

The ACT Prison: Human Rights Rhetoric Verses Crowded and Bored Reality

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The Australian Capital Territory opened its first prison, the Alexander Maconochie Centre (AMC) in 2009. Named after a 19th Century reformer who is often dubbed the 'father of parole', the AMC is Australia's first 'human rights' prison, in one of only two Australian jurisdictions to be governed by a human rights framework. As this article will illustrate, however, the AMC has failed to live up to its lofty goals, with a recent Auditor-General's report concluding that there was 'a very large gap between what was anticipated and what has occurred since the opening of the AMC'. Two key issues – overcrowding and the lack of meaningful activities for prisoners – will be considered in this article.

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I. INTRODUCTION

The Australian Capital Territory (ACT) opened its first prison – the Alexander Maconochie Centre (AMC) – in 2009, to significant fanfare about being the first 'human rights' prison in Australia.¹ This objective is laudable and provides some direction for other Australian prisons to follow. As I will demonstrate in this article, however, it has unfortunately failed to live up to its lofty goals.

It is beyond the scope of the present article to discuss the human rights of prisoners in detail, but there are a number of international law documents that preserve these rights. The most significant of these is the International Covenant on Civil and Political Rights (ICCPR),² Article 10(1) of which provides that '[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. In addition, Article 7 provides that '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.³

In 1955, the United Nations (UN) also established Standard Minimum Rules (SMRs) for prisons,⁴ which set out minimum standards relating to issues such as access to food, water, clothing and social information. The SMRs underpin the *Standard Guidelines for Corrections in Australia*,⁵ which govern the treatment of inmates in Australian prisons. However, the ICCPR and *Standard Guidelines* are not enforceable in Australian law.⁶

II. A NEW WORLD ORDER? THE ACT'S 'HUMAN RIGHTS' PRISON

The ACT and Victoria are in a different position to the rest of Australia, due to the passage of the *Human Rights Act 2004* (ACT) (the HRA) and *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). As Naylor has noted, 'these essentially incorporate the ICCPR rights'.⁷ Specifically for the present discussion, section 10 of the HRA and Charter replicate Article 7 of the ICCPR, while Article 10(1) is replicated in sec-

tions 22(1) and 19(1) respectively. The ACT goes further than Victoria, however, in giving citizens the right to bring legal action in relation to alleged breaches of duty by public authorities to comply with the provisions of the HRA.⁸

It was against this backdrop that the ACT opened its first prison in March 2009,⁹ ACT prisoners having previously been housed in New South Wales (NSW). Significantly, the prison was named after the so-called ‘father of parole’, 19th Century penal reformer Alexander Maconochie.¹⁰ As the Attorney-General noted in a speech in 2008, naming the new prison after Maconochie reflected the ACT’s philosophy of rehabilitating, rather than punishing, prisoners.¹¹ The management of the AMC is governed by the *Corrections Management Act 2007* (ACT). Notably, unlike comparable legislation in other Australian jurisdictions,¹² this legislation makes its commitment to human rights principles explicit.¹³

The AMC is an open-campus facility which accommodates all unsentenced and sentenced male and female prisoners in the ACT. About half of the accommodation is five-bedroom cottages and no female detainees are housed in cells. It is suggested that this model ‘enable[s] detainees to develop and practice living skills’ and ‘facilitates normalisation’.¹⁴

According to the ACT Corrective Services (ACTCS) website, the AMC:

emphasises rehabilitation, compliance with Human Rights principles and adherence to the Healthy Prison Concept. A Healthy Prison is one in which: everyone is and feels safe (detainees, staff and visitors alike); everyone is treated with respect and as a fellow human being (again, all people within the AMC); everyone is encouraged to improve him/herself and is given every opportunity to do so through the provision of purposeful activity; and everyone is enabled to maintain contact with their families and is prepared for release.¹⁵

On paper, the ACT’s commitment to prisoners’ human rights is clearly far ahead of anywhere else in Australia and should be seen as a model worth emulating. There have also been a number of positive reports about the AMC. For example, as Official Visitor, Ivan Potas stated in 2011 that he was ‘rather impressed’ and ‘praised the prison’s human rights compliance’.¹⁶ A 2011 independent review of the AMC (the Hamburger Review) described it as:

unique in relation to other Australian prisons in the high level of attention paid to detainees’ human rights in its Legislation, policies and procedures, in the design of its facilities, in delivery of services to detainees and in the scrutiny applied to its administration.¹⁷

In 2014, David Biles asserted that, ‘hav[ing] visited just about every prison in Australia ... the AMC is one of the best designed and equipped correctional institutions in this country.’¹⁸ Also in 2014, a human rights audit of the treatment of women at the AMC found that ‘women detainees at AMC are treated humanely in custody, and

that correctional staff and management are respectful of the particular needs and vulnerabilities of women.’¹⁹ It appears, therefore, that substantial progress has been made towards respecting ACT prisoners’ human rights. As I will detail in the following sections, however, the ability of the AMC to deliver on its human rights principles is hampered by two key issues: overcrowding and the lack of purposeful activity for prisoners.²⁰

III. BUILD IT AND THEY WILL COME?

One of the key arguments against establishing a prison in the ACT was the concern that this would lead to an increase in the use of prison in a jurisdiction that had always had Australia’s lowest imprisonment rate.²¹ It is of course impossible to conclusively determine the causes of changes in the use of imprisonment.²² In the ACT context, the Justice Minister, Shane Rattenbury MLA (the Minister) and Human Rights Commissioner, Dr Helen Watchirs OAM, have argued that a number of factors have caused recent increases, including community attitudes, judicial appointments, court delays and improved policing.²³ Nevertheless, it has emerged that the year that the AMC opened represented a low point in the ACT’s imprisonment rate, at 74 per 100 000, compared with 85, 90 and 93 in 2006, 2007 and 2008 respectively.²⁴

By contrast, since 2009, the rate has risen steadily to 130 per 100 000 in 2014.²⁵ Notably, the ACT imprisonment rate rose 25 per cent over the two years to December 2014, compared with a national increase of only 12 per cent.²⁶ Concerningly, the number of Indigenous prisoners increased by 47 per cent, compared with 17 per cent nationally.²⁷ Interestingly, these increases have not been accompanied by any significant policy changes, such as reforms to bail in NSW and parole in Victoria.

According to the most recent Australian Bureau of Statistics (ABS) data,²⁸ the AMC had 343 people in full-time custody in the December 2014 quarter. By May 2015,²⁹ the Minister indicated that numbers were fluctuating between 348 and 353. There was a 40 per cent increase in the AMC population between January and October 2013, at which point the Minister acknowledged that the AMC was ‘close to capacity’.³⁰ By that stage, extra beds had been installed to increase the AMC’s capacity from 332 to 366. Nevertheless, prison expert David Biles warned that overcrowding ‘may jeopardise safety and security’,³¹ earlier noting that assigning two prisoners to a single cell raises questions about the potential for serious or even fatal assaults.³² Biles described the Government’s response to the ‘crisis’ as ‘breathtakingly inept’ and ‘pathetic’.³³ Even the Minister agreed that ‘the overcrowding ... pose[d] a risk for human rights compliance and rehabilitation at the prison.’³⁴

The current pressures appear to be at least in part of the Government’s own making, although it is worth

noting that the Minister was not part of the Government at that stage. Nonetheless, the Government has been dogged by revelations that it chose to ignore advice on projected prison numbers.³⁵ Specifically, it was reported in October 2013 that the Government had ‘buried a confidential report that suggested Canberra’s prison would be full almost immediately, instead using its own figures to justify a smaller facility that is now facing critical overcrowding problems.’³⁶ This advice suggested that the ACT would need space for at least 335 prisoners by 2009 and 340 by 2013. Furthermore, a separate 2001 report which ‘urged the government to build the prison to a total capacity of 480’³⁷ was also ignored. The Government instead adopted modeling that predicted a worst-case scenario of 275 prisoners by 2042.³⁸

In response to ongoing pressure, in April 2014, the ACT Government announced it would spend \$54 million building a new 56-cell block with 80 beds and a 30-bed special care centre for detainees requiring intensive support.³⁹ The special care centre is due to open in late 2015 and the new block in mid-2016.⁴⁰ Pending completion of the extension, the Government has upgraded the Symonston Correctional Facility (premises near the AMC which house offenders on periodic detention) to use as a temporary full-time prison when required.⁴¹ The Human Rights Commissioner and Official Visitor will be granted access, but it has been suggested that ‘the decision is likely to raise questions on...whether it will be human rights compliant, given its comparative lack of services and facilities’.⁴² The first prisoners were moved to Symonston in June 2015.⁴³ Additional inmates were moved over in July,⁴⁴ bringing the number housed there to 28, over 7 percent of the prison population.

