

## Second Reading

**Ms SYLVIA HALE** [11.30 a.m.]: I move:

That this bill be now read a second time.

The object of this bill is to amend the Crimes (Administration of Sentences) Act 1999 to prevent the use of contractors for the transport of prisoners and to prevent a management agreement from being entered into for a private operator to manage a correctional centre in New South Wales, unless it is approved by both Houses of Parliament. Thus, if this bill were passed, all proposals to privatise a prison in New South Wales would have to be approved by a vote of both Houses of Parliament rather than decided solely by the commissioner and the Minister. This is consistent with an approach that the Greens have taken to two other privatisation proposals—Snowy Hydro and the State's electricity infrastructure.

Let me make it clear: the Greens oppose privatisation of essential public services. That includes our water, our mass transit systems, our schools, our electricity and our prisons. The Greens do not think that running a prison is a business. The Greens do not think that incarceration of offenders is a market activity. We have a totally different view of essential services and State responsibilities to the gung-ho privateers in the New South Wales Labor Government who seem to think that the State Government should not have to be responsible for those that the judiciary sentences to imprisonment. The Government is making a mistake in continuing down the road of privatising prisons for two reasons, which were summed up by Tony Blair in 1993 when he said:

I believe people who are sentenced by the state to imprisonment should be deprived of their liberty, kept under lock and key by those who are accountable primarily and solely to the state ...

He went on to say:

... there is a danger that if you build up an industrial vested interest into the penal system ... as part of that interest they are designed obviously to keep the prison population such that it satisfies those commercial interests.

Handing over those being punished by the State to the private sector is a dereliction of duty for those that the State has deemed to be punished. Introducing a profit motive into the prison system encourages incarceration and recidivism as being good for business. A private operator has no intrinsic interest in the rehabilitation of offenders because without offenders they have no business. The most extreme example of these perverse business incentives was the recent case in the United States of America where two juvenile court judges were bribed to the tune of \$2.6 million by a private detention centre operator to give young offenders the maximum sentence so that they would spend more time in the private operator's detention centres.

Indeed, those judges went even further, imprisoning young people who had committed no offence whatsoever. Deriving profits from punishment regimes raises significant ethical issues for our society. Prisoners are removed from society for the purposes of deterrence and rehabilitation, not to be fodder for corporate profit. The Government has an obligation to run the prison system in the best interests of society. It should be part of a comprehensive strategy to deliver a safe community, including the provision of services that will minimise the risk of prisoners reoffending. Multinational corporations are not interested in promoting a safe community in New South Wales; they are interested in generating profit and therefore in maintaining high levels of incarceration.

There is no incentive whatsoever for them to run programs for offenders to try to reduce recidivism. Their focus will be on cutting costs by reducing working conditions for prison officers and living conditions for inmates, and on promoting ever more draconian laws to increase the human fodder for their privatised prisons. We have only to look at the United States, which has a huge private prison industry and one of the highest incarceration rates for any Western country. The United States experience of a private prison operator bribing two judges to deliver harsher sentences points to the need for absolute transparency and detailed scrutiny of any move to privatise prisons. I believe that this need for scrutiny is underlined in the New South Wales context by the role of the only private operator currently operating in New South Wales—the GEO Group that holds the contract for Junee—a contract worth well in excess of \$20 million each year. GEO has already submitted its expression of interest in running Parklea and Cessnock correctional centres.

The relationship between GEO and the New South Wales Labor Party is instructive in demonstrating the absolute necessity for open public scrutiny in this area. Electoral authority documents reveal that the GEO Group is a major political donor in New South Wales. It has given more than \$80,000 to the State's two largest political parties, more than \$50,000 to the New South Wales Labor Party, and more than \$20,000 to the New South Wales Liberal Party. All these political payments have been made while GEO has held a multimillion-dollar government contract to run a private prison. More telling still is that, as revealed in this morning's *Sydney Morning Herald*, in August 2005 GEO paid \$2,000 into the personal campaign account of Paul McLeay, the Labor member for Heathcote.

**The Hon. Amanda Fazio:** Point of order: Ms Sylvia Hale well knows that if she wants to make adverse reflections on a member in this House or in the other House it must be by way of substantive motion. Based on her comments in the media today I presume she is about to launch into a series of adverse reflections on a member in the other place, which is inappropriate in this debate. I ask you to advise Ms Sylvia Hale of that fact and to remind her that at this stage she should be speaking to the bill in question, and not attempting to adversely reflect on other members of Parliament.

**Ms SYLVIA HALE:** To the point of order: Ms Amanda Fazio referred to what I was about to say—she was incredibly prescient in that regard—but I am not making any adverse reflections; I am merely recounting what is on the public record. It is up to members to draw what conclusions they will. I am merely stating—

**The PRESIDENT:** Order! I uphold the point of order. Members cannot reflect on other members except by way of substantive motion. Members are well aware that imputations of improper motives to, or personal reflections on, members are deemed to be disorderly at all times. Members simply citing the fact that something is in a newspaper has consistently been ruled not to be adequate in this House. If a member wishes to cite a matter as having been in the media as a basis for an allegation, then the member should be able and willing to say that he or she authorises and believes that to be the case. I ask the member to proceed, bearing those comments in mind.

