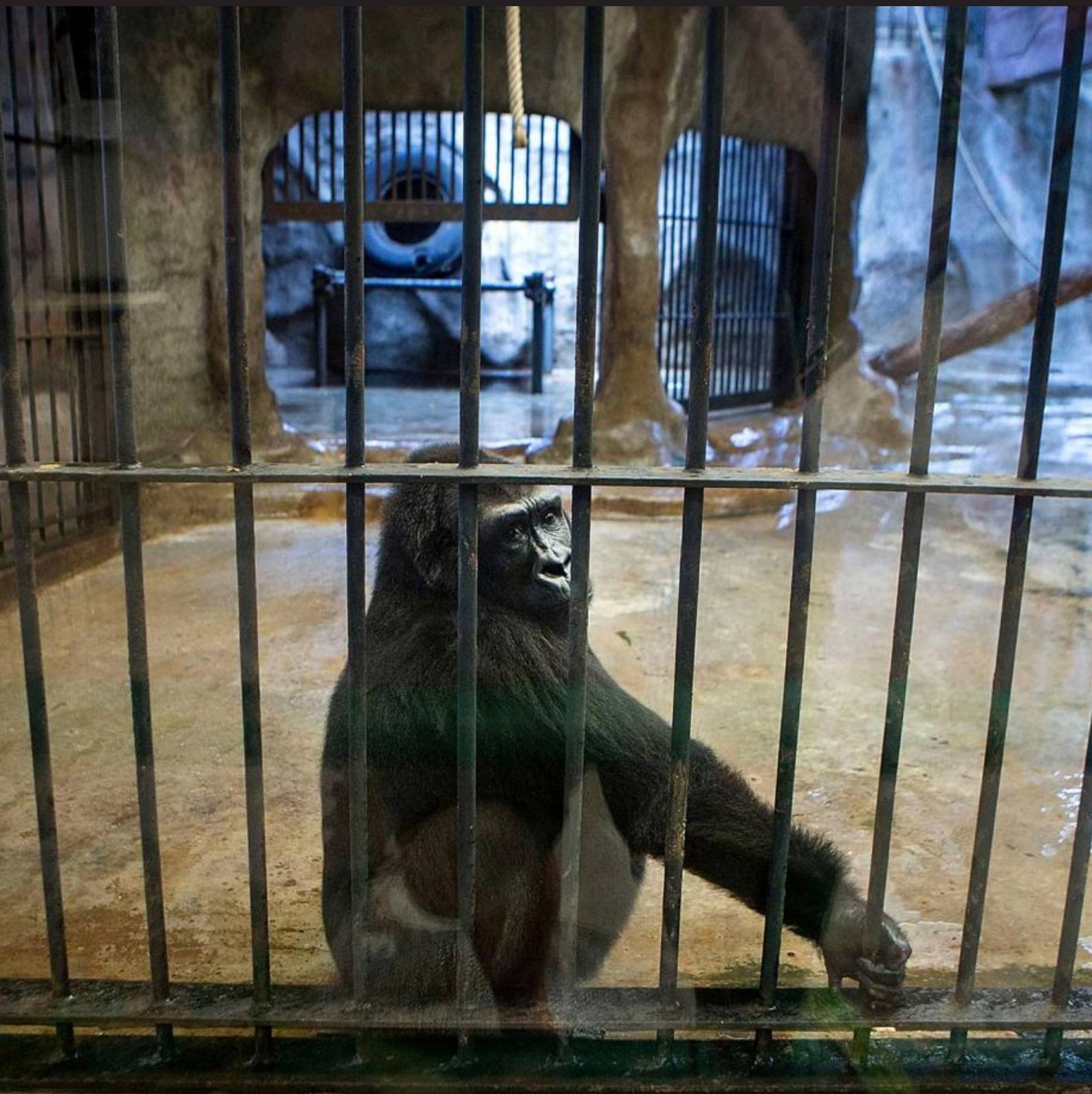


Comparing Treatment in Zoos and Prisons



Worse Than Animals

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Executive Summary

In April 2015 the Report¹ of the Inspector of Custodial Services “Full House” exposed the inhumane conditions experienced within NSW prisons due to overcrowding. This is due to an exploding prison population of 12.5% a year. The Inspector declared: “*the state treats inmates in a way that denies them a modicum of dignity and humanity.*”² This view was based upon the limited space for each prisoner in breach of Health Regulations, poor access to health care and inadequacy of facilities.

