



THE UNIVERSITY OF
SYDNEY

Responses to Questions on Notice to the Inquiry into Parklea Correctional Centre and other operational issues

Rapid Build Dormitory Prisons

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**PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS
PARKLEA CORRECTIONAL CENTRE AND OTHER OPERATIONAL
ISSUES**

**RESPONSES TO QUESTIONS ON NOTICE TAKEN DURING THE HEARING ON
FRIDAY 28 SEPTEMBER 2018**

DR CAROLYN MCKAY

1. **Mr DAVID SHOEBRIDGE:** And there was the Victorian evidence of that notorious dormitory prison. The name of it escapes me. It was a dormitory-style Melbourne prison that had a series of riots in the 1960s and early 1970s. I might ask you about it on notice.

RESPONSE:

I suggest that the facility being referenced was Her Majesty's Prison Pentridge (1851-1997) in Victoria. It is my understanding that Pentridge had dormitory accommodation in several divisions.¹ There was a riot in the large dormitory 'E' division in 1973 and a fire in the 'F' division dormitory in the late 1970s.² It is worth noting that during 1982, there was also a large fire in an old timber dormitory at HM Prison Fairlea (1956-1996) in Victoria and three female remand prisoners died.³ In the 1983 Interim Report of the Select Committee of the Legislative Council upon the Victorian Prisons Service, it was stated:

The Committee considers that the first priority should be to move substantially from dormitory accommodation to single cells in Victorian gaols. D and F Divisions at Pentridge are clearly unfit for human habitation and should be demolished as soon as possible.⁴

In a 1985 news release, the Victorian Attorney-General is reported as announcing the closure of the Pentridge dormitories following a series of rapes⁵, stating:

The conditions in the dormitories are unacceptable in this day and age. They are intolerable for both inmates and staff and the sooner they are closed the better. They are widely recognised as a fire hazard and can only be described as Dickensian.⁶

¹ Paterson, W.C., (1997). *Victoria's prison policy 1851-1992: from hulks to unit management*, University of Tasmania PhD thesis, November 1997, 222.

https://eprints.utas.edu.au/21156/1/whole_PatersonWilliamCross1998_thesis.pdf

² Lynn, P. and Armstrong, G., (1996) *From Pentonville to Pentridge. A History of Prisons in Victoria*, Melbourne, 160, 170.

³ Lynn, P. and Armstrong, G., (1996) *From Pentonville to Pentridge. A History of Prisons in Victoria*, Melbourne, 172.

⁴ Victorian Parliament, Legislative Council. (1984). Select Committee of the Legislative Council upon the Victorian Prisons Service, *Select Committee of the Legislative Council upon the Victorian Prisons Service: Interim Report*, Melbourne, 7. <https://www.parliament.vic.gov.au/papers/govpub/VPARL1982-85NoD35.pdf>

⁵ Paterson, W.C., (1997). *Victoria's prison policy 1851-1992: from hulks to unit management*, University of Tasmania PhD thesis, November 1997, 222.

https://eprints.utas.edu.au/21156/1/whole_PatersonWilliamCross1998_thesis.pdf

⁶ News Release issued by the Attorney-General for Victoria, 17 December 1985 cited in Paterson (1997), 222.

However, dormitory accommodation continued to exist in other divisions of Pentridge as well as in 'Ararat, Bendigo, Castlemaine, Dhurringile, Sale and Won Wron' according to Paterson.⁷

2. **Mr DAVID SHOEBRIDGE:** Can you think of examples from any of your national or international literature where there is an identifiable and independent third-party who has done that kind of work and what that model would look like?

RESPONSE:

Models of prison oversight should be independent, transparent, accessible as well as responsive. New South Wales (NSW) has the Inspector of Custodial Services⁸ and perhaps the first consideration ought to be whether this service could be further resourced and expanded to support regular and independent assessment, monitoring, reporting and response to specific rapid build prison/dormitory issues, given the experimental nature of these new facilities. It is also noted that prisoners may currently lodge complaints with the NSW Ombudsman⁹, although the mechanism for prisoners held in the new dormitories to raise a complaint to the Ombudsman is not known to this writer.

In other jurisdictions where human rights measures have been ratified and implemented, prison oversight models are structured by relevant human rights instruments such as the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).¹⁰ It is understood that no current NSW prison oversight body has a specific mandate pursuant to OPCAT.¹¹ OPCAT, ratified by the Australian Government in 2017, requires the establishment of a scheme of independent National Preventive Mechanisms (NPMs)¹² for all places of detention and closed environments.¹³

⁷ Paterson, W.C., (1997). Victoria's prison policy 1851-1992: from hulks to unit management, University of Tasmania PhD thesis, November 1997, 222.

https://eprints.utas.edu.au/21156/1/whole_PatersonWilliamCross1998_thesis.pdf

⁸ *Inspector of Custodial Services Act 2012* (NSW);

<http://www.custodialinspector.justice.nsw.gov.au/Pages/About-us.aspx>

⁹ *Ombudsman Act 1974* (NSW) <https://www.ombo.nsw.gov.au/what-we-do/our-work/custodial-services/corrective-services>

¹⁰ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>; see also *Convention against Torture and*

Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26

June 1987, in accordance with article 27 (1) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

¹¹ Legal Aid NSW (2017) Submission to the Australian Human Rights Commission *OPCAT in Australia: Consultation Paper*, July 2017.

<https://www.humanrights.gov.au/sites/default/files/48.%20Legal%20Aid%20NSW%20Sub%202%20August%202017.pdf>

¹² Examples of NPMs in the UK: <http://www.nationalpreventivemechanism.org.uk/members/>

¹³ OPCAT was ratified by the Australian Government on 15 December, 2017.

<https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>; Harding, R. and Morgan, N., (2008) *Implementing the Optional Protocol to the*

NPMs are premised on ‘visits-based inspections by an agency possessing functional independence’.¹⁴ In the edited book, *Human Rights in Closed Environments*¹⁵, the authors detail a framework for implementing human rights measures in closed environments including compliance with international and national obligations. Of particular relevance to this Parliamentary Inquiry, the authors examine the operationalisation of human rights measures into the daily practices and policies of correctional facilities and frontline staff, as well as how to establish effective and independent monitoring mechanisms. For instance, there needs to be appropriate ‘in-prison complaints mechanisms’¹⁶ and this is an issue that needs to be addressed especially for prisoners living in open dormitories.

There are a number of human rights based models from other jurisdictions where the ‘healthy prison standards’ have been adopted emphasising safety, respect/humane treatment, purposeful activity/rehabilitation and resettlement/reintegration.¹⁷ These principles structure the process of prison oversight. As an example, the United Kingdom (UK) HM Inspectorate of Prisons undertakes detainee surveys to understand their experiences of custodial conditions and environments.¹⁸ See also the ‘Standards of Inspection and Monitoring’, ‘Inspection Framework’ and ‘Guide for Inspectors’ of the HM Inspectorate of Prisons for Scotland.¹⁹ In New Zealand (NZ) there is the Office of the Inspectorate.²⁰ The NZ experience may be particularly ‘instructive because of its similar legal and political history’²¹ and the over-

Convention against Torture: Options for Australia, Australian Human Rights Commission.
<https://www.humanrights.gov.au/sites/default/files/content/human.../opcat/opcat.doc>

¹⁴ Harding, R. and Morgan, N., (2008) *Implementing the Optional Protocol to the Convention against Torture: Options for Australia*, Australian Human Rights Commission, 2.

<https://www.humanrights.gov.au/sites/default/files/content/human.../opcat/opcat.doc>

¹⁵ Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press.

¹⁶ Naylor, B., (2014) ‘Human Rights and Respect in Prisons: The Prisoners’ Perspective’ in Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press, 115.

¹⁷ Owers, A., (2014) ‘Comparative Experiences of Implementing Human Rights in Closed Environments: Monitoring for Rights Protection’ in Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press; see also Office of the Inspectorate (NZ) (2018) *Media release: Prison inspection reports first for Office of the Inspectorate*, 15 February 2018.

https://www.corrections.govt.nz/about_us/who_we_are/office_of_the_inspectorate/media_release_prison_inspection_reports_first_for_office_of_the_inspectorate.html

¹⁸ HM Inspectorate of Prisons (2017) *Inspection Framework*, May 2017.

<https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/02/1.-INSPECTION-FRAMEWORK-May-2017-1.pdf> ; HM Inspectorate of Prisons (2018) *Guide for Inspectors*, January 2018

<https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/01/2.-GUIDE-FOR-INSPECTORS-January-2018.pdf>

¹⁹ HM Inspectorate of Prisons for Scotland (2018) *Standards of Inspection and Monitoring*

https://www.prisoninspectorscotland.gov.uk/publications?tid_1=31

²⁰ Office of the Inspectorate (NZ)

https://www.corrections.govt.nz/about_us/who_we_are/office_of_the_inspectorate.html

²¹ Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press, 7; Pierce, N., (2014) ‘Implementing Human Rights in Closed Environments: The OPCAT Framework and the New Zealand Experience’ in Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press.

representation of Māori in criminal justice statistics.²² Nevertheless, major shortcomings and crises in these jurisdictions have been reported.²³

Other useful resources include the ‘prison assessment template’ provided in the United Nations Office for Project Services (2016) Technical Guidance for Prison Planning,²⁴ and the experiences of the International Committee of the Red Cross (2018) in their confidential and impartial inspection process.²⁵

3. **The Hon. LYNDIA VOLTZ:** This is something you might want to also take on notice. The dormitory style works best, it appears, when you have a structured day. It is heavily reliant on investment in education programs and employment programs. My concern with these programs is that they are not just programs for the sake of programs and having a structured day but that there is an outcome on the end. The question has two parts: What is the best scenario, outcome or efficacy of those employment and education programs within the jail systems? Which ones work best and which ones do not?

The Hon. TREVOR KHAN: The ones that achieve literacy is probably a good start for the newer prisons.

The Hon. LYNDIA VOLTZ: Well, for some people, and for some people, having a practical school when they walk out the door, like the barista.

Mr DAVID SHOEBRIDGE: Or the music class that we saw, which was extraordinary.

The Hon. LYNDIA VOLTZ: Yes. It would be a mix. But what happens in dormitories where they do not exist? If the system breaks down at a later stage, my concern is that when they start looking for cost-cutting, does education become the focus of that? That style of prison does not work without it. You may not know if there are any studies along those lines, but that would be interesting.

Dr McKAY: I would have to take that on notice and come back to you. Thank you.

RESPONSE:

The provision of a structured day with meaningful programs relates to the ‘healthy prison standards’²⁶, discussed above, that emphasise purposeful activity, full engagement and

²² Department of Corrections (2007) Over-representation of Maori in the criminal justice system. https://www.corrections.govt.nz/resources/research_and_statistics/over-representation-of-maori-in-the-criminal-justice-system.html; see also

https://www.corrections.govt.nz/resources/strategic_reports/statements-of-intent/statement_of_intent_2018-2022/foreword_-_minister_of_corrections.html

²³ For example, in the UK: Clarke, P., (2018) Letter to the Ministry of Justice: Urgent Notification: HM Prison Birmingham, 16 August 2018. <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/08/16-Aug-UN-letter-HMP-Birmingham-Final.pdf>; see also <https://www.rand.org/blog/2017/02/uk-prisons-are-in-crisis-so-what-can-be-done-to-improve.html>

²⁴ United Nations Office for Project Services (2016) Technical Guidance for Prison Planning: Technical and operational considerations based on the Nelson Mandela Rules Annexure 3, https://content.unops.org/publications/Technical-guidance-Prison-Planning-2016_EN.pdf?mtime=20171215190045

²⁵ International Committee of the Red Cross (2018) *Towards Humane Prisons: A principles and participatory approach to prison planning and design*. <https://www.icrc.org/en/publication/4286-towards-humane-prisons>

²⁶ Owers, A., (2014) ‘Comparative Experiences of Implementing Human Rights in Closed Environments: Monitoring for Rights Protection’ in Naylor, B., Debeljak, J. and Mackay, A. (eds) (2014) *Human Rights in Closed Environments*, The Federation Press; see also Office of the Inspectorate (NZ) (2018) *Media release: Prison inspection reports first for Office of the Inspectorate*, 15 February 2018.

rehabilitation as well as resettlement and reintegration. I have not found any literature that suggests that such structured days, purposeful activities, education or reintegration programs should be limited to prisoners housed in dormitories.

The question on notice relates to what programs ought to be offered, particularly in dormitory-style accommodation, and how to measure the effectiveness of prison programs. This is a very large question without, I suggest, a simple answer. Moreover, there is not a 'one-size fits all' solution given the different prison populations with varying complex needs and demographics such as gender, age, health, cultural and linguistic backgrounds. In addition, I note the lack of access to programs by remand inmates, female prisoners and those with short sentences.²⁷

Prison programs may be provided for many reasons, including:

- to address criminogenic factors and recidivism;
- to support prisoners' eventual reintegration back into society through vocational training with pathways to employment;
- to educate in fundamental literacy and numeracy as well as arts and music programs that may better suit some prisoners;
- to promote digital literacy;
- to support parenting skills;
- to treat substance abuse and mental health issues;
- to address violence and sex offender behaviour;
- to establish a safe and harmonious environment in the prison by keeping prisoners occupied;
- to be restorative or therapeutic;
- or for a combination of these objectives.²⁸

https://www.corrections.govt.nz/about_us/who_we_are/office_of_the_inspectorate/media_release_prison_inspection_reports_first_for_office_of_the_inspectorate.html

²⁷ Australian Law Reform Commission (2017) *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (DP 84) 'Prison Programs, Parole and Unsupervised Release.'

<https://www.alrc.gov.au/publications/availability-and-effectiveness-prison-programs>

²⁸ Goulding, D., Hall, G., Steels, B. (2008). Restorative prisons: Towards radical prison reform. *Current Issues in Criminal Justice* 20(2), 231-242; Macgregor, S., (2008) Sex offender treatment programs: effectiveness of prison and community based programs in Australia and New Zealand, Brief 3, April 2008, Indigenous Justice Clearinghouse <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief003.pdf>;

Farley, H. and Pike, A. and Demiray, U. and Tanglang, N. (2015) *Taking digital learning to prison: how four universities are using technology to deliver higher education into prisons in Australia, UK, Turkey and Nigeria*. In: 12th Biennial Australasian Corrections Education Association Conference (ACEA) and the Correctional Industries Association of Australasia (CIAA) 2015: The Pen, the Hammer or the Mouse? What Works for Correctional Education and Training in the 21st Century, 22-24 Nov 2015, Hobart, Australia.

See also New Zealand prison program examples:

https://www.corrections.govt.nz/working_with_offenders/prison_sentences/employment_and_support_programmes/rehabilitation_programmes.html

https://www.corrections.govt.nz/working_with_offenders/prison_sentences/employment_and_support_programmes/education_and_training.html

There are many useful and contemporary studies, evaluations and recommendations regarding Australian prison programs and here is a selection:

- Australian Law Reform Commission's 2017 *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* examines prison programs.²⁹
- Council of Australian Governments' 2016 *Prison to Work Report*.³⁰
- Jones, C. and Guthrie, J., (2016) *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia*.³¹
- Giles, M., (2016) Study in prison reduces recidivism and welfare dependence: A case study from Western Australia 2005–2010.³²
- Gallant, D., Sherry, E., and Nicholson, M., (2015) Recreation or rehabilitation? Managing sport for development programs with prison populations.³³
- Harding, R., (2014) Rehabilitation and prison social climate: Do 'What Works' rehabilitation programs work better in prisons that have a positive social climate?³⁴
- Heseltine, K., Sarre, R. and Day, A. (2011) *Prison-based correctional rehabilitation: An overview of intensive interventions for moderate to high-risk offenders*.³⁵
- Goulding, D., Hall, G., Steels, B. (2008). Restorative prisons: Towards radical prison reform.³⁶
- There are many international evaluations.³⁷

²⁹ Australian Law Reform Commission (2017) *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (DP 84) 'Prison Programs, Parole and Unsupervised Release.'

<https://www.alrc.gov.au/publications/availability-and-effectiveness-prison-programs>

³⁰ Council of Australian Governments (2016) *Prison to Work Report*

<https://www.coag.gov.au/sites/default/files/reports/prison-to-work-report.pdf>

³¹ Jones, C. and Guthrie, J., (2016) *Efficacy, Accessibility and Adequacy of Prison Rehabilitation Programs for Indigenous Offenders across Australia*, Australian Institute of Judicial Administration

<https://aija.org.au/publications/efficacy-accessibility-and-adequacy-of-prison-rehabilitation-programs-for-indigenous-offenders-across-australia-2/>

³² Giles, M., (2016) *Study in prison reduces recidivism and welfare dependence: A case study from Western Australia 2005–2010*. Trends & issues in crime and criminal justice No. 514. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/tandi/tandi514>

³³ Gallant, D., Sherry, E., and Nicholson, M., (2015) Recreation or rehabilitation? Managing sport for development programs with prison populations *Sport Management Review* 18 (2015) 45–56

³⁴ Harding, R., (2014) Rehabilitation and prison social climate: Do 'What Works' rehabilitation programs work better in prisons that have a positive social climate? *Australian & New Zealand Journal of Criminology* Vol 47, Issue 2, pp. 163 - 175

³⁵ Heseltine, K., Sarre, R. and Day, A. (2011) *Prison-based correctional rehabilitation: An overview of intensive interventions for moderate to high-risk offenders*. Trends & issues in crime and criminal justice No. 412. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/tandi/tandi412>

³⁶ Goulding, D., Hall, G., Steels, B. (2008). Restorative prisons: Towards radical prison reform. *Current Issues in Criminal Justice* 20(2), 231-242.