**Ms SYLVIA HALE:** I simply invite members of the House to examine the returns of the electoral authority relating to donations from the GEO. I think they will find that only one member of this Parliament received those donations. I also invite them to examine the report of the inquiry by the Public Accounts Committee and to look in particular at the questions that were asked by Mr McLeay and the answers—

**The Hon. Amanda Fazio:** Point of order. My point of order is that Ms Hale is clearly flouting your ruling. Again she is referring to matters that you have ruled to be disorderly. It is completely inappropriate for her to continue in this phase, particularly when she is the person who put this information into the media in the first place. To refer to comments that appeared in the newspaper when she is the source of them compounds her disorderly conduct in this Chamber.

**The PRESIDENT:** Order! I can do no more than again uphold the point of order. I read from the ruling of the Hon. Virginia Chadwick on 17 November 1998:

[implying] that members of the coalition may have been influenced in some way, perhaps for reward, by companies involved in [a particular] matter is an improper reflection on the motives of honourable members.

I ask the member to proceed, but not to canvass the issues.

**Ms SYLVIA HALE:** I point out that the Greens believe it is fundamentally wrong for a company that receives public funds from a government contract to donate some of those funds back to the party that granted them the contract. There are numerous connections with GEO. For example, Col Kelaher was appointed Assistant Commissioner of the Department of Corrective Services North West Region in June 2006. His biography on the Department of Corrective Services website, prior to his appointment, states:

Mr Kelaher held the position of Executive General Manager Operations for the GEO Group Australia Pty Ltd, the largest provider of outsourced correctional management in Australia. In this role, Mr Kelaher was responsible for the operational management of correctional facilities in NSW, Queensland and Victoria.

Mr Kelaher has been reported as playing a significant role in the privatisation push within the Department of Corrective Services. All of this is even more concerning when the political donations and network of connections involve a company with the international reputation of the GEO Group, which has a particularly poor history in its home country, the United States. In 2006 the family of Guillermo De La Rosa won a settlement of \$US47 million in a wrongful death suit brought against GEO after Mr De La Rosa was beaten to death in a Texas detention facility. It has been reported also that a case brought on behalf of several girls who were sexually assaulted and physically abused by GEO—then known as Wackenhut—employees at a juvenile Justice Centre in Texas was settled for \$US1.5 million.

While the close political and financial relationship that exists between GEO and the Australian Labor Party [ALP] seems typical of the way this Government operates, it seems that the residents of Laredo Texas find this sort of behaviour harder to tolerate. In November 2007 the *Laredo Morning Times* reported that Webb County Commissioners unanimously voted against accepting a \$250,000 donation from the GEO Group, which at that time was seeking to build a private jail in that county. The report went on to say:

The vote followed public comment where the money was characterized as "dirty" by attorneys who represent the family of an inmate killed inside one of the companies privately owned prisons.

"Commissioners, this is not a donation, this is a payment," said Ron Rodriguez, who represents the families of

Guillermo De La Rosa, an inmate who died while serving time in a Geo Group facility in Willacy County.

"This transaction is dirty, the money is dirty and everybody that touches it will have dirty hands," Rodriguez continued.

"If you look at the history, you will see that these people—

that is, GEO—

are the functional equivalent of a sexual predator," said Craig Smith, who also represents the De La Rosa family.

The people of Texas could see the problem with taking donations from this company, but the New South Wales Labor and Liberal parties apparently cannot. The political donations culture in New South Wales clearly is not as bad as the wild west of Texas: it is far worse. GEO's poor reputation is not merely restricted to the United States of America. Its Australian subsidiary, Australasian Correctional Management [ACM], ran the infamous immigration detention centres of the Howard Government. Australasian Correctional Management was heavily criticised in a report by the Human Rights Commission into the abuse of inmates in its detention centres.

Given the reputation of this company, the amount of money changing hands between it, the Government and the major parties, and the links between GEO and prominent members of the Government, privatisation of a prison is a process that requires absolute transparency and detailed scrutiny by this Parliament. It should not take place behind closed doors. The new Minister for Corrective Services, John Robertson, has been promoted to preside over the privatisation agenda of his predecessor, John Hatzistergos. This is no simple appointment; it appears to be a deliberate test for the newest entrant into the Cabinet. Last year the newly appointed Minister told *ABC Stateline*:

You can rest assured I won't be becoming an advocate for privatisation. I'm not going to change who I am. I am not going to change my belief systems or my values. And I will continue to advocate for those.

