



# RAPID BUILD PRISON PLANS

An Unacceptable Pressure Cooker

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Macquarie rapid-build prison, Wellington - March 2017

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## ***Executive Summary***

This report examines the current construction and implementation of Rapid-Build Prisons at Macquarie Correctional Centre at Wellington and the Hunter Correctional Centre at Cessnock. The Rapid-Build project adopts a 'dormitory style' approach to construction, housing 25 prisoners per cell and providing an additional 400 beds per prison.

Rapid-Build Prisons contradict existing standards and the accepted culture for New South Wales prisons, fostering a violent environment and subjecting inmates to increased sexual assault, psychosis, mental illness and making it significantly more difficult to resettle following release.

The government has also remained quiet, limiting public discussion or formal analysis of the detrimental effects these prisons will have. This report will outline the damaging environmental, psychological and social effects these new prisons will have on inmates if permitted to proceed.

The most significant issues for dormitory accommodation are the security of person and lack of privacy. Every prisoner should be entitled to their own personal space where they can feel safe and have privacy. The *Standard Guide for Corrections in Australia 2012* emphasises that 'accommodation should respond effectively to the actual needs and risk status of a prisoner'. Sharing a cell, let alone a dormitory, and choosing your fellow occupant should be an autonomous choice. Forcing individuals to share a dormitory and live in such close proximity whilst they sleep, eat and defecate inevitably increases tensions in an already volatile population. This gives rise to a number of significant health, safety and security concerns (Standardization of Cell Sizes, appendix 1, Community Justice Coalition).

International experiences with the use of dormitory-style complexes, such as in the US and Romania, have revealed a number of issues posed by this type of facility. Amongst the most significant of these problems are security, prisoner safety and privacy. Any sense of personal security is destroyed. Violence against prisoners and staff is a constant problem. Additionally, and most significantly Victoria once had a dormitory prison called the Pentridge Prison. Violence was a key issue and it was closed in 1997.

## **Overview of Rapid-Build Prisons**

The NSW government has chosen the cheapest and fastest option in order to address the apparent failure of Corrective Services to supply sufficient cells and to reduce recidivism rates.

Concerns have been raised in regards to the benefits of building a Rapid-Build prison. The main issue raised is whether the purpose behind the initiative benefits the government and ignores the rights of the key stakeholders in the prison system. As of yet, there have been no substantive reports produced relating to the provision of rehabilitative care and educational services for prisoners in Rapid-Build Prisons. However, from the outset Rapid-Build Prisons appear to only be benefitting the government and proponents of a retributive approach to justice. The Government has found a way to reduce prison expenditure and build smaller prison facilities in a shorter period of time. These facilities are intended to produce a solution to 'increasing prison populations'<sup>1</sup>. Instead of engaging with issues addressing factors such as recidivism, smaller facilities accommodating a larger number of people. Therefore, the success and quality of life of prisoners has been undermined by the government without consultation.

### ***Below is the government's promotional material for Rapid-Build Prisons:***

Rapid-Build prisons are a new concept for Australia. They are secure, dormitory style facilities chosen due to their speed and efficiency in regards to the building process.<sup>2</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>3</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.

This is 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>4</sup> The Rapid-Build facilities at the Macquarie Correctional Centre are scheduled to open in November 2017 and the Hunter Correctional Centre in Cessnock is scheduled to open in early 2018.

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<sup>1</sup> Corrective Services NSW, *Better Prisons: Overview*, Department of Justice <[http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/better%20prisons/Better\\_Factsheet\\_1\\_The\\_projects\\_INTERNET\\_171116\\_ACCESSIBLE.pdf](http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/better%20prisons/Better_Factsheet_1_The_projects_INTERNET_171116_ACCESSIBLE.pdf)>.

<sup>2</sup> Department of Justice, *Cessnock Correctional Centres* <<http://www.correctiveservices.justice.nsw.gov.au/news-prisons/facilities/cessnock>>.

<sup>3</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>4</sup> Department of Justice, *New Prisons* <<http://www.correctiveservices.justice.nsw.gov.au/nsw-prisons>>.

Features of the Rapid-Build include:

- 400 bed dormitory-style accommodation will have 16 dormitory pods, with 25 cubicles in each pod;
- Individual cubicles will apparently have interactive TV for inmates to take greater control;
- Sufficient industries, programs and recreational capacity to ensure all inmates have a balanced routine;
- New facilities have 'state-of-the-art' security systems and surveillance to ensure safety and security;
- "The focus will be on rehabilitation to help reduce the rate of reoffending without compromising safety and security"<sup>5</sup>

## ***Human Rights Violations of Rapid-Build Prisons***

The Rapid-Build prison potentially violates the basic human rights of prisoners. By having multiple people in one dormitory cell it compromises the individual's right to privacy, while also restricting the space available for recreational activities and general living space.

