correctional Standards advises the floor space for a:

- Standard single cell is **8.2m<sup>2</sup>**;
- Dual cell the standard is **12.75m<sup>2</sup>**.<sup>86</sup>

As previously stated, the premise of doubling or tripling up in cells is slowly being entrenched within the prison system. Calculated in terms of floor space per person, one individual has **3.75m<sup>2</sup>** if two people are double bunked in an individual dry cell, or **4.1m<sup>2</sup>** for a wet cell. It must be emphasised that while recognising differing state standards, the *Full House* Report endorsed the 1990 *Standard Guidelines* recommendation of **8.75m<sup>2</sup>**.

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<sup>82</sup> Australian Institute of Criminology, above n 2, 24.

<sup>83</sup> Victorian Office of Corrections, above n 2.

<sup>84</sup> International Committee of the Red Cross, above n 5.

<sup>85</sup> Ibid 32.

<sup>86</sup> NSW Inspector of Custodial Services, above n 1, 30 (2.51).

## Recent New South Wales Amendments

The Public Health Regulations, which protects inmates against being held in cramped conditions long-term, have been recently amended.<sup>87</sup> The NSW *Public Health Regulation 2012* (made under the *Public Health Act 2010*) previously provided that the minimum floor area requirement for any room or cubicle was **5.5m<sup>2</sup>** or more for each person sleeping in it for more than 28 days, or **2m<sup>2</sup>** in any other case.<sup>88</sup> These fall below the recommendations of the ICRC.<sup>89</sup> However, with the legislative amendment effective July 1<sup>st</sup>, 2016 (the insertion of s 46(1)(d)), Correctional Centres were excluded from this requirement.<sup>90</sup> Additionally, section 44B gives the Commissioner the right to make regulations for NSW cell sizes, and the right to amend the directions issued at any time (subject to 5 yearly review by the Commissioner themselves) – with no minimum standard to comply with.<sup>91</sup> The guidelines proposed by the Commissioner of Corrective Services will reduce a 2-person cell to **10.5m<sup>2</sup>**, which is **2.25m<sup>2</sup>** smaller than the existing national minimum standard.<sup>92</sup>

With the grant of these additional regulatory powers onto the Commissioner of Corrective Services, all correctional facilities will be exempt from the minimum standards under the public health regulations.<sup>93</sup> As stated by current Assistant Commissioner Luke Grant, clause 22 of the reform permits two (or even multiple) inmates to share a single occupancy cell, should the prison(s) be full.<sup>94</sup> This opens the possibility of “doubling up” or even “tripling up” which increases the potential for cases of three inmates occupying a **12.75m<sup>2</sup>** cell. The reform is supported by independent research conducted by the Government, which according to Assistant Commissioner Grant ‘failed to demonstrate any particular association between the sizes of cells and adverse health impact’.<sup>95</sup>

As noted, the amendment was enacted through the regulatory power rather than a parliamentary vote, which protects this amendment from the full scope of public and parliamentary scrutiny. This unprecedented introduction of reform impairs the regional investment infrastructure program announced in the current New South Wales Budget in which 3.8 billion dollars was committed to increase the capacity of correctional facilities over

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<sup>87</sup> *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW).

<sup>88</sup> *Public Health Regulation 2012* (NSW) reg 46(1)(a), as amended by *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW) sch 1 item 3.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Public Health Regulation 2012* (NSW) reg 46(1), as amended by *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW) sch 1 item 3.

<sup>91</sup> *Ibid* reg 44B.

<sup>92</sup> David Shoebridge, ‘The smallest cell standards in the country will make NSW prisons even more unsafe’ (Media Release, 8 October 2016) <http://davidshoebridge.org.au/2016/10/08/media-release-the-smallest-cell-standards-in-the-country-will-make-nsw-prisons-even-more-unsafe/>.

<sup>93</sup> *Public Health Regulation 2012* (NSW) reg 46(2).

<sup>94</sup> Penny Times, ‘NSW Government accused of sneaking through changes to prison cell sizes ‘in the deep of the night’, *ABC News* (online), 8 Oct 2016 <<http://www.abc.net.au/news/2016-10-07/nsw-government-accused-of-sneaking-prison-cell-changes-through/7914498>>.

<sup>95</sup> Timms, above n 6, [11].

four years.<sup>96</sup> This investment will provide 2,380 jobs along with an additional 4,165 prison beds.<sup>97</sup> Although this investment will help increase prison capacity, when combined with these new reforms, it raises serious concerns about the compromises required on behalf of prisoners such as a smaller per square metre floor space.