The publicly exposed lack of enforceable standards was the basis for this unique analysis comparing people locked in prisons and animals in zoos, not previously undertaken elsewhere. *The Sydney Morning Herald* published the findings.³

Health Regulations require 5.5m² to be allocated to each person in prison,⁴ yet Corrective Services claimed a special exemption from the Health Minister and subsequently argued that 4m² might be enough.⁵ There is no punishment for breaches and no mechanism for enforcement.

That space compares to the 72m² that gorillas must have under NSW legislation⁶. Breaches of obligations to animals are enforced by imprisonment.

One explanation for the differences is that the public can see animals in zoos, see their conditions and are encouraged to understand their needs. People in prisons however are in places of isolation where they are put into cages and cells where no-one can see them or their conditions. They cannot show their anguish and are not able to talk to the public. Their conditions are not visible and therefore the administration is not accountable to the public.

Zoo enclosures simulate natural habitats in order to ensure the health and well being of the specific species. However, prison cells are homogeneously designed and don't cater for individual needs. Captive animals in zoos roam in larger spaces for long

¹ NSW Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW: Key Issues with Parklea, MRRC and Long Bar Correctional Centres Taken from the Report*, retrieved: <http://tiny.cc/8yhgzx>

² Ibid., p. 6.

³ Mitchell, Georgina, ‘Overcrowding in Sydney police cells holds up court appearances’, *The Sydney Morning Herald* (online), 19 September 2015.

⁴ Mitchell, Georgina, ‘Overcrowding in Sydney police cells holds up court appearances’, *The Sydney Morning Herald* (online), 19 September 2015.

⁵ NSW Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW: Key Issues with Parklea, MRRC and Long Bar Correctional Centres Taken from the Report*, retrieved: <http://tiny.cc/8yhgzx>

⁶ *Policy on Exhibiting Primates in New South Wales: Exhibited Animals Protection Act 2000* (NSW), Sch 1. NB: 360/5=72m².

periods to be seen, but incarcerated people are held in cells with strangers for around eighteen hours a day with no ability to leave. The gorilla is dangerous by nature but the prisoner is statistically very unlikely to be dangerous.

The rights of animals are protected by laws, including penalties of fines and imprisonment in the instances of breach. Zoos maintain and uphold strict safeguards and are held accountable to ensure all animals receive adequate care.

The existing rules in place to protect the rights of inmates are largely regulatory rather than legislative. For example, the Royal Australian College of General Practitioners has codified *Standards for health services in Australian prisons*⁷; the NSW, ACT, Northern Territory, Queensland, Victoria, Tasmania and Western Australia Corrective Services Departments have adopted the *Standard Guidelines for Corrections in Australia*.⁸ While the *Crimes (Administration of Sentences) Act*⁹ enshrines inmates' rights to medical treatment¹⁰ it is largely concerned with legally empowering correctional facilities to detain, order and control inmates.

This report recommends greater accountability through public and media scrutiny of the prison system, subject to privacy rights. Overcrowding should cease by adopting alternative sentencing measures. Legislation enforcing living standards should be adopted. Technological advances applying to humans should give prisoners access to computers in cells as an expression of the human right to develop.

⁷ Royal Australian College of General Practitioners, 'Standards for health services in Australian prisons', retrieved 1/12/15 from: <http://www.racgp.org.au/your-practice/standards/standardsprisons/preamble/>

⁸ *Standard Guidelines for Corrections in Australia, revised 2012*, retrieved 1/12/15 from http://www.correctionalservices.nt.gov.au/documents/useful_links/aust-stand_2012.pdf

⁹ *Crimes (Administration of Sentences) Act 1999* (NSW)

¹⁰ *Ibid.*, s72, 73.