### Sharing cells and human rights

In human rights documents, prisoners are included because "everyone is entitled" to rights and freedoms and to "equal protection of the law".

- **Article 5** of the Universal Declaration of Human Rights (UNDHR) 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 9** of the ICCPR also determines the right to security of 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...*".
- **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*".
  - The Rapid-Build Prison breaches this right in that prisoners have a compromised standard of living that is adequate to a person's health and wellbeing. This is also undoubtedly a failure of adequate housing given the over crowding circumstances.

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<sup>5</sup> Ibid.

- Additionally, such prisons establish an environment conducive to excessive bullying, overcrowding and the facilitation of characteristics such as excessive dominance.

However, since prisoners are deprived of their liberty, they are 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>6</sup> It also found that the “likelihood of prisoners being physically or sexually assaulted or self-harming leading to deaths is greater now than at any time in recent years.”<sup>7</sup> Similarly, the Northern Territory Prison Officers’ Association cited that because of overcrowding, prisoners in the Northern Territory are living in “third world conditions”.<sup>8</sup> Prison conditions in New South Wales and South Australia have also been described as “inhumane”, due to overcrowding.<sup>9</sup>

Equally, the Rapid-Build Prisons that will house 400 maximum-security inmates is likely to fail in providing measures to mitigate its 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.

In *Peers v Greece*, the applicant was sharing an isolation cell designed for one person, with another prisoner, with an open toilet, which often failed to work, in hot, cramped conditions with little natural light and no 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.

### **Overcrowding Concerns**

The Rapid-Build system inherently promotes prison overcrowding. According to the Victorian Auditor-General, the ‘nationally acceptable limit for the safe and efficient operation of the prison system’ is a 95 per cent utilisation rate.<sup>10</sup> This allows for flexibility to

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<sup>6</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)>.

<sup>7</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>8</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>9</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-e6frea83-111115573713](http://www.adelaidenow.com.au/news/south-australia/overcrowding-pressures-prisons/story-e6frea83-111115573713)>; *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>10</sup> Anita Mackay, ‘Overcrowding in Australian Prisons: The Human Rights Implications’ (2015) 37(128) *Precedent* 37, 38.

ensure prisoner welfare and the adherence to human rights standards. Prisons in NSW are currently operating at 109.4 per cent 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 on a much larger scale. Stewart Little's (Public Service Association's General-Secretary) recently commented that "*rapid-Build facilities that will have 50 inmates in a dormitory*" are in fact, going ahead.

Overcrowding can stimulate negative psychological effects such as stress responses, elevated blood pressure, adrenal hypertrophy and a corticosteroid production<sup>11</sup>. These diminished health outcomes could then lead to more serious conditions such as higher blood pressure, the increased prevalence of physical and mental illness and death (Cox, Paulus & McCain, 1984; D'Atri et al., 1981; Paulus et al., 1985).

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. This is because it reduces the prisoner's ability of freedom of movement, access to recreational and learning facilities and increases health-care waiting times<sup>12</sup>. Hence, consequences of the Rapid-Build prison model epitomize the notion that '*small additional pressures can make the difference between conditions that are uncomfortable and those that are intolerable*' (Inspector of Custodial Services John Paget)<sup>13</sup>

### ***Ethical considerations and Human Rights based violations of Rapid Build Prisons***

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

It is important to consider the UNSTRTP (UN Standard Minimum Rules for the Treatment of Prisoners). Rule 12.2 states that "dormitories shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions"<sup>14</sup>. This is similar to Sect 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>15</sup>. Though it is difficult to tell, given the intentional silence of the government, it is unclear whether these conditions have been studied or met.

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<sup>11</sup> Marc Shaeffer et al, 'Architecturally mediated effects of social density in prison' (1988) 20(1) *Environment and Behavior* 3, 5.

<sup>12</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>13</sup> Ibid.

<sup>14</sup> *United Nations Office on Drugs and Crime* art 12.

<sup>15</sup> Ibid.

## ***Safety of the Prisoner in the Rapid Built Prison Model***

Additionally, the risk of sexual assault is intensified in overcrowded prison environments, particularly those occupied by young males.<sup>16</sup>

New South Wales prison population data and rising assault rates show indicate that the system is 'in a crisis':

- Prison assaults up 37% in overcrowded NSW prisons in past 2 years.
  - Assault rate per 1000 prisoners increased by 25%.
  - Prison population up by 16%.
- "It's been well established in research overseas that when you get more prisoners than there is space available to fit them, you get an increase in violence, especially among younger prisoners," Bureau director Don Weatherburn said.
- 12 729 prisoners in a system designed for 11 000 inmates.
  - Dr Weatherburn: Result of tougher bail laws and courts handing out longer sentences rather than more arrests for crimes.