## Effects of Inadequate Cell Size

The *Full House Report* also raised concerns with the extensive doubling of inmates in cells and reinstatement of tripling in cells as attempted at the Parklea Correctional Facility in 2015.<sup>98</sup> It was noted that that was a widespread occurrence as 21 of 44 correctional centres in NSW were operating over design capacity in 2015.<sup>99</sup> This reflects long-term trends that depict a consistent rise in number of people who are incarcerated<sup>100</sup>. Furthermore, NSW has the lowest number of hours out-of-cell each day (an average 8.2 hours per day)<sup>101</sup>. When combined with the issue of overcrowding, it becomes clear that the correctional system is at significant risk.

As the prison environment is a volatile one, these critical overlooks can manifest in raised tensions, with the possibility of assault, self-harm, suicide and general prison disorder.<sup>102</sup> This exposure to physical, emotional and mental health risks clearly compromises rehabilitation outcomes, suggesting that increased inmate numbers only fosters an unproductive environment and limits opportunities for parole.

Additionally, the increase of inmates also places a strain on the health system and its resources, consequently resulting in negative outcomes such as the health needs of inmates not being met.<sup>103</sup> With an already lesser health profile than the general public,<sup>104</sup> it is therefore crucial that this issue is addressed.

One of the most significant issues of cramming prisoners into cells is the lack of privacy and safety. Privacy and safety concerns arise when prisoners are isolated, asleep and without support whilst involuntarily detained with a stranger. Privacy is a right to be alone and right

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<sup>96</sup> Lucy McNally, 'NSW budget: \$3.8b to fund thousands of extra beds in crowded jails' *ABC News* (online), 16 Jun 2016 <<http://www.abc.net.au/news/2016-06-16/nsw-govt-to-fund-thousands-extra-beds-to-help-crowded-jails/7515336>>.

<sup>97</sup> NSW Justice, 'Regional investment strengthened with prison infrastructure program' (Media Release, 11 August 2016) [1] <<http://www.justice.nsw.gov.au/Pages/media-news/news/2016/regional-investment-prison-infrastructure-program.aspx>>.

<sup>98</sup> NSW Inspector of Custodial Services, above n 1.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid*12.

<sup>104</sup> *Ibid*11.

to control one's thoughts, beliefs and their body.<sup>105</sup> Article 12 of the *Universal Declaration of Human Rights* stipulates that no one shall be subject to interference with their privacy.<sup>106</sup> The right to privacy in prison is crucial in order to empower inmates to formulate their own autonomous beliefs and decisions, and for their self-conception as trustworthy and self-determined individuals.<sup>107</sup> An absence of privacy in prison can lead to forced shame and degradation, with the potential to damage a prisoner's self-respect. This, combined with the lack of time and space to privately reflect on past actions, can counteract the rehabilitative process and reduce a prisoner's ability to critically assess their behaviour.<sup>108</sup>

It is important to further consider the impact of crowding and cell conditions on staff. Crowded prisons make custody more difficult, as it becomes harder to supervise crowds and groups, and therefore harder to control situations.<sup>109</sup> The workload that is associated with long periods of overcrowding is problematic, as the prison population becomes more difficult to manage.<sup>110</sup> This problem is further exacerbated with a lack of positive contact between staff and prisoners—having to expand supervision or control over more prisoners stretches staff and leaves them unable to establish relationships with inmates.<sup>111</sup> The corrective services environment begins to become more stressful and tense with increased employee turnover, and less staff to help inmates experiencing distress.

## Case Studies

In April 2014 Prisoners at Parklea Correctional Centre complained of “two out” cells being converted into “three out” cells.<sup>112</sup> Prisoners expressed concerns surrounding ventilation, storage space, infectious disease and mental health.<sup>113</sup> Prisoners mentioned that this lack of privacy had led to three cases of violent disputes.<sup>114</sup> One of the main concerns expressed by prisoners was the impact of such a confined space for cell inmates with asthma and other

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<sup>105</sup> William Bülow, 'Treating Inmates as Moral Agents: A Defense of the Right to Privacy in Prison' (2014) 33 1 *Criminal Justice Ethics* 1-20.

<sup>106</sup> *Universal Declaration on Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

<sup>107</sup> *Ibid*, 2-3.

<sup>108</sup> *Ibid*, 8.

<sup>109</sup> Craig Haney, 'Overcrowding and the Situational Pathologies of Prison' (2006) *American Psychological Association* 204.

<sup>110</sup> Mary K. Stohr et al, 'Staff turnover in new generation jails: An investigation of its causes and prevention' (1992) 20(5) *Journal of Criminal Justice* 460.

<sup>111</sup> Hans Toch, 'Warehouses for People?' (1985) 478 *The Annals of the American Academy of Political and Social Science* 58.