Are the belief systems of Labor Party people so post-modern and flexible that they can say one thing one day and then try to explain away a complete reversal the next? The Minister told the House yesterday that because only two prisons are being privatised, it is not really a problem. That is a humbug argument and I am sure most union members in New South Wales will see it for its hypocrisy. The Minister also told *Stateline* recently that this is not an ideological argument. Privatisation of essential public service is always an ideological argument. It goes to the heart of what is government, what is public service and what is the duty of the State. Should we allow private companies and shareholders to make a profit, to turn a buck from incarcerating others? Should we compromise the safety of prison officers and inmates alike?

Privatisation is a key issue that divides people onto one side of the fence or the other. Why does the Minister think thousands of people opposed selling the Snowy Hydro? Why does he think thousands of people rallied against power privatisation? Why does he think thousands of people resisted WorkChoices? They did not take to the streets because John Robertson told them to; they did so because these issues are examples of differing ideologies in conflict. Again and again we see Labor Ministers overriding the rank and file of their own party and ignoring the party's platform. The ALP platform clearly opposes prison privatisation. It states:

Labor opposes the private contract management of prisons.

So much for Labor Party policy. The few remaining rank and file members of the New South Wales ALP must wonder why they bother developing a policy when the Cabinet clearly views the ALP platform as an optional extra. I know from reading this morning's *Daily Telegraph* that a deputation from the ALP Left faction is reportedly off to see the Premier to point out that the Government is breaching party platform. I wish them luck! The Minister for Corrective Services, who, in his previous role as the leader of Unions NSW, galvanised unions against WorkChoices, battled electricity privatisation, and was an intelligent and effective advocate, now has to leave his union badge at the door in order to enter the corridors of Labor power. It is a well-worn path, one trodden by his unlamented predecessor at Unions NSW and in this House.

**The Hon. Melinda Pavey:** Sylvia, he just said he had a frontal lobotomy.

**Ms SYLVIA HALE:** Good, a frontal lobotomy—that is probably it. The new Minister appears to be engaging in the traditional loyalty display required of former Unions NSW secretaries when they enter the Cabinet. By overseeing the privatisation of two prisons and the potential loss of over 1,000 unionised jobs he demonstrates once again how easily Labor principles are abandoned. In return, he will no doubt be promoted—maybe even to the office of Premier! The man who wired this building as a young electrician may one day rule it, even if it means stepping on a few workers on the way through. There is still time to move away from prison privatisation. There is still time to talk to the prison officers union and come to agreement on how to improve productivity while keeping the prisons in public hands.

As a former head of Unions New South Wales, the Minister is more than capable of brokering an agreement and changing things when they need to be changed. I am sure he is more than capable of entering a dialogue on

overtime and staffing levels, if he chooses to. I am sure he could end the 18-hour lock-in of forensic patients at Long Bay by putting on an extra shift of officers, if he chooses to. He could even look at long-term strategies to reduce recidivism, if he chooses to.

I now turn to the effect of the bill. The Greens bill will allow members of the Legislative Council and members of the lower House to vote on any proposed prison privatisation. Although the Greens are opposed to prison privatisation, our bill does not prevent all private management contracts for prisons. The bill simply requires that a vote be taken by both houses of Parliament on any proposed management contract prior to the contract being instituted. The Minister and the commissioner can provide arguments to the Parliament, and then the Parliament can decide. There will be a range of issues surrounding any proposal to privatise prisons. These include industrial issues, health and safety, inmate programs, cost-benefit considerations, and the development and monitoring of proper performance indicators.

All of these issues should be subject to open parliamentary scrutiny. They should be considered in detail by members prior to voting on any proposed privatisation. Staffing levels may be insufficient for the increase in prison populations. It remains unclear whether front-line staff levels have kept pace with the growth in the prison populations, with contradictory evidence being provided at recent public hearings. The commissioner claimed that staff numbers have kept pace with the huge increase in inmate levels, but it is unclear whether the staff are all front-line staff or whether the figure includes office staff. I note public reports that the Minister has declined to attend the General Purpose Standing Committee No. 3 inquiry to justify the Government's position. The Government clearly does not want scrutiny of this issue.

The so-called overtime cost blow-out, which the commissioner and Minister have used to justify the privatisations of Cessnock and Parklea, appear exaggerated. While it may well be the case that some officers abuse sick leave and maximise overtime, the commissioner has not said why these practices, if they exist in isolated cases, have not been dealt with by management; and, if manipulation of overtime, as he described it, is entrenched, why those matters have not gone before the Industrial Relations Commission. He appears to be exaggerating the problem to justify privatisation. Cessnock and Parklea seem to have been chosen not because of any documented problem with staffing and overtime that is unique to them, but because the private tenderers prefer the locations and the commissioner has a poor relationship with the local union committees.

The other problem with overtime appears to be that insufficient provision is being made for staffing costs because they do not reflect the reality of wages and incidences, such as inmate illness. Clearly there are issues about how overtime budgets are calculated that need to be fixed. For a start, budgeting needs to be realistic and needs to reflect the overtime hours required as well as average wage levels of those who will be doing the work. Mr Woodham has been commissioner since January 2002. He has had seven years in which to manage the situation, yet he now throws his hands in the air and says, "Hand them over to others to manage!" Perhaps it is the commissