

**Submission
No 23**

INQUIRY INTO PARKLEA CORRECTIONAL CENTRE AND OTHER OPERATIONAL ISSUES

Organisation: Australian Human Rights Commission

Date received: 26 February 2018



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The Chair
Portfolio Committee No. 4 – Legal Affairs
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Chair

Inquiry into Parklea Correctional Centre and other operational issues

The Commission welcomes the opportunity to make a submission in relation to the above inquiry. On 7 December 2017, the Committee extended its inquiry into rapid-build dormitory prisons. This submission speaks only to that issue.

Two rapid-build dormitory prisons are currently operational in New South Wales to respond to prison overcrowding.¹ The Commission appreciates that prison overcrowding jeopardises the protection of the human rights of detainees, prison staff and others who interact with the prison system. Nevertheless, imprisonment in a rapid-build dormitory prison carries its own particular human rights risks. The Commission outlines its concerns and recommendation below.

Australia's human rights obligations

Australia's human rights law obligations, under the international conventions to which Australia is a signatory, apply to all federal, state and territory governments, and include particular obligations that are designed to protect the basic rights of prisoners. For example, Article 10 of the *International Covenant on Civil and Political Rights* (ICCPR) requires that persons deprived of their liberty be treated with respect for humanity and human dignity.

The UN Human Rights Committee has said that persons deprived of their liberty must not be subjected to treatment that is contrary to the prohibition on torture and ill-treatment under article 7 of the ICCPR, nor should they be 'subjected to any hardship or constraint other than that resulting from the deprivation of liberty'.²

It follows that conditions of detention, if they are to be compatible with human rights, should be no more oppressive than is 'necessary to maintain the deprivation of liberty which is the object of the punishment'.³

Specific human rights concerns regarding rapid-build dormitory prisons

The Commission notes expert concerns reported in the media that the design of rapid-build dormitory prisons increases the risk of violence, bullying and fear among prisoners, and will ultimately frustrate prisoners' rehabilitation.⁴ The media has also reported that this design also reduces privacy between inmates.⁵

The Human Rights Committee has stated that persons deprived of their liberty enjoy other human rights unless 'unavoidable in a closed environment'.⁶ If conventional prison designs carry a lower risk of violence, bullying, fear and loss of privacy among prisoners, the Commission does not consider that such impingements on the human rights of prisoners are 'unavoidable'.

The Commission is also concerned about the impact of such increased physical interferences and interferences with privacy on the rehabilitation of inmates. In that regard, it notes that article 10(3) of the ICCPR requires the essential aim of a prison system to be 'reformation and social rehabilitation' of prisoners.

The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provide standards against which to assess conditions of detention for compliance with human rights.⁷ The Commission considers that good practice demands that conditions of detention comply with the Mandela Rules.

The Mandela Rules state that the safety and security of prisoners, staff, service providers and visitors should be ensured at all times.⁸ They also provide that:

- each prisoner must have his or her own cell,
- prison windows must be large enough to enable prisoners to read or work by natural light and allow the entrance of fresh air,
- sanitary installations must be adequate to use in a clean and decent manner,
- adequate bathing and shower installations should be provided, and
- the prison should otherwise be properly maintained.⁹

Prisons are unavoidably complex institutions and, generally, considerable time and attention are devoted in the planning and development of the direct and supporting infrastructure for any new prison. The Commission is concerned that the very nature of a rapid-build prison carries a particularly high risk so that the NSW Government will be unable to give sufficient consideration to ensuring that the Mandela Rules are followed in the development and maintenance of rapid-build prisons.

Noting that Australia is a party to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), which requires that Australia systematically review the treatment of prisoners,¹⁰ and that Australia has recently ratified the Optional Protocol to the CAT (OPCAT), the NSW Government should ensure that its rapid-build dormitory prisons comply with the CAT prior to inspection under OPCAT. It should also conduct regular inspections to ensure that prisons are compliant with human rights standards as a matter of good practice.

Recommendation

The Commission recommends that the NSW Government ensure that rapid-build dormitory prisons are compliant with Australia's international human rights obligations and with the United Nations Standard Minimum Rules for the Treatment of Prisoners. To that end, it should facilitate regular inspection of rapid-build dormitory prisons.

Yours faithfully

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¹ Ben Millington and Anthony Scully, 'Pop-up prison opens in Cessnock to help deal with NSW prison overcrowding', *ABC News* (online), 31 January 2018. At <http://www.abc.net.au/news/2018-01-31/rapid-build-prison-opens-at-cessnock-nsw/9377740> (viewed 15 February 2018). Siobhan Ryan, 'NSW's first 'pop-up prison' opens in bid to ease overcrowding', *The Sydney Morning Herald* (online), 17 December 2017. At <http://www.smh.com.au/nsw/nsws-first-popup-prison-opens-in-bid-to-ease-overcrowding-20171216-h05rlj.html> (viewed 15 February 2018).

² Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44th sess (1992) [3]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f4731&Lang=en (viewed 15 February 2018).

³ Daniel Mockli, Sangeeta Shah & Sandesh Sivakumaran, *International Human Rights Law* (Oxford University Press, 2010) 217–218.

⁴ Ben Millington and Anthony Scully, 'Pop-up prison opens in Cessnock to help deal with NSW prison overcrowding', *ABC News* (online), 31 January 2018. At <http://www.abc.net.au/news/2018-01-31/rapid-build-prison-opens-at-cessnock-nsw/9377740> (viewed 15 February 2018).

⁵ Siobhan Ryan, 'NSW's first 'pop-up prison' opens in bid to ease overcrowding', *The Sydney Morning Herald* (online), 17 December 2017. At <http://www.smh.com.au/nsw/nsws-first-popup-prison-opens-in-bid-to-ease-overcrowding-20171216-h05rlj.html> (viewed 15 February 2018).

⁶ Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44th sess (1992) [3]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f4731&Lang=en (viewed 15 February 2018).

⁷ United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (the **Mandela Rules**), UNGA, 70th sess, UN Doc A/C.3/70/L.3 (29 September 2015). At

http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3 (viewed 15 February 2018). See generally about the Mandela Rules at <https://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/> (viewed 15 February 2018).

⁸ Mandela Rules, rule 2.

⁹ Mandela Rules, see rules 12–17.

¹⁰ *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), art 11. At https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en (viewed 15 February 2018).