<sup>112</sup> Justice Action, *Parklea Prisoners Protest Cramped Cells*, Justice Action  
<[http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=620:parklea-prisoners-protest-crammed-cells&catid=75&Itemid=1020&highlight=WyjwYXJrbGVhll0](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=620:parklea-prisoners-protest-crammed-cells&catid=75&Itemid=1020&highlight=WyjwYXJrbGVhll0)> [1].

<sup>113</sup> *Ibid*, 6.

<sup>114</sup> *Ibid*, 9.

health conditions.<sup>115</sup> In an environment where prisoners are overcrowded, proper surveillance becomes impossible.

As of August 2014, three correctional centres - Dillwynia CC, MRRC and Grafton CC - were using single cells to accommodate three inmates.<sup>116</sup> This reduces individual floor space to as little as **2.5m<sup>2</sup>**, assuming the single cell standard of **8.2m<sup>2</sup>** as advised in the Custodial Services NSW's Facility Assets Correctional Standards. Inmates living under these cramped conditions were, however, rotated every 14 - 28 days to meet Public Health Regulations.<sup>117</sup> The increasing prison population, coupled with inadequately sized cells has resulted in the overcrowding of prisons - with multiple people kept in a cell intended to only house one inmate. The ramifications of the reduced cell sizes would be to restrict prisoner accessibility to essential services, and thus, will have an adversely commensurate effect on their overall wellbeing.

### **Comparing Zoos and Prisons**

A previous report by Justice Action found the conditions of animal enclosures in zoos to be regulated by law, whereas the conditions of cells for prisoners had mere guidelines. A comparison between zoo animals and prisoners found that a gorilla in captivity is afforded twenty four times the space of a human in a jail cell.<sup>118</sup> The existence of stringent safeguards and legislation, which upholds and protects the welfare of animals in captivity, draws a stark contrast to the safeguards of human welfare in prisons. These conditions will only worsen with the impact of the new legislation. It is findings such as these that prompted Justice Action to work with prisoners to develop model cell plans. In the absence of measures guaranteeing adequate space in cells, and in the place of non-enforceable recommendations, prisoners are denied basic rights and conditions that a human both requires and deserves.

### **Wellington Report**

On 3 April 2009, a tour of the Wellington Correctional Centre occurred so as to determine whether its accommodation led to adverse health impacts in inmates as a result of the exemption under Clause 22 of the *Public Health (General) Regulation 2002*.

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<sup>115</sup> Ibid.

<sup>116</sup> NSW Inspector of Custodial Services, above n 1, 35.

<sup>117</sup> Ibid.

<sup>118</sup> Justice Action, *Comparing Zoos and Prisons: Worse than Animals*, (23 November 2015) Justice Action. <[http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=771:treating-us-worse-than-animals-comparing-the-conditions-of-zoos-and-prisons&catid=38&Itemid=1079](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=771:treating-us-worse-than-animals-comparing-the-conditions-of-zoos-and-prisons&catid=38&Itemid=1079)>.



Initially opened in 2007 to accommodate 500 female and male inmates/patients, the centre, by 2009, was overcrowded with over 600 inmates, with approximately 80 inmates per pod.<sup>119</sup> The floor area for a standard, singular cell was 7.7m<sup>2</sup>, which later changed to 11.15m<sup>2</sup> to accommodate the influx in inmates.<sup>120</sup> Various other factors, such as ventilation, lighting and cleanliness, were also carefully considered in this decision.<sup>121</sup>

Based on their findings, a series of recommendations were presented to improve faults in accommodation. In order for the centre to continue operation it was required that the following criteria be adopted within the Correctional Centre in order for it to be considered still exempt from Clause 22. Such criteria included:

- Ventilation systems to be run at all times when inmates/patients are in cells, including when inmates are sick or in lockdown.
- Additional single celled accommodation should be provided in the event that a patient is sick and in need of isolation.
- Inmates having a fresh set of clothing each day; this can be improved by supplying more clothing or increasing the frequency of laundry days.

## New Prisons

### Grafton Jail

According to Prisons Minister David Elliott, the new Grafton Correctional Centre will operate in a way as to “reduce reoffending through rehabilitation programs and help keep the community safer, as well as reducing the burden on police and courts”.<sup>122</sup> The Corrective Services Commissioner Peter Severin has noted that the changes to the Centre are likely a response to the increased prison population, thus making the need for appropriately sized and regulated cells particularly prevalent.<sup>123</sup>

An article in *The Daily Examiner*; ‘Crowded cells causing chaos’, has attributed discord in the Grafton Jail to be a direct result of inmate overcrowding – placing further importance on the need for reform and regulation in relation to cell size and prisoner allocation per cell.<sup>124</sup> One especially salient incident concerned a fire lit in a cell earlier this year.<sup>125</sup> Former jail governor

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<sup>119</sup> NSW Health, submission to Department of Corrective Services, *Report on the Assessment of Wellington Correctional Centre under Clause 22 of the Public Health (General) Regulation 2002 Undertaken on 3 April 2009*, 29 October 2009, 2.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid, 3-5.