Case Study: Taronga Zoo Gorillas conditions compared to Parklea Prisoners

Government Expenditure

The 2015 NSW government budget will be providing extra funds for both the construction of a new prison and a new gorilla enclosure.¹¹

A new 600-bed facility in Grafton is set to open and Parklea Correctional Centre will expand, with an additional 400 beds being added.¹² In total, \$314.6 million has been dedicated to expand bed capacity in the NSW Correctional system over the next four years. This equates to a 3.3% increase in funding for prisons and corrective services over the 2015-16 period.¹³

The NSW government will also contribute \$57 million for ‘additional support for tourism infrastructure at Taronga Zoo’. This contribution makes up part of a \$115 million dollar upgrade to the Zoo that will include the construction of new enclosures for gorillas, lions, meerkats and endangered Australian wildlife. In addition to this, the government will provide \$25 million to upgrade Taronga Western Plains Zoo and will contribute an additional \$6.9 million to the Zoological Parks Board of New South Wales.¹⁴

Distinguishing Humans From Animals

Attempts to distinguish between captivity requirements for humans and animals are usually met with arguments emphasising the innocence of animals in comparison to the guilt of people who have committed serious crimes. This is a misconceived argument that undermines the purposes of imprisonment. Rehabilitation is one of the primary aims of the criminal justice system. However, effective rehabilitation becomes increasingly difficult in a confined environment, and puts undue pressure on the physical and mental capacity of the inmate. This pressure can potentially lead to unpredictably aggressive prisoner behaviour.¹⁵

Whilst the tendency of animals to become stressed in small enclosures is widely recognised, the same propensity in humans is not. The Inspector of Custodial Services

¹¹ Needham, Kirsty, ‘NSW Budget 2015: Winners and losers’, *The Sydney Morning Herald* (online), 23 June 2015.

¹² Ibid.

¹³ Ibid.

¹⁴ NSW Treasury, Infrastructure Statement 2015-16 - Budget Paper No. 2, p.6-2, 3-8.

¹⁵ Haney, Craig, ‘The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions’, *Washington University Journal of Law & Policy*, 22, 2006: 265.

explains the ramifications of confinement in his recent report on overcrowding. He argues:

‘Where 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-compliant behaviour escalating into collective disorder, such as riots.’¹⁶

There is a tendency amongst those in authority to increase spending in areas that carry greater public approval and have a demonstrable public benefit. There is far greater goodwill among the public to improve the conditions of animals in captivity than there is to do the same for prisoners.

Taronga Zoo receives generous private donations, whereas few private citizens are passionate enough to fund the improvement of conditions in prisons. Whilst the public may not be concerned with prison conditions, there are clear public benefits to successful processes of rehabilitation. Appropriate cell conditions allow for a greater likelihood of rehabilitation and improved reintegration into the community.¹⁷ This results in reduced crime rates and a more harmonious society.

Minimum Space Standards

In New South Wales, Western Lowland Gorillas must be held in an enclosure that holds a minimum of 5 gorillas.¹⁸ The minimum size of an enclosure for Western Lowland Gorillas is 360m². This equates to 72 m² of floor space per animal.¹⁹ Conversely, the floor space for a single prison cell in NSW is 8.75 m². The approximate ratio of a prisoner’s cell to a gorilla enclosure for a single inhabitant is 1:8. That is, a Western Lowland Gorilla’s enclosure is 8 times as large as the space holding an inmate.

Western Lowland Gorillas are typically shorter than the average human, standing at about 120cm. They are however afforded more headroom than most prisoners. Enclosures for Western Lowland Gorillas must be at least 5 metres in height.²⁰

Standard Guidelines For Corrections In Australia suggests that minimum cell sizes should be the same as what was recommended in the *Standard Guidelines for Prison*

¹⁶ Inspector of Custodial Services (2015). *Full House: The growth of the inmate population in NSW*, April 2015, p.6.

¹⁷ Nilsson, Anders, ‘Living Conditions, Social Exclusion and Recidivism Among Prison Inmates’, *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 4, 2011: 57-83.

¹⁸ *Policy on Exhibiting Primates in New South Wales: Exhibited Animals Protection Act 2000*, Sch 1.

¹⁹ Ibid.

²⁰ Ibid.

Facilities in Australia and New Zealand (1990).²¹ The latter text recommends that single cells be a minimum of 8.75m² and that double cells be a minimum of 12.75m².²² Unfortunately, the *Standard Guidelines For Corrections In Australia* “constitute outcomes or goals to be achieved by correctional services rather than a set of absolute standards or laws to be enforced.”²³

In early 2014, Justice Action received reports from prisoners in Parklea Correctional Centre that Corrections NSW was holding up to three people in a 8.75m² single cell. Prisoners describe the cells as containing “a double bed with a single bed overhanging it and a third bed at the opposite side of the room as well as a toilet, shower and a bench”. One prisoner explained “There are three grown men in a tight area, you can’t walk past each other without bumping into each other”. He added “there are only two seats in a cell... where’s the third guy to sit, eat, write, etc.?” These reports were validated by the Inspector of Custodial Services’ Report, which found that at least three prisons were ‘tripling up’ their inmates.²⁴

Three inmates in one cell equates to 2.92m² of floor space for each person. Compared to the floor space for an individual Western Lowland Gorilla, the ratio of human to animal is 1:24.7. This means that some inmates had over 24 times less space than a gorilla in captivity.

Gorilla enclosures are covered by specific regulations that specify that the design of the enclosure be as pleasant as possible. Non-traditional enclosures such as areas enclosed by moats are recommended by the *General Standards for Exhibiting Animals in New South Wales*. As well as this, NSW Agriculture specifies that in each gorilla enclosure there must be “at least 4 horizontal pathways of rigid or semi-rigid materials” and “areas for sitting at or near ground level for the animals to sun themselves.”²⁵

Capacity and Time Allowed to Leave Primary Living Space

Both animals and prisoners can leave their primary space, however time spent away from this space is restricted. Prisoners can leave their cell to enter communal space in the yards, but cannot control when they leave. Similarly, animals can be held in off-exhibit enclosures but they cannot choose when. Gorillas are held in off-exhibit

²¹ Standard Guidelines For Corrections In Australia (2012), Standard Guidelines For Prisons, 2.3.

²² Victorian Office of Corrections, *Standard guidelines for prison facilities in Australia and New Zealand* (1990) p.31.

²³ Standard Guidelines For Corrections In Australia (2012), Preface, emphasis added.

²⁴ Inspector of Custodial Services (2015). *Full House: The growth of the inmate population in NSW*, April 2015, p.35.

²⁵ *Policy on Exhibiting Primates in New South Wales: Exhibited Animals Protection Act 2000*, Sch 3.

enclosures for healthcare, quarantine, social constraints, pre-departure, reproduction, or as additional housing.²⁶

According to the *Prevention of Cruelty to Animals Act 1979* (NSW), an animal must be released from confinement at least once every 24 hours.²⁷ In contrast, NSW prisons have the lowest out-of-cell hours in Australia with an average prisoner spending only 8.2 hours a day outside of their cells.²⁸ This is far below the Australian average of 10 hours that was recommended in the Inspector of Custodial Services' Report into Overcrowding.²⁹

Mental Stimulation

For the enclosure of exhibition animals there are requirements to provide mental stimulation. Animal carers are required to maintain a 'complex and stimulating environment' in the interests of reducing 'boredom' and inactivity, which may lead to tension and behavioural problems for zoo animals.³⁰ Behaviour-enriching activities must be provided to stimulate the animal and reduce boredom. This includes providing extra space, native plants, climbing equipment, novel feeding experiences and devices, introducing scents and providing opportunities to interact with other animals.³¹

As humans are more intelligent than primates, they arguably require even greater mental and physical stimulation, which cannot possibly be provided while being held for prolonged periods in overcrowded cells. According to the *Inspector's Report*, a lack of physical and mental stimulation may lead to antisocial behaviour. It was stated that not keeping inmates 'gainfully occupied' might contribute to disturbances resulting from boredom and inactivity.³²

²⁶ *General Standards for Exhibiting Animals in New South Wales: Exhibited Animals Protection Act 2004*, cl 20.

