

Foreword

In December 2017, Australia ratified the Optional Protocol to the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and in doing so committed itself to opening up places in which persons are deprived of their liberty to enhanced levels of external independent scrutiny. This very timely book offers a compelling analysis of current issues concerning prison detention in Australia and explores the prerequisites for addressing the problems it identifies.

As this book goes to press, the world is facing the challenge of a global health pandemic on a scale not experienced in recent times. The response has been to try to reduce the spread of infection by ensuring that people ‘keep their distance’ from each other via imposing restrictions on personal mobility, widely referred to as ‘lock downs’. For those in prisons, such restrictions are not a temporary necessity, they are a way of life. But in what are frequently overcrowded prison systems this results in the very opposite of ‘distancing’, and the physical, health and mental problems resulting from such closed and close confinement, now being glimpsed by the population at large, form the day-to-day reality for many in prison detention. This book probes that reality and explores options for change.

The picture and pattern of prison detention is surveyed in the opening chapter, which are then juxtaposed against Australia’s international human rights obligations, including the obligations to establish effective independent visiting mechanisms. It carefully explores existing provisions at the state/territory and Commonwealth level before concluding that there is much to be done to ensure compliance with those international commitments, both procedural and substantive.

There follow a series of chapters that consider prerequisites for addressing these deficiencies, fundamental to which is to reduce reliance on imprisonment. It should be noted that the author is not calling for this

merely to address the problems of overcrowding within in the prison system (though naturally it will have this effect). The opening chapter considers what are described as the more generic ‘pains of imprisonment’ which overcrowding naturally exacerbates. But its amelioration does not remove those pains, and so there remains a human rights imperative to ensure that the prison population is as limited as possible, irrespective of overcrowding. Various strategies are canvassed and practices evaluated, and the case for a reductionist approach made.

Drawing on the earlier analysis, a second prerequisite identified is to bring Australian law into conformity with its international obligations, and various examples of where it falls short are highlighted. Particular focus is placed on there being variable, but invariably relatively weak, systems of human rights protection. Serious issues concerning the extent to which fundamental rights are acknowledged and reflected in the respective Corrections Acts of the states and territories are also highlighted, it being concluded that ‘the majority of jurisdictions have neither human rights legislation, nor enforceable rights in corrections legislation. In short, there is no effective legislative protection of human rights for imprisoned people’ (Chapter 5). Helpfully, practical suggestions for reform are then given, in both the legislative and regulatory spheres.

A further prerequisite of change, drawing inspiration from the *International Covenant on Civil and Political Rights*, is then considered—this being to ensure that the focus of the prison system is on ‘rehabilitation and restoration’. As in so many systems that have grown over many years, there are overlayers of differing conceptions of penal theory and policy which result in confusions and contradictions as to aims and purposes. The author offers a clear path through these complexities and a strategy for implementing a model based on her understanding of the international human rights–based approach.

A fourth prerequisite has a very practical orientation, and that is to assist prison staff to treat detainees in a human rights–compliant manner. This is a very important point, though often misunderstood as suggesting that those working in detention facilities are mistreating detainees. While, unfortunately, this is indeed sometimes the case, the problem is more usually that the systems and structures, resources and facilities stand in the way of realising this objective. That said, there are some powerful

structural hurdles based on disparities of power and agency that need to be overcome too, and which are magnified by the use of coercive power within the day-to-day regime of detention.

A final prerequisite is, perhaps, self-evident, but is important nonetheless to emphasise: the need for there to be decent physical conditions of detention. International standards have much to say about this, and have done so for many years. There can, then, hardly be an excuse for such standards not to be known or adhered to and, as the author points out, ‘lack of resources is not an acceptable reason for failing to comply with this prerequisite’ (Chapter 8). Yet so often it is not. The author then carefully looks at issues arising from both the nature of the ‘built environment’ and provision of basic necessities before once again concluding that, in Australia, there is huge scope for improvement, as there is in so many other countries too. Once again, practical suggestions are made, particularly regarding detention conditions for Indigenous populations.

The work concludes that there ‘is a large gap between the international human rights law applicable to prisons, which Australia has chosen to be bound by, and daily prison operations in individual prisons across Australia’ and that ‘The picture of Australian prisons painted throughout this book is not positive’ (Conclusion). Yet the author has not given in to despair. Rather, throughout this careful and thoughtful presentation and analysis, practical suggestions are made and strategies advocated, imbued with a sense of hopeful optimism that the ratification and implementation of the Optional Protocol to the Convention against Torture—and the promise of enhanced openness and transparency it brings—will help forge a new climate in which positive advances can be made. This is a compelling book with a convincing message.

Sir Malcolm D Evans
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