³⁷ For example, in the US: Lois M Davis et al, (2013) *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*, RAND Corporation. https://www.rand.org/pubs/research_reports/RR266.html; Gaes, G., (2008) The Impact of Prison Education Programs on Post-Release Outcomes, http://www.antonioacasella.eu/nume/Gaes_2008.pdf; Aos, S., Miller, M. and Drake, E., (2006) *Evidence-based Adult Corrections Programs: What works and what does not*, Washington State Institute for Public Policy http://www.wsipp.wa.gov/ReportFile/924/Wsipp_Evidence-Based-Adult-Corrections-Programs-What-Works-and-What-Does-Not_Preliminary-Report.pdf; see also Duguid, S., Hawkey,

In terms of ‘what works’ in dormitory-style accommodation, it is interesting to examine the establishment of ‘honor dorms’ in the US. Peguese and Koppel (2003) discuss how honor dorms are made desirable, filled with vetted, well-behaved inmates, and with privileges attached.³⁸ These honor dorms are only available to inmates with assigned jobs, perhaps akin to the NSW ‘structured day’ model, and this system has apparently resulted in decreased assaults and other serious incidents. However, a recent news report suggests the potential for violence even in honor dorms.³⁹

4. **Mr DAVID SHOEBRIDGE:** Your submission talks about the removal of the public health regulation about minimum cell sizes. Have you monitored what has happened since then? Do you know if there is any monitoring that is happening since then?

RESPONSE:

I am not aware that prison cell size has been monitored since the regulations were amended in 2016 to exempt correctional centres from the minimum floor area requirements for rooms used for sleeping accommodation, and to enable the Commissioner of Corrective Services to determine the standards and sizes required for such rooms.⁴⁰ I note that in evidence before this Inquiry, the Inspector of Custodial Services stated that prison cell size was examined in the 2015 Full House report⁴¹, prior to the 2016 amendments to the regulations, but the deregulation of prison cell size has not since been the subject of investigation.⁴²

C. and Pawson, R. (1996) Using recidivism to evaluate effectiveness in prison education programs, *Journal of Correctional Education*, Vol 47, No 2, 74-85.

³⁸ Peguese, J. and Koppel, R., (2003) Managing High-Risk Offenders in Prison Dormitory Settings. *Corrections Today* 65.4: 82-85.

<https://www.prearesourcecenter.org/sites/default/files/library/managinghighriskoffendersinprisondormitorysettings.pdf> ; see also <https://www.nytimes.com/2000/10/15/nyregion/the-law-the-privileged-inmates-who-earn-honor-rooms.html> ; Page, R.C. and Barry, B., (1979) Comparison of the Attitudes of Honor and Regular Dormitory Inmates of a Large Prison *OFFENDER REHABILITATION* Volume:3 Issue:4, (SUMMER 1979), 341-348.

³⁹ Hensley, M., (2018) Estate sues over SC inmate’s honor dorm slaying. *Index-Journal*.

http://www.indexjournal.com/news/state/estate-sues-over-sc-inmate-s-honor-dorm-slaying/article_e4531f5f-b0f2-5591-b106-38160d37986b.html

⁴⁰ *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW); *Public Health Regulation 2012* (NSW); McKay, C., (2018) Submission to the Inquiry into Parklea Correctional Centre and other operational issues, Submission No 17, 3.

<https://www.parliament.nsw.gov.au/lcdocs/submissions/59825/0017%20Dr%20Carolyn%20McKay.pdf>

⁴¹ Paget, J., (2015) *Full House: the growth of the inmate population in NSW*

<http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf> ; this report also examined out-of-cell hours in NSW.

⁴² Rafter, F., (2018) REPORT ON PROCEEDINGS BEFORE PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS PARKLEA CORRECTIONAL CENTRE AND OTHER OPERATIONAL ISSUES (uncorrected), 28 September 2018, 9.

<https://www.parliament.nsw.gov.au/lcdocs/transcripts/2046/Transcript%20-%2028%20September%202018%20-%20UNCORRECTED.pdf>