²⁷ *Prevention of Cruelty to Animals Act 1979* (NSW) s 9(2).

²⁸ Olding, Rachel, 'NSW prisoner numbers 'out of control' as half of all jails operating over capacity', *Sydney Morning Herald*, August 29 2015.

²⁹ Inspector of Custodial Services (2015). *Full House: The growth of the inmate population in NSW*, April 2015, p.11.

³⁰ *Policy on Exhibiting Primates in New South Wales: Exhibited Animals Protection Act 2000* – Introduction.

³¹ *General Standards for Exhibiting Animals in New South Wales: Exhibited Animals Protection Act 2004*, cl 57.

³² Inspector of Custodial Services (2015). *Full House: The growth of the inmate population in NSW*, April 2015, p.60.

Access to fresh air

For primates that are held in ‘permanent indoor housing’, there must be sufficient air changes per hour to provide plenty of fresh air and prevent the build-up of odours/ noxious gases (such as carbon dioxide).³³

The Standard Guidelines for Prison Facilities in Australia and New Zealand 1990 refers to the *United Nations Standard Minimum Rules for Treatment of Prisoners* in highlighting “the need for natural and artificial light and “the entrance of fresh air whether or not there is artificial ventilation.”³⁴ However, Justice Action has received reports from prisoners in the High-Risk Management Unit at Goulburn whose experiences have included limited access to natural light and fresh air. One inmate commented:

“This place is purposely built as a basic box in a box. Once our back door is closed there is no natural ventilation and no natural light... The lack of air in cells or claustrophobia are both related to its a box and once I feel the walls closing in and I realise there is no air, no openings. Yet I can see air and know its outside the door and that is what causes me to panic as I know I can't get to it. In other units the ASU or MPU I could always get to the grille and breathe in fresh air and after a few minutes I would feel better, in here one cannot do this.”³⁵

Accountability

The greatest difficulty with regard to accountability in this analysis is the fundamental difference in the purposes of incarceration and degree of public oversight. The reason for the imprisonment of humans and animals are opposing; offenders are incarcerated so they are removed from the public eye; animals are incarcerated so they may be seen in the public eye.

In regards to this, it is firmly in the interests of regulatory bodies to ensure the maintenance of animal enclosures as they are in plain sight of the public. Prisoners on the other hand are purposely segregated and concealed, meaning that the likelihood of insufficient living conditions going unnoticed and unaddressed is much higher. Further, as evidenced by the constant pressure placed upon politicians to be ‘hard on

³³ *Policy on Exhibiting Primates in New South Wales: Exhibited Animals Protection Act 2000*, 2.10.1.

³⁴ Victorian Office of Corrections, *Standard guidelines for prison facilities in Australia and New Zealand* (1990) p.29.

³⁵ Justice Action, *HRMU segregation analysis*.

crime’,³⁶ there is a stigma placed on criminal offenders and subsequently there remains limited public pressure on prison administrators to ensure adequate living conditions.

Protection Bodies

The overwhelming public interest in animal welfare has led to the existence of a number of non-government organisations that advocate for the protection of animals. Some of these organisations include the World Wildlife Fund, the Royal Society for the Prevention of Cruelty to Animals (RSPCA), the NSW Animal Welfare League and Greenpeace. Comparatively, prisoners have few organisations that advocate for them.

International Standards

There are currently no internationally recognised standards on the rights of animals.

For Prisoners, there is the *United Nations’ General Assembly Resolution 45/111 of 14 December 1990 on the Basic Principles for the Treatment of Prisoners*. Principle 4 of this resolution argues that ‘promoting the well-being and development of all members of society’ is a fundamental responsibility of the State.³⁷

Regulation and Enforcement

The overcrowding crisis is reaching breaking point in NSW prisons. NSW Corrections is currently in the process of adding 1000 new beds to the system, but in the short term, prisoners continue to suffer. The Inspector’s Report was researched in July 2014 and at that point there already existed unacceptably high levels of overcrowding. The NSW government has recently reopened Kirkconnell Correctional Centre but in the meantime, the prisoner population has increased at an even faster rate than it did during the early part of 2014. There will be no punishment for our elected officials or for our public servants for allowing the human rights of NSW’s prisoners to be systematically breached. Documents like the *Standard Guidelines For Corrections In Australia (2012)* and the *Standard Guidelines for Prison Facilities in Australia and New Zealand (1990)* are merely recommendations and cannot be formally enforced.

³⁶ Mauer, Marc, ‘Why are Tough on Crime Policies so Popular?’, *Stanford Law & Policy Review*, Winter, 1999.

³⁷ United Nations, ‘General Assembly resolution 45/111’, *Basic Principles for the Treatment of Prisoners*, A/RES/45/111 (14 December 1990) Principle 4.

According to the *Prevention of Cruelty to Animals Act 1979 (NSW)*, a person “shall not confine the animal in a cage of which the height, length or breadth is insufficient to allow the animal a reasonable opportunity for adequate exercise.” If an animal is confined for a period of 24 hours or more, the perpetrator can be punished with a \$5500 fine or imprisonment for six months, or both. A corporation that is found guilty can be fined a maximum of \$27,500.³⁸

If the regulations contained in the *General Standards for Exhibiting Animals in New South Wales 2004* concerning animal housing are breached, an individual can be fined a maximum of \$1100.³⁹

Conclusion and Recommendations

Rehabilitation with the aim of reducing recidivism is one of the fundamental aims of the correctional system. Rehabilitation is encouraged by providing prisoners with the means (education and rehabilitative programs) to address and rectify their past criminal behaviour.⁴⁰

Rehabilitation should be aimed at promoting positive natural behaviours (as evidenced by the maintenance of primate enclosures as natural habitats). Unfortunately, the imposition of highly unnatural confinement with limited access to resources does not encourage positive natural behaviours and ultimately may lead to the aggravation and perpetuation of negative tendencies.

In the areas of accountability, enforceability and space and access to facilities, animals receive more respect than prisoners.

Specific regulations on the treatment of prisoners should be established. These regulations should be evidence-based and should be designed to maximise chances of rehabilitation. These regulations should most importantly address cell sizes, time spent out-of-cell and the existence of physically and mentally stimulating material inside cells. It is important that regulations are able to be enforced and do not merely serve as recommendations.

In short, Justice Action supports the recommendations made by the Community Justice Coalition and International Commission of Jurists in their response to this issue.⁴¹

³⁸ *Prevention of Cruelty to Animals Act 1979 (NSW)* s 93.

³⁹ *Exhibited Animals Protection Regulation 2010 (NSW)* reg 24.

⁴⁰ Inspector of Custodial Services (2015). *Full House: The growth of the inmate population in NSW*, April 2015, p.60.

⁴¹ *Overview of Inspector of Custodial Services Report April 2015*, retrieved 01/12/15 from: http://www.communityjusticecoalition.org/images/pdf_files/ForumInspLflt.pdf

1. Accountability: The facts exposed by the Report demand a structural change for accountability.
 - Media and community access allows public scrutiny subject to privacy objections.

2. Alternative sentencing measures including Earning Early Release: A structured incentive system to encourage self-improvement and cooperative behaviour earning early release.
 - Solve overcrowding in prison and break down the cycle of recidivism for long-term good.
 - Rehabilitative effect that aims to reduce recidivism and improve prison management.
 - Central objective of the correctional system is to reduce recidivism by 5% by 2016.

3. Technological privileges: it is recommended that prisoners are allowed some access to computers in cells as an expression of the human right to develop skills and intelligence.

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