

Inquiry into Parklea Correctional Centre

Legal Aid NSW submission to
Portfolio Committee No. 4 – Legal
Affairs

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Legal Aid 
NEW SOUTH WALES

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW provides state-wide criminal law services through the in-house Criminal Law Division and private practitioners. The Criminal Law Division services cover the full range of criminal matters before the Local Courts, District Court, Supreme Court of NSW and the

Court of Criminal Appeal as well as the High Court of Australia.

The Prisoners Legal Service (**PLS**) provides representation in hearings at the State Parole Authority, prison discipline offences before a Visiting Magistrate, reviews of segregation directions, and applications in the Supreme Court to determine a term for pre 'truth-in-sentencing' life sentences. The PLS also provide general legal advice and minor assistance to prisoners by way of a visiting advice service to most gaols and responding to letters and telephone calls from or on behalf of prisoners.

Legal Aid NSW welcomes the opportunity to make a submission to the Committee's Inquiry into Parklea Correctional Centre. Should you require any further information, please contact:

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Introduction

Legal Aid NSW welcomes the opportunity to contribute to the Inquiry into Parklea Correctional Centre (**Parklea CC**). We have significant concerns about Parklea CC, which relate to the Inquiry's Terms of Reference (b), contraband, (h), the benchmarking of prisons in New South Wales and (i), other related matters.

Our concerns include:

- the inflow of contraband into Parklea CC
- difficulties in obtaining access to our clients to take instructions and give legal advice
- the delivery of documents from prisoners at Parklea CC to other agencies, and
- inadequate access to health services in Parklea CC.

The following submissions draw on the experience of our lawyers who provide advice and legal assistance to inmates at Parklea CC. This includes Legal Aid NSW's Prisoners Legal Service (**PLS**) which visits Parklea CC once a fortnight and advises between 5 and 20 clients each time. The PLS also advises Parklea CC inmates by telephone.

Legal Aid NSW's Human Rights Team also assists prisoners with complaints about their experience of health care in custody in New South Wales. In partnership with the Public Interest Advocacy Centre we have established the Prison Health Project which aims to:

- improve access to quality and timely health services for persons in custody
- identify systemic issues contributing towards the lack of access to, and the standard of, health care in custody, and
- collaborate with Corrective Services NSW and Justice & Forensic Mental Health Network to address systemic issues contributing towards lack of access to, and the standard of, health care in custody.

Where possible, we have identified potential means of addressing our concerns in relation to Parklea CC. However, the opacity of the performance requirements and contractual obligations applying to private prison operators in NSW means that it is difficult to make appropriately targeted recommendations.

Human rights standards and prisoners

Our comments below include reference to relevant human rights standards, and we encourage the Inquiry to take an approach that is informed by relevant human rights standards and principles. We note that the UN General Assembly adopted *Basic Principles for the Treatment of Prisoners* in 1990, and these include:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.¹

Specifically, the *International Covenant on Civil and Political Rights* provides that:

- no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,² and
- all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.³

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* (**Standard Minimum Rules** – also known as the Nelson Mandela Rules) also provide clear guidelines for the state and prison authorities on the minimum standards of compliance with international human rights law in Australia. Based on those Rules, the *Standard Guidelines for Corrections in Australia*⁴ is intended to reflect 'best practice' and community demands for state and territory correctional services.

¹ *Basic Principles for the Treatment of Prisoners* adopted by General Assembly resolution 45/111 of 14 December 1990, clause 5.

² *International Covenant on Civil and Political Rights* article 7. See also *Convention on the Rights of the Child* article 37 and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

³ *International Covenant on Civil and Political Rights* article 10.

⁴ Available at: <http://assets.justice.vic.gov.au/corrections/resources/d16d61ab-ea20-4277-9cfe-adc2ee5162d8/standardguidelines%2b2012.pdf>

Contraband

In our experience, there appears to be significant problems at Parklea CC with contraband, particularly weapons. We are concerned about the risk to the health and safety posed by contraband to our clients and to Parklea CC staff. These concerns are highlighted by the following feedback from solicitors who have provided assistance to inmates in Parklea CC.

