



THE UNIVERSITY OF  
**SYDNEY**

# **Submission to the Inquiry into Parklea Correctional Centre and other operational issues**

## **Rapid Build Dormitory Prisons**

**Dr Carolyn McKay**

Lecturer in Law  
University of Sydney Law School  
[carolyn.mckay@sydney.edu.au](mailto:carolyn.mckay@sydney.edu.au)  
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## **To the Members of the Portfolio Committee No. 4 – Legal Affairs**

The focus of this submission is on the expansion of the penal estate in New South Wales (NSW) by the construction of Rapid Build Prisons with dormitory accommodation. This submission responds to the extended terms of references, specifically:

The Chair of the Committee, the Hon Robert Borsak MLC said, “Concerns have been raised to the committee about plans to accommodate prisoners in dormitory style accommodation. In particular, there are significant concerns about the privacy and safety of prisoners and the impact of such conditions on prisoner health and recidivism.” (Legislative Council 2017)

The thrust of this submission is that extant literature does **not** support the use of dormitory accommodation as a means to provide safe, secure, sanitary and rehabilitative environments for prisoners.

### **Background**

The Australian prison population stands at approximately 41,262 (ABS 2017). NSW contributes the largest proportion of prisoners to this figure with 12,989 persons incarcerated as at December 2017 (BOCSAR 2018), representing roughly 32 per cent of the national population (ABS 2017). Until recently, NSW’s prison population has continued to hit new highs, but a large number of prisoners being released on parole has resulted in a slight decline in the current prison population (BOCSAR 2018). In order to address the rising prison population and ensuing prison overcrowding (Paget 2015; Audit Office of NSW 2016; Productivity Commission 2017), the NSW Government has adopted a strategy of expanding the prison estate via the \$3.8 billion Prison Bed Expansion program (Nicholls 2016) that includes the recommissioning of old prisons<sup>1</sup>, expanding existing facilities and the construction of Rapid Build Prisons with dormitory accommodation.

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<sup>1</sup> Interestingly, just six years ago in 2012, the NSW corrections system had a utilisation rate of 90 per cent, that is, there was spare capacity and the prison population was actually in steady decline (Legislative Council 2013). Around this time, a number of facilities, including historic Parramatta, Berrima, and Grafton centres, as well as the more contemporary Kirkconnell, were either closed or downsized.

## **Building Prisons Rapidly**

To address the growing prison population, the NSW government has adopted prison expansionist policies. Situations of rising prison populations, overcrowding, increased expenditure on the prison estate and the building of new prisons, are symptomatic of penal expansionism (Scott and Flynn 2014; Drake 2016; Rutherford 1984). This is explicit in NSW with \$3.8 billion dedicated to expanding prison capacity and adding 7,000 more beds (Elliott 2016; Nicholls 2016). NSW is also to be the site of Australia's biggest gaol: the New Grafton Correctional Centre is to be delivered as a Public Private Partnership (Infrastructure NSW 2017).

### *Rapid Build Dormitories*

The Rapid Build Prisons can be built within half the time of more traditional prison constructions (Lake 2017) and represent a means to quickly satisfy the current lack of prison accommodation. It is understood that maximum and medium security sentenced prisoners will be housed in these new facilities. Each Rapid Build Prison will offer 4 wings, every wing will have 4 dormitory pods that will accommodate 25 prisoners, that is, 400 beds in total. The Rapid Build Prison design abandons the cellular model of the fully enclosed 'one-out' cell for a single occupant. Instead of enclosed single or double cells, there will be individual cubicles with walls of 1.5m in height in open plan dormitories, and, for each 25 person dormitory pod, there will be eight individual bathroom and toilet cubicles (CSNSW 2017).

It is also understood that each cubicle will have an Offender Access Digital Television screen that may enable some access to legal and educational materials and rehabilitation programs. As a means to address digital illiteracy and recidivism, this initiative has the promise of being a welcome piece of technology for prisoners (Jewkes and Reisdorf 2016; European Organisation of Prisons and Correctional Services 2017; Law Council of Australia; McKay 2017).

Relevant prisons and corrections guidelines suggest that new prisons should preferably provide accommodation in single cells although provision is made for the possibility of multiple cell accommodation and dormitories. Where dormitories are used, the guidelines require that the mix of prisoners be carefully considered to avoid intimidation or bullying that may occur due to the inadequate separation of groups or

mismatch of inmates (*Standard Guidelines for Prison Facilities in Australia and New Zealand* 1990; *Australian Standard Guidelines for Corrections in Australia Revised* 2012; see also *United Nations Standard Minimum Rules for Treatment of Prisoners* 1984). For instance, the problem of mismatched prisoners being housed together is demonstrated by the 2016 incident where a former army reservist was inappropriately placed in a cell at the Mid North Coast Correction Centre with an alleged Islamic State supporter who violently attacked him and carved ‘E4E’ – an eye for an eye – in his forehead (ABC News 2016). The potential for mismatching prisoners in a dormitory is amplified.

Prison cell size is relevant to health. Until recently, prison cell size was controlled via the *Public Health Regulation 2012* (NSW) because incarceration means that the state has responsibility for the health of large populations living in close proximity and in closed environments (see also *Standard Guidelines for Prison Facilities in Australia and New Zealand* 1990; *Standard Guidelines for Corrections in Australia Revised* 2012). Pursuant to the *Public Health Amendment (Correctional Centres) Regulation 2016* (NSW), the *Public Health Regulation 2012* (NSW) was amended 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. Now there are no legislated minimum dimensions in NSW (Timms 2016; Paget 2015; Kirby Institute 2015). This change to public health policy has the potential to adversely affect the physical and mental wellbeing and sanitary conditions of people held in closed environments, for instance, possible higher risks of the transmission of blood-borne and infectious diseases including hepatitis C and HIV (Parliament of Australia 2013). While one positive of the dormitory is that bathroom and toilet cubicles are separate, the dormitory is necessarily communal with no real exclusive personal space.

In summary, the state has a responsibility to provide sanitary, safe and secure accommodation for prisoners in a humane environment that promotes their rehabilitation (*Crimes (Sentencing Procedure) Act 1999* (NSW) s3A(d)).

### *What do we know about prison dormitories?*

The Public Service Association's General Secretary, Stewart Little, has been reported as stating that dormitories represent a 'retrograde step' especially in the housing of maximum security sentenced prisoners: 'Dangerous inmates, you want to have them one to a cell or two to a cell' instead of in dormitories (Woodburn 2017). This statement is supported by relevant empirical research and scholarly literature. Prison dormitories are contentious and problematic:

- Dormitory style accommodation in the US has been found to promote violence, gangs, higher natural death rates among older prisoners, increased stress and drug use (Peguese and Koppel 2003; Cox, Paulus and McCain 1984; Leger 1988; Grant and Memmott 2008).
- Fairweather and McConville (2003: 38-39) examine the pros and cons of dormitories in the US. On the positive side, dormitories can provide companionship, and dormitories with cubicles that have *high* partitioning can be 'almost as effective as providing a single cell'. On the negative side, dormitories reduce personal/interpersonal space and privacy, and increase the potential for intimidation, bullying and disruption or riots.
- Uncontrollable and unpredictable noise is a major problem in US dormitories (Zoukis 2013).
- In the Australian juvenile justice system, dormitories have been demolished and replaced with the 'more humane standard' of individual cells (Wallace and Jacobsen 2012). Further, the report of the NSW Ombudsman's Inquiry into Juvenile Detention Centres in 1996 found that reliance upon dormitory accommodation was not conducive to detainees' safety or their privacy (ALRC 1997).
- In some Australian adult prisons, there has been a seeming race divide with Aboriginal prisoners housed in dormitories and non-Aboriginal prisoners housed in individual cells. Given the number of Aboriginal deaths in custody that occurred while prisoners were alone, the Royal Commission into Aboriginal Deaths in Custody (1987-1991) supported the desirability of housing Aboriginal prisoners together (Johnston 1991) and this emerged as the 'best practice' model. However, while the use of dormitories for adult Aboriginal prisoners has been replaced primarily by double-bunking practices,

Grant and Memmott (2008) argue that neither practice addresses the needs of Aboriginal prisoners in terms of personal safety, privacy and health.

In Australia, dormitories have been abandoned for cogent reasons, yet NSW is introducing this form of adult prison housing for the first time. According to relevant studies, dormitory accommodation is beset with inmate classification, security and safety issues. While the individual cubicles will offer a form of screen technology, dormitory noise and the lack of privacy will negate this benefit and compromise prisoners' capacity to privately undertake rehabilitation, educational and post-release programs in their cubicles without other prisoners eavesdropping or interfering.

In addition, clarification is required to understand what the out-of-dormitory hours will be. Currently, NSW has the lowest level of out-of-cell hours in Australia (Productivity Commission 2017; Auditor-General 2016). Corrective Services NSW operates on 'a low cost, low time out of cell system' system (Auditor-General 2016: 2, 20), that is, the low out-of-cell time reduces supervision costs making it cheaper to run prisons. However economically efficient such a model may be, it necessarily diminishes prisoners' welfare (Auditor-General 2016; Productivity Commission 2017).

### *Surveillance Measures*

Above the dormitory pods will be raised viewing platforms so that prison officers can conduct total surveillance of the prisoners below. This means that prison officers will be physically separate from the prisoners, a form of 'indirect supervision' and 'distant visual surveillance' where staff and prisoners occupy separate territories without any intermingling (Fairweather and McConville 2003: 35). This form of supervision may lead to more prisoner cliques and hierarchies that officers may find difficult to control (Fairweather and McConville 2003). Conversely, Fairweather and McConville (2003:35) argue that 'direct supervision' where there is a level of intermingling and contact between staff and prisoners 'has been found to lead to increased positive relationships, allowing more effective surveillance and better security', that is, less conflict and violence amongst prisoners and between staff and prisoners.

