

## **LEGAL ISSUES RELATING TO RAPID BUILD DORMITORY PRISONS**

The following is an examination of possible legal challenges to the occupation of the new rapid build dormitory prison at Wellington, which is set to be occupied from 16 December 2017. An upper house inquiry has been extended to incorporate these challenges, however the issue will not be heard until February 2018.

Key legal concerns correspond but are not limited to discretionary injunctions, which may be available pursuant to the Administrative Decisions (Judicial Review) Act 1977.

Such legal challenges include:

1. Improper exercise of administrative discretion
2. Breach of the Environmental Planning Act
3. Repercussions attracted from the propagation of false and/or misleading information
4. Potential breaches of UN Conventions and aligning Australian cultural standards
5. Prisoner's rights issues

### **CAUSES OF ACTION**

#### **1. Improper exercise of administrative discretion**

Under the Public Health Regulation 2012 s 44b (1), the Commissioner has discretion to determine the standards and sizes of rooms and cubicles required at correctional centers. In 2016, Assistant Commissioner Luke Grant stated that prison authorities were 'experts' in 'designing...managing' prisons. However, this correctional facility is the first of its kind, and the Rapid Build Prison contradicts basic humane standards and thus constitutes an inappropriate use of discretion in regards to the nature of prison cells. These cells are also contrary to pre-existing federal and international Prisoners Regulations.

## **2. Breach of the Environmental Planning Act**

Due to the rapid build nature of the prison, the government has not undertaken the usual level of community consultation. This is a possible breach of the Environmental and Planning Regulations. Notably, construction and operation of the facility may result in:

- Impacts to land during construction (Clause 228 (2)(o))
- Changes to overall land use of the site (Clause 228 (2)(b))
- The government has not accounted for the residential area to the south, which may be affected by background noise levels (Clause 228 (2)(e))
- Potential complaints from locals regarding noise (Clause 228 (2)(e))
- Improper stormwater and waste management (Clause 228 (2)(m))

## **3. Repercussions attracted from the propagation of false and/or misleading information**

It may be argued that the construction of rapid-build prison facilities may be a breach of s 148B, *Environmental Planning and Assessment Act 1979* (NSW) which provides for the consequences of providing false and misleading information in connection with a planning matter.

Inferences may be argued that the temporary nature of the Cessnock Prison is false or misleading through an analysis of associated costs of constructing the facility. The construction cost of the expansion is currently \$199 million as per Estimates Committee evidence (050917, p. 619). Such conclusions as stipulated in the Cessnock report are similarly mirrored in analysis relating to the Wellington facility evinced in the Wellington report. We wish to draw your attention to page 12 of the report, under clause 3.5 'Rapid Build Prison', which states that the rapid Build Prison "is intended to address an immediate short-fall in bed

capacity and is only expected to operate between 5-7 years.”

S148B(1) of the *Environmental Planning and Assessment Act 1979* (NSW) affords a prohibition on providing information in connection with a planning matter that the person knows, or ought reasonably to have known, is false or misleading in a material particular. S 148B(2) provides a tier 3 maximum penalty under s 125.

A person provides information in connection with a planning matter if: (s 148B(3)):

- a. the person is an applicant for a consent, approval or certificate under the Act (or modification thereof) and the information is provided by the applicant in or in connection with the application, or
- b. the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
- c. The person is a proponent of a proposed development and the information provided in or in connection with a formal request to an authority
- d. Person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.

Further, the Review of Environmental Factors document states “given the temporary nature of the facility (...) All risks and benefits associated are also temporary.” It must be noted that the *Environmental Planning and Assessment Act 1979*, s 111 stipulates a duty to examine all matters of the environment to the fullest extent possible.

#### **4. Breach of UN Conventions**

The International Covenant on Civil and Political Rights mandates the inherent dignity of the human person. Article 7 prohibits any person’s subjection to torture or to cruel, inhuman or degrading treatment or punishment.

Further, the International Covenant on Economic, Social and Cultural Rights establishes in Article 12(1) that State Parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. As such, States must take active steps to realise this (Article 12(2)) including:

(b) the improvement of all aspects of environmental and industrial hygiene

(c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness

It may be argued that the conditions precipitating from the shared dormitory space, such as potential increased aggression, volume resulting in inability to sleep, the potential spread of illnesses owing to the large volume of adults in a confined area may qualify for breaches accepted international conventions. Further, Australia's own cultural standards are clearly violated.

## **5. Prisoner's rights issues**

Whilst there is insufficient information given by the complainants to determine a breach of most of these regulations, it is clear that they present significant moral and ethical dilemmas concerning the treatment of prisoners in Wellington Correctional Centre, and should be further investigated.

In NSW, whilst there is no express recognition of prisoner rights, certain provisions within the Crimes (Administration of Sentences) Regulation 2014 (NSW) aim to ensure that certain standards and protocols are adhered to with regard to the use of gas, drug use, education, correctional officer training, rehabilitation, cell size, food quality and daily exercise. Many of these standards have the effect of affording prisoners basic rights.

Consideration of possible violations of prisoners' rights should include:

- Cell size. Correctional centers are exempt from minimum floor area requirements for rooms and cubicles in premises to be used for the purposes of sleeping accommodation (Public Health Amendment (Correctional Centres) Regulation 2016). However, the proposed sleeping quarters are not enclosed and will only be 3 by 2 metres, thus posing several significant risks. Firstly, the quality of life for prisoners will be significantly reduced by the lack of privacy, resulting in no control over their personalised space.
- The physical layout of the dormitory cell will also limit the availability of living and recreational space. It will also likely serve as a catalyst for increased offender-based violence, intimidation, assault, and bullying. This will all have serious ramifications for prisoner safety and health.
- In the event of an outbreak of infectious disease, the nature of the sleeping quarters will also pose a substantial health risk.