Reports from Legal Aid NSW solicitors:

'I have had numerous clients who have suffered minor stab wounds whilst at Parklea CC and it has been explained to me that "everyone has a shiv [makeshift knife] here".'

'Clients have indicated that "you can get anything in Parklea".'

'I was a duty solicitor at our Blacktown office for 18 months. We regularly had matters coming out of Parklea CC including escape custody matters and matters involving the possession of drugs, sim cards, mobile phones, and weapons. It was incredibly and remarkably frequent compared to my experience of similar matters at other courts I have worked in.'

Communications with clients

The Standard Minimum Rules provide that an untried prisoner shall be allowed to receive visits from his or her legal adviser (clause 93). Further, Clause 1.17 of the *Standard Guidelines for Corrections in Australia* provides that 'all prisoners who have legal matters pending' should be able to meet with their lawyers. Despite these standards, Legal Aid NSW solicitors report considerable frustration with the arrangements for prisoners at Parklea CC to speak to their legal representatives, both via audio-visual link (**AVL**) and in person.

In-person prison visits

In our experience, there is no consistent procedure for entry of legal staff into Parklea CC. Sometimes solicitors are directed to proceed immediately to the Gatehouse. At other times, our PLS solicitors are asked to complete paperwork indicating the inmate they are visiting (even though they do not know who they are visiting until they have viewed the Legal Aid Book, which lists inmates who are seeking legal advice). Staff at the Gatehouse often have to consult with supervisors and colleagues to determine the correct procedure,

even though our attendance at the prison is regular and long standing. This causes considerable delay and inconvenience.

We note that in 2015, the Inspector of Custodial Services said:

Parklea CC has recognised the need to refurbish the visits and visits holding areas to accommodate different cohorts of inmates and enable legal visits to take place outside of the secure perimeter. Currently, legal visits at Parklea CC take place in the interior of the centre, which presents unnecessary security risks and requires an escort officer for movements of the legal representative. MRRC has a visit centre capable of hosting multiple categories of inmates and their visitors concurrently.⁵

The Inspector of Custodial Services recommended that ‘GEO provides alternative space for legal visits outside the secure perimeter at Parklea CC’.⁶

Corrective Services NSW supported this recommendation in principle, saying:

Plans for the improvement and relocation of the legal visits area at Parklea have been finalised following consultation with legal practitioners. The work will be incorporated into a Parklea capital improvement plan that has been funded but is yet to be time-tabled.⁷

Despite the Inspector of Custodial Services repeating its recommendation for provision of alternative space for legal visits in its 2016–17 Annual Report, as far as Legal Aid NSW is aware, no action has yet been taken to provide space for legal visits outside the secure perimeter.

Our solicitors also report that clients are not reliably brought to the interview room for their in-person legal appointments. While at the Metropolitan Remand and Reception Centre it is possible for our solicitors to see up to 20 prisoners in one day, at Parklea CC our solicitors sometimes see as few as four or five in a day. One solicitor said, ‘Officers would conveniently forget to call inmates up for visits and then decide there would be no time for the visit even though there may have been 20 minutes left until the end of visits (and knowing that I would only need 10 minutes with them).’ At times, face to face visits have proved so frustrating that solicitors visiting Parklea CC have found it was more effective to book AVL interviews with the inmates who had indicated a need for legal advice.

⁵ Inspector of Custodial Services *Full House: The growth of the inmate population in NSW* (2015) 63.

⁶ Inspector of Custodial Services *Full House: The growth of the inmate population in NSW* (2015) Recommendation 28.

⁷ Corrective Services NSW *Response to Full House Report* (2015) <http://www.custodialinspector.justice.nsw.gov.au/Documents/CSNSW%20Response%20to%20Recommendations%20on%20Full%20House%20Report.pdf>.

AVL interviews

Legal Aid NSW also has serious concerns about AVL interviews with prisoners at Parklea CC. One Legal Aid NSW solicitor reports that for the last two years, clients have not been reliably brought to the AVL facility for their appointments with their Legal Aid NSW solicitor: *'They either don't bring people up from the yard, bring them up from the yard but not into the interview room or just don't answer the phone in the first place. You can reliably say that the first 20 – 30 minutes of an AVL booking will be taken up waiting for the client to be brought in to the studio. Frankly, you are lucky if they are brought in at all.'*

Another solicitor notes that the delay in seeing inmates appears to be due to the fact that the holding area is downstairs and the AVL facility is upstairs, and no system seems to be in place to ensure that inmates are moved from the holding area to the AVL facility in a timely manner.