## ***Psychological Effects of 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"<sup>17</sup>.

Constant surveillance leaves prisoners feeling uneasy, continually suspicious of their surroundings and manifest the assumption that they "belong" to someone else<sup>18</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>19</sup>. As it is with the case of a lack of privacy in prison cells, constant surveillance too breeds a culture of suspicion that exacerbates the hostility of a prison environment. As Lippke argues, 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>16</sup> Victorian Ombudsman, Parliament of Victoria, Investigation into deaths and harm in custody (2014) 34. <http://www.smh.com.au/nsw/record-nsw-prison-population-rising-assault-rate-show-a-system-in-a-crisis-20170127-gtzzsg.html>

<sup>17</sup> Haney, C. 'The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment' (Paper presented at the U.S. Department of Health and Human Services, January 30-31 2002), 79.

<sup>18</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>19</sup> Unknown Author, *The Panopticon* (2017) Bentham Project, University College London, <http://www.ucl.ac.uk/bentham-project/who/panopticon>



and monitoring<sup>20</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 freedoms “creates atmospheres that impede adaptation to prison life” and increase the likelihood of self-harm, PTSD, hierarchal relationships, assault and mental trauma.<sup>21</sup>

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) 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>22</sup> and are unable to control access to their own bodies, personal space and belongings.

Inmates living in open dorm-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 scant 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>23</sup> Especially in overcrowded prisons and those with barrack-style architecture, prison facilities fail to provide their inmates both psychological and physical privacy. There have been significant findings emerging from prison overcrowding literature. Gaes (1994) argues for two main points: (a) open-dormitory prisons correlate with higher use of surveillance, and (b) prisons that operated at excessive capacity, or utilized dormitory layout experiences higher assault rates.<sup>24</sup>

The extremely close proximity with which prisoners live to one another becomes taxing, and as Haney discusses, this lack of privacy makes them hyper vigilant, distrustful of fellow inmates and essentially implies the inability for prison authorities to recognize the moral agency and autonomy of the inmate. The invasive noise, deterioration of control and duress associated with overcrowding cause considerable stress and behavioral issues. It is also argued that such harsh conditions and the denial of inmate privacy creates the need for inmates to associate within and solidify antisocial subcultures as prison staff lose their legitimacy and control of the overcrowded, noisy, open barracks.<sup>25</sup> This also has significant ramifications once prisoners are released. As Dumont et al notes, this effects the family life of inmates outside of prison because they become more prone to respond in

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<sup>20</sup> Lippke, Richard. *Rethinking Imprisonment*. Oxford: Oxford University Press, 2007.

<sup>21</sup> Kupers, T. ‘Trauma and its sequelae in male prisoners: effects of confinement, overcrowding and diminished services’ (1996) 66(2), *American Journal of Orthopsychiatry*. 189.

<sup>22</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>23</sup> William Bulow, ‘Treating inmates as Moral Agents: A Defense of the Right to Privacy in Prison’ (2014) 33(1) *Criminal Justice Ethics*, 2

<sup>24</sup> Gerald Gaes, “Prison crowding research reexamined” (1994) 74(3) *Prison Journal*, 1

<sup>25</sup> Bierie, 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*, 339-40

violence to those around them, as well as maintain that previous level of distrust. (REFERENCE: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3329888/>)

Although the size of personal space or the boundary a person requires to define his or her own comfort zone, varies among people, the average boundary ranges from 20 to 40 centimeters or an arm's reach, in front of the face.<sup>26</sup> According to a study published in the Journal of Neuroscience, anxious people tend to require a larger personal space and 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>27</sup> In fact, those who project their personal space too far beyond the standard of arm's reach are more likely to experience claustrophobia- the fear of small spaces.<sup>28</sup>

To be imprisoned is to experience a primal form of anxiety as it restricts a person's freedom. This form of anxiety is known to be at the root of claustrophobia.<sup>29</sup> As such, claustrophobia is an unfortunate reality that many prisoners are likely to experience in the course of their incarceration.

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

### **United States**

Within the US, dormitory style prisons have been implemented as a means to save construction money and to cut per prisoner costs. Research shows that housing people in dorms lowers the cost per prisoner by almost a third.<sup>30</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 this severity of this issue and the results of this have not been positive, with prison strikes in over 20 states.

**South Carolina** is one of the many states within the US to implement dormitory style prisons, with many of the prisoners who has processed through the Federal Bureau of Prisons being placed into 'communal living', also known as dorms. Dorms are usually used in lower security institutions such as federal prison camps and low security federal prisons.<sup>31</sup> They tend to vary in size, either having as few as 50 inmates with 25 bunk beds

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<sup>26</sup> <https://www.livescience.com/39229-personal-space-anxiety.html>

<sup>27</sup> Ibid.

<sup>28</sup> <https://www.livescience.com/13709-claustrophobia-distorted-personal-space.html>

<sup>29</sup> Practical Intelligence: The Art and Science of Common Sense, Karl Albrecht, Wiley Publishers

<sup>30</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>31</sup> C. Zoukis (2013) 'Inmate Housing in the Federal Bureau of Prisons' <

<http://www.prisonerresource.com/inmate-housing/inmate-housing-federal-bureau-prisons/>>

or as many as 200 inmates with 200 inmates with 200 bunk beds,<sup>32</sup> making noise and the lack of privacy common issues within this setting.

Typically, in the more populated dorms there are rows and rows of bunk bed at 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, even sleeping is no longer a private matter. This also means that theft is more common within a dorm setting, access to personal property is easily gained making theft more prevalent.<sup>33</sup> The conditions present within dormitory style prisons means that any sense of personal security is destroyed.<sup>34</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 this discretion may lead to unnecessary violence, which in turn may cause on-going psychological consequences.

**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>35</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 with Maryland's solution of housing these types of prisoners. 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>36</sup> Violence involving not only inmate-on-inmate assaults but also attacks on the staff is a prevalent problem that arises from this style of prison.<sup>37</sup>

## **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>38</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>39</sup> The lack of legitimate security within the prison has meant that inmates within each cell act as security guards for their own cell.

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<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

<sup>34</sup> *ibid*

<sup>35</sup> J. Peguese & R. Koppel 'Managing High-Risk Offenders in Prison Dormitory Settings'

<sup>36</sup> *ibid*

<sup>37</sup> *ibid.*

<sup>38</sup> H. Cartner (1992) 'Prison Conditions in Romania' Human Rights Watch, 29

<sup>39</sup> *ibid.* 29

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>40</sup>

## **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>41</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 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.

## **Future Research**

Dormitory style prison accommodation is used in America and is referenced as a pod. Utilised for veterans – proven to lower recidivism.<sup>42</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>43</sup>

## **Legal Precedent Cases Include:**

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

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<sup>40</sup> *ibid.* 29

<sup>41</sup> R. E. Bichell (2015) 'In Finland's 'open prisons,' inmates have the keys

<sup>42</sup> <https://www.nbcnews.com/news/us-news/prisons-experiment-cell-blocks-military-veterans-n721306>

<sup>43</sup> <http://www.dailytelegraph.com.au/news/nsw/the-macquarie-correctional-centre-new-jail-will-open-midyear-and-house-400-inmates/news-story/803679953c9a71811912a17d7a75a7dfhttp://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/New%20Prisons/facilities/wellington-cc.aspx>

## ***Violence in Wellington Prison***

### ***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 myriad problems. There is no increase in the ventilation system, no opening windows, no extra facilities such as chairs or tables to sit on or at, no 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, at the WCC as soon as it opened for operations CSNSW went through and effectively increased the operational capacity by 50% by putting bunks in every cell, 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 change being a fixed number of years until 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.

### **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 of which the prisoner did not observe/hear yet happened at the WCC during the same period, and seen by the 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)

### **Case Study Alex**

Alex was a married man with two young children, and was in jail for the first time. He was on remand on one charge of negligent driving causing death, and had been in the WCC 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 prisoners 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 the Guards did find Alex the prison Authorities made arrangements so that the care that Alex did receive, and his subsequent hospitalisation 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 their own safety, there is no escape as they are in a multiple occupancy cells with gang members.

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 a lesser risk of search by the Guards. The non-gang

member may even be the one who takes the fall, being charged for breaches of Centre rules for having those items amongst their property.

In conclusion removing the 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, and may make CSNSW negligent in their action.

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.

## ***Appendix***

### **Appendix 1**

#### **Standardization of Cell Sizes**





**Standardisation of  
cell sizes**

## Standardisation of Cell Sizes

*Community Justice Coalition Discussion Paper: 30 November 2016. Comments to: [info@communityjusticecoalition.org](mailto: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>44</sup>

The *Standard Guidelines for Corrections in Australia 2012*<sup>45</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>46</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>47</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>48</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>44</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>45</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>46</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>47</sup> NSW Inspector of Custodial Service, above n 1, 30.