<sup>122</sup> David Elliott, ‘Prison Projects to Deliver 1650 beds’ (Media Release, 1 February 2016) [4] <[http://www.infrastructure.nsw.gov.au/media/51791/160201\\_david\\_elliott\\_med\\_rel\\_-\\_prison\\_projects\\_to\\_deliver\\_1650\\_beds.pdf](http://www.infrastructure.nsw.gov.au/media/51791/160201_david_elliott_med_rel_-_prison_projects_to_deliver_1650_beds.pdf)>.

<sup>123</sup> Ibid 6.

<sup>124</sup> Tim Howard. ‘Crowded cells causing chaos?’ *The Daily Examiner* (online) 23 July 2016 <<http://www.dailyexaminer.com.au/news/crowded-cells-causing-chaos/3066230/>>.

<sup>125</sup> Ibid 1.

John Heffernan linked the fire and the increase of incidents at the centre, to the overcrowding of the centre.<sup>126</sup> This reflects the need for increased resources, experienced staff and appropriate facilities to avoid further incidents of this nature. Upon completion (projected to be in 2020), the new Grafton Correctional Centre is set to accommodate up to 1,700 beds.<sup>127</sup> Whilst the proposal for the new Correctional Centre shows plans for increased inmate capacity, the size and conditions of these cells have not been specified. Thus, there is no certainty that the key issues facing prisons will be addressed, or that they have even been considered at all.

## **Proposal**

### **Proposed Standard Size**

It is imperative that a legally enforceable standard minimum cell size is introduced. Without a legal framework guaranteeing prisoners rights, their basic human rights are at risk. A legal framework will place accountability on government officials and correctional centres, motivating them to comply. This will help to reform the current practices in prisons, where over crowding has become a norm. Further it will provide an adequate standard of safety, health and privacy to prisoners. The long-term benefits to society of successfully rehabilitated prisoners, so they become active members in society, will outweigh the costs of executing this standard.

We propose that the guideline of 8.75m<sup>2</sup> for the single cell set out in the *Standard Guidelines for Prison Facilities in Australia and New Zealand (1990)* be entrenched in the law.

### **Repeal the Amendment**

The amendment needs to be repealed. Allowing the Commissioner to have complete autonomy in determining the regulations for minimum cell size threatens the safety of prisoners and their opportunities to rehabilitate. As a visual aide, Justice Action proposes a model cell be built to compare the current standards and the proposed standards under the amendments. This model can then be referenced in future discussions and proposals for reform. Further, the amendment needs to be repealed to make correctional centres subject to the standard guidelines enforced by the *Public Health Act* in order to ensure the health and development of prisoners while in correctional facilities.

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<sup>126</sup> Ibid 3.

<sup>127</sup> Infrastructure NSW, *New Grafton Correctional Centre Infrastructure NSW*  
<<http://www.infrastructure.nsw.gov.au/projects-nsw/grafton-correctional-centre.aspx>>.

Until the amendment can be repealed, we propose an increased focus on encouraging prisoners to engage in the programmes and services provided such as education and vocational training as well as skills courses that are aimed at reducing recidivism. This engagement should decrease the emotional and psychological distress that overcrowding can incite and/or enhance as outlined earlier in the report. Furthermore, prisoners should be encouraged to engage more extensively in the range of sports, recreational and cultural activities available to them. This proactive approach to increased engagement in the services provided is outlined in the *Standard Guidelines for Corrections in Australia* as revised in 2012.

It is also within the guidelines that prisoners should have access to a professional counselling service provided by appropriately qualified persons and available at least during normal working days. However, we suggest that until the issue of overcrowding can be properly addressed and reduced there should be an increased availability of psychological services in order to help reduce prisoner stress and any additional psychosocial consequences.

## **Conclusion**

Whilst NSW Corrective Services claim cell sizes have no effect on the wellbeing of inmates, the extensive empirical research in the field suggests otherwise. The recent amendments deprive prisoners of adequate facilities to seek effective rehabilitation. The lack of transparency and clarity of the reforms raise concerns in regards to the treatment and safety of prisoners, as well as the respect of their privacy. Our proposal is twofold; Firstly, implementation of legislative protection for a non-negotiable minimum cell size in accordance with the 1990 Standard Guidelines and secondly, the Commissioner's power to arbitrarily reduce cell sizes be repealed. These proposals are put forth to uphold prisoner's right to rehabilitate in an environment free from privacy, safety and health concerns.