The delays affect not only legal appointments, but court proceedings. Clients are not reliably brought to the AVL facility for their appearances at Central Local Court, taking at times over an hour delay to get through to remandees. This creates problems moving efficiently through the day's list.

Some of these delays may be due to what we understand has been a recent reduction in staff from two officers to one in the guard compound in the secure area in front of the multi-purpose building. That guard must confirm the inmate's location and availability, and facilitate the inmate's movements in and out of the building. That officer is fully engaged in facilitating general movements and has little time to facilitate interviews with Legal Aid NSW solicitors. Even when that officer is able to assist, there are often no available officers to escort inmates from their location to the guard compound. This greatly reduces the efficiency of visits by the PLS and impedes our solicitors' ability to respond to requests for legal aid in a timely fashion.

Legal Aid NSW solicitors have also observed that their AVL interviews with Parklea CC inmates are sometimes cancelled with what appears to be inadequate justification, as the following case studies illustrate.

Case Study: Cancellation of AVL interviews

A Legal Aid NSW solicitor was advised by a prison officer that her AVL interview with an inmate was cancelled because he was on suicide watch. However, the inmate later informed his solicitor that, while he had reported to prison officers that he was feeling suicidal, he had not asked for his interview to be cancelled. The solicitor considered that this was an inadequate reason for cancellation and that legal advice should be considered more urgent in this situation.

The same solicitor was advised by prison officers that a different client was refusing to speak to her. She considered this unlikely as both the client and his mother had been telephoning the solicitor regularly seeking an appointment. The client later confirmed that he had not refused to attend the interview.

Finally, our clients are sometimes unable to give proper instructions because they are not given access to reading glasses.

Case Study: reading glasses

A Legal Aid NSW solicitor reported having two clients at Parklea CC who were not given their reading glasses for months. One raised the problem at his Local Court mention and the magistrate made a recommendation that he be given his glasses. For both clients, the lack of access to their glasses meant that they could not read the brief of evidence and give proper instructions, meaning that their preparation for trial was affected.

Recommendations

- 1. Performance requirements for private correctional centres including Parklea CC should be updated to include requirements concerning legal visits and communication with inmates.**
- 2. Public scrutiny of private prison operators' compliance with performance requirements should be enhanced (see further below under 'Accountability').**
- 3. Recommendation 28 of the Inspector of Custodial Services 2015 *Full House* report regarding the provision of alternative space for legal visits outside the secure perimeter of Parklea CC should be implemented as a matter of priority.**

Delivery of legal documents

Legal Aid NSW solicitors have been advised by inmates at Parklea CC that they have lodged a court form, such as a release application, notice of intention to appeal, or notice of appeal, or that they have sent a legal aid application form, but there is no record of such documents being received. In other words, court forms or legal documents completed by an inmate and provided to a correctional officer at Parklea CC are not always received by the appropriate person or agency. Legal Aid NSW is not confident that operational

procedures are adequate to ensure that important legal paperwork is properly directed once provided by an inmate to a correctional officer.

The consequence of lost paperwork in the context of strict time limitations on filing of appeals against conviction and/or sentence is potentially significant and undermines the inmates' right under article 14.5 of the *International Covenant on Civil and Political Rights* to have their conviction and sentence reviewed by a higher court.

Recommendation

- 4. To the extent that they are not already provided for, contractual obligations for the operation of Parklea CC should address the collection and delivery of legal documents. Such obligations should be supported by operational procedures requiring the provision of an acknowledgement of receipt of legal documents to inmates, a commitment to prompt delivery of the documents, and monitoring of implementation of the policy.**

Health care

Legal Aid NSW has significant concerns about the health care given to the inmates at Parklea CC. Feedback from inmates to the *Full House* report of the Inspector of Custodial Services was that a lack of health care was 'the single biggest issue at all centres, and was particularly so at Parklea CC'.⁸ Inmates reported that a lack of access to both physical health care and mental health services was particularly acute in Parklea CC.⁹ That report shows that waitlists in 2014 were about twice as long at Parklea CC as the average for all NSW correctional centres, and were 49 days for a primary health nurse, 43 days for a medical officer, and 60 days for a psychiatrist or a mental health nurse.¹⁰