IV. TOO MUCH TIME WITH NOTHING TO DO

The second issue relates to the lack of purposeful activity for prisoners. The 2011 Hamburger Review recommended that:

ACT[CS] and AMC Leadership give high priority to ensuring the centre’s philosophy of active engagement by detainees in meaningful activities is achieved through an efficiently organised ‘structured day’ where the various staff disciplines ensure attendance and participation by detainees in their programs, activities and employment.⁴⁵

Three years later, the human rights audit in relation to women prisoners recommended that ‘ACTCS further investigate options for establishing a prison industry at the AMC to provide greater structured employment opportunities for detainees’.⁴⁶ In a comment accompanying the release of that report, the Human Rights Commissioner observed that ‘the most urgent

problem facing women was the lack of structured employment opportunities through a prison-based industry inside the AMC.’⁴⁷ Biles likewise suggested that ‘[t]he most serious shortcoming in the AMC is the shortage of meaningful work’,⁴⁸ while Prisoners Aid ACT and the Victims of Crime Assistance League described prisoners as ‘sitting around idle instead of learning trade apprenticeships because industrial workshops that were part of the original plan were never installed because of cost cutting’.⁴⁹ In response, the Minister indicated that the Government was ‘exploring industry options for the AMC’.⁵⁰

To date, that exploration has not yielded results. In April 2015, the Auditor-General released a report on the rehabilitation of male prisoners at the AMC.⁵¹ The report made a number of damning findings about the lack of a rehabilitation framework and inadequate information management systems. The Auditor-General also found that ‘a “structured day” with “purposeful activity” is not being achieved for many detainees. It is therefore likely that some detainees are bored, which can compromise their rehabilitation’.⁵² The report found that detainees who do not work spend an average of only five hours per week involved in the three main activities of education, therapeutic programs and visits, which is significantly less than the 30 hours envisaged in the 2007 delivery strategy.⁵³ Overall, there was ‘a very large gap between what was anticipated and what has occurred since the opening of the AMC’.⁵⁴

The report made 10 recommendations, including that:

- ACTCS develop a rehabilitation framework that ‘guides the integration of rehabilitative activities and services to achieve a “structured day” that incorporates sufficient “purposeful activity” for detainees...and guides the provision of employment’⁵⁵; and
- the ACT Government clarify the role of prison industries in providing employment for detainees and develop a paper outlining options and recommending the role of prison industries.⁵⁶

The report prompted a critical editorial in the *Canberra Times*, which suggested that ‘[t]he misfortunes surrounding the planning, construction and operation of the Alexander Maconochie Centre have become legion, and there are few signs of a let-up’.⁵⁷ The President of the Law Society, Martin Hockridge, stated that the report was ‘particularly disappointing because the AMC had been mooted as the country’s first human rights compliant prison, with a particular emphasis on rehabilitating offenders before their release as productive members of the community’.⁵⁸ The Government has ‘asked

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for more time to consider the report's recommendations', although the Minister has indicated his personal support for prison industries.⁵⁹

V. CONCLUSION

There are many positive aspects to the AMC. As discussed above, detainees are treated respectfully and humanely. The facilities are pleasant and nearly half of the detainees live in cottage accommodation designed to foster healthy living skills. The ACT also has the nation's highest proportion of prisoners engaged in education.⁶⁰ In addition, the Extended Throughcare Program, which links 'prisoners up with everything from housing, employment, transport, health services, and drug and alcohol rehabilitation' for a year following their release from the AMC, is an Australian first.⁶¹ Anecdotally, there has been initial success in keeping participants from returning to custody, and the program is currently being independently evaluated.

The Minister acknowledged in a 2013 Legislative Assembly committee hearing that he did not think that the AMC 'will ever be perfectly human rights compliant'.⁶² Clearly, there is still much more to be done. An editorial in the *Canberra Times* opined that 'despite expectations that Australia's first "human rights-compliant" prison would break the old correctional mould, the reality has proved different'.⁶³ As I have noted previously, 'if the Government [wants] to hold its standards up very high and say this is a human rights prison, this is a healthy prison, then they need to ensure they meet those objectives'.⁶⁴ This article has considered two key issues affecting the AMC: overcrowding and prisoner boredom. It is acknowledged that overcrowding is largely out of the control of ACTCS. Nevertheless, addressing these issues is a critical step along the way towards building a new correctional mould.

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