<sup>48</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>49</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>50</sup>

Overcrowding has led to an increase in the risk of assault, self-harm and an escalation of general prison disorder.<sup>51</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>52</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>49</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>50</sup> Fiona Campbell, 'Overcrowding in Queensland prisons.' (2012) 7(28) *Indigenous Law Bulletin* 12-15.

<sup>51</sup> *Ibid.*

<sup>52</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>53</sup> resulting in significant overcrowding in NSW correctional centres.<sup>54</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>55</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>56</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>57</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>58</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>59</sup> Mr Shoebridge anticipates the current trend will see the overcrowding of prison cells systematically “entrenched” into the prison system.<sup>60</sup>

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<sup>53</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>54</sup> NSW Inspector of Custodial Services, above n 1, 10.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, 6.

<sup>57</sup> Ibid, 35.

<sup>58</sup> Ibid 36.

<sup>59</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>60</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>61</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>62</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>63</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>64</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>65</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>61</sup> Australian Institute of Criminology, above n 2, 24.

<sup>62</sup> Victorian Office of Corrections, above n 2.

<sup>63</sup> International Committee of the Red Cross, above n 5.

<sup>64</sup> Ibid 32.

<sup>65</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>66</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>67</sup> These fall below the recommendations of the ICRC.<sup>68</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>69</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>70</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>71</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>72</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>73</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>74</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>66</sup> *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW).

<sup>67</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>68</sup> *Ibid.*

<sup>69</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>70</sup> *Ibid* reg 44B.

<sup>71</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>72</sup> *Public Health Regulation 2012* (NSW) reg 46(2).

<sup>73</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>74</sup> Timms, above n 6, [11].



four years.<sup>75</sup> This investment will provide 2,380 jobs along with an additional 4,165 prison beds.<sup>76</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>77</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>78</sup> This reflects long-term trends that depict a consistent rise in number of people who are incarcerated<sup>79</sup>. Furthermore, NSW has the lowest number of hours out-of-cell each day (an average 8.2 hours per day)<sup>80</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>81</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>82</sup> With an already lesser health profile than the general public,<sup>83</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 to control one's thoughts, beliefs and their body.<sup>84</sup> Article 12 of the *Universal Declaration of*

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<sup>75</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>76</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>77</sup> NSW Inspector of Custodial Services, above n 1.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid12.

<sup>83</sup> Ibid11.

<sup>84</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.



*Human Rights* stipulates that no one shall be subject to interference with their privacy.<sup>85</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>86</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>87</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>88</sup> The workload that is associated with long periods of overcrowding is problematic, as the prison population becomes more difficult to manage.<sup>89</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>90</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>91</sup> Prisoners expressed concerns surrounding ventilation, storage space, infectious disease and mental health.<sup>92</sup> Prisoners mentioned that this lack of privacy had led to three cases of violent disputes.<sup>93</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>85</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>86</sup> *Ibid*, 2-3.

<sup>87</sup> *Ibid*, 8.

<sup>88</sup> Craig Haney, 'Overcrowding and the Situational Pathologies of Prison' (2006) *American Psychological Association* 204.

<sup>89</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>90</sup> Hans Toch, 'Warehouses for People?' (1985) 478 *The Annals of the American Academy of Political and Social Science* 58-72.

<sup>91</sup> Justice Action, *Parklea Prisoners Protest Cramped Cells*, Justice Action <[<sup>92</sup> \*Ibid\*, 6.](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=620:parklea-prisoners-protest-crammed-cells&catid=75&Itemid=1020&highlight=WyJwYXJrbGVhI0> [1].</a></p></div><div data-bbox=)

<sup>93</sup> *Ibid*, 9.

health conditions.<sup>94</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>95</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>96</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>97</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>94</sup> Ibid.

<sup>95</sup> NSW Inspector of Custodial Services, above n 1, 35.

<sup>96</sup> Ibid.

<sup>97</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>98</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>99</sup> Various other factors, such as ventilation, lighting and cleanliness, were also carefully considered in this decision.<sup>100</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>101</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>102</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>103</sup> One especially salient incident concerned a fire lit in a cell earlier this year.<sup>104</sup> Former jail governor

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<sup>98</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>99</sup> Ibid.

<sup>100</sup> Ibid, 3-5.

<sup>101</sup> David Elliot, ‘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>102</sup> Ibid [6].

<sup>103</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>104</sup> Ibid [1].

John Heffernan linked the fire and the increase of incidents at the centre, to the overcrowding of the centre.<sup>105</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>106</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>105</sup> Ibid [3].

<sup>106</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.