It appears that the health care provided at Parklea CC falls below the standard set out in the Minimum Rules, which call for a medical officer to 'daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed' (clause 25). We also note that the *Basic Principles for the Treatment of Prisoners* call for prisoners to 'have access to the health services available in the country without discrimination on the grounds of their legal situation'.¹¹

Our practice experience reflects the feedback provided to the *Full House* report as to the serious problems that have arisen at Parklea in respect of health care, including

⁸ Inspector of Custodial Services *Full House: The growth of the inmate population in NSW* (2015) 12.

⁹ Inspector of Custodial Services *Full House: The growth of the inmate population in NSW* (2015) 52.

¹⁰ Inspector of Custodial Services *Full House: The growth of the inmate population in NSW* (2015) [5.28].

¹¹ *Basic Principles for the Treatment of Prisoners* adopted by General Assembly resolution 45/111 of 14 December 1990, clause 9.

permanent and avoidable health problems. This is demonstrated by the following case studies.

Case studies removed for publication

Legal Aid NSW does not make any specific recommendations regarding the provision of health care at Parklea CC at this time. However, we consider that the problems identified above warrant the urgent attention of both the Inquiry, the current and future operators of Parklea CC, and of Corrective Services NSW.

Accountability

There are a number of institutions with oversight of private prisons in New South Wales: the Auditor-General, the Inspector of Custodial Services (who supervises Official Visitors), Corrective Services NSW and the Ombudsman.¹² However, as Andrews, Baker and Roberts noted, ‘information supplied by oversight bodies accounts for fewer than 50 pages of text over the last decade’.¹³ They conclude that ‘overall, private prisons in New South Wales suffer from a lack of public accountability’.¹⁴

In 2016 the Audit Office of NSW recommended that Corrective Services NSW should provide greater detail of private correctional centre performance in annual reports.¹⁵ We note that Corrective Services NSW does not currently produce an annual report, but reports as a business unit of the Department of Justice. The 2016–17 Annual Report of the Department of Justice includes half a page regarding Parklea CC and indicates that:

*The Parklea Correctional Centre was assessed as meeting most performance outcomes of the Operating Specifications that were reviewed during the contract year with the exception of a few operational functions that required remedial action to address identified deficiencies.*¹⁶

No further detail is provided about the identified deficiencies.

Legal Aid NSW believes that more information should be available about the performance of private prisons in New South Wales, and considers that the Inquiry could usefully consider how public scrutiny and accountability of these prisons could be improved.

In this context, Legal Aid NSW welcomes the Australian Government’s recent ratification of the Optional Protocol to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which requires the creation of a regime of independent inspections for all places of detention, and the future periodic monitoring visits by the United Nations Subcommittee on Prevention of Torture. Consistent with the objectives of transparency and public accountability of that regime, Legal Aid NSW would also support implementation of the NSW Audit Office’s suggestion that public reporting of private correctional centre performance be improved through a legislative requirement that

¹² Jane Andrew, Max Baker, Philip Roberts *Prison privatisation in Australia: the state of the nation* (2016) 21.

¹³ Jane Andrew, Max Baker, Philip Roberts *Prison privatisation in Australia: the state of the nation* (2016) 24.

¹⁴ Jane Andrew, Max Baker, Philip Roberts *Prison privatisation in Australia: the state of the nation* (2016) 24.

¹⁵ Audit Office of NSW *Performance frameworks in custodial centre operations* (2016) Recommendation 10.

¹⁶ Department of Justice *Annual Report 2016–17* 315.

an annual report on all private prisons in NSW be tabled in Parliament (as occurs in Western Australia).¹⁷

Recommendations

5. Performance requirements for private correctional centres should be the subject of public consultation and review.

6. Corrective Services NSW should report annually and publicly on individual private correctional centres' performance.

¹⁷ Audit Office of NSW *Performance frameworks in custodial centre operations* (2016) Key Findings [2.4].