### *Chemical Agents: Security and Restraint Measures*

It is noted that in the new Rapid Build Prisons, the 24-hour Immediate Action Team will ‘have the ability to deploy chemical agents from an elevated position with the use of gas insertion hatches’ (CSNSW 2017: 5; see also *Crimes (Administration of Sentences) Regulation 2014* (NSW) Reg 132; Ombudsman 2012). Of course it is recognized that prisons can be volatile places with high risk violent offenders that can, and do, endanger both prison officers and prisoners (see, for example, *State of NSW v Briar* [2017] NSWSC 702; *R v Bugmy* [2012] NSWCCA 223). Prison riots need to be swiftly diffused and chemical aids can facilitate in subduing the perpetrators (ABC News 2017), but the *Standard Guidelines for Corrections in Australia Revised 2012* provides at 1.69 that ‘Chemical agents should only be used where it is strictly necessary to maintain the security of the prison or to prevent injury to any person.’ It is understood that the new Rapid Build Prisons will feature built-in extraction systems in the dormitory pods so that ‘the area can be decontaminated in the shortest time possible and normal operations restored’ (CSNSW 2017: 5).

Nevertheless, the embedding of chemical agent dispensing hatches into prison accommodation is a challenging design element that requires further clarification. Chemical agents may be considered as non-lethal weapons in prison control but Lewer and Davison (2005) argue that ‘less lethal’ is more apt given the toxicity of certain chemical agents, for example, the lacrimatory agent chloroacetophenone, a form of tear gas, when used in enclosed and confined spaces such as prison cells (Thorburn 1982; Chapman and White 1978). These scholarly articles provide evidence of the injuries and fatalities that can occur with prolonged gassing in closed environments. This is a humanitarian as well as work, health and safety issue that requires further explanation.

### **The Privatisation and Corporatisation of Incarceration**

Finally, I wish to comment briefly on the privatisation of prisons that is beset with challenges, primarily on the basis of the ethics of profiting from incarcerating people: ‘This is surely one area where a free market certainly does not exist’ (former UK Labour Party Home Secretary, Jack Straw in 1995, cited in Scott and Flynn 2014: 114). Whilst clearly this sentiment has shifted in the UK, it is worthwhile to reflect on

whether governments should delegate imprisonment responsibilities to profit-making organisations.

With the focus on for-profit operations, the private prison industry has a vested interest in maintaining and increasing prison populations as well as achieving Performance Linked Fees. As Scott and Flynn (2014: 116) argue: 'The profit motive results in greater pressure for penal expansion' so private prison operators are committed to sustaining and expanding the corrections system (Drake 2016; Ames 2015). There is thus an inherent incompatibility between profit motives and reducing recidivism. As such it is a self-perpetuating apparatus with contradictory objectives of maximising the profit in detaining humans, versus reducing reoffending. Furthermore, public oversight and accountability may be compromised when government functions are delegated to private operatives (Andrew, Baker and Roberts 2016).

It is submitted that the response to prison overcrowding in NSW requires a more cautionary approach because it is clear from previous studies over the last century that 'no jurisdiction has ever built its way out of prison overcrowding' (Coyle 2008). As far back as the 1920s, it was recognised by then Commissioner for Prisons in England and Wales, Alexander Paterson, 'Wherever we build prisons, the courts will make use of them' (Coyle 2003). Limits on incarceration and penal policy are necessary (Howard League 2007) to address moral, economic and social sustainability (Pratt 2008). Imprisonment is damaging in terms of the impacts upon the prisoner themselves: their employment, housing, children, future prospects and difficulties in post-release reintegration, as well as the ripple effects to their families and broader communities. Therefore, an allocation of financial resources to address social issues *beforehand* is more productive than pumping funds into punishment *after* the event (Howard League 2007).

The massive financial expense - \$3.8 billion - and the ongoing cost of incarcerating each prisoner (Just Reinvest 2017) means that this significant financial resource is not available to other more worthy and constructive social causes.



## Conclusion

It would be more productive to:

- Ensure that imprisonment is as a last resort (*Crimes (Sentencing Procedure) Act 1999* (NSW) s5);
- Shape policies that address the root causes of criminal offending;
- Focus funding on diversionary programs and the development of cogent, proportional and non-custodial sanctions;
- Develop custodial programs of rehabilitation, education and re-integration; and
- Further support prisoners post-release in terms of housing and employment and continuity with any required rehabilitation programs.

There is clearly a need to address strategies other than penalisation (Scott and Flynn 2014) especially for non violent offenders, given that the increasing prison population is not a result of escalations in crime (BOCSAR 2017; Weatherburn et al. 2016; Arlington 2017). In this respect, the proposed greater use of Community Corrections measures by the NSW Department of Justice is to be commended as a credible ‘decarcerative’ alternative to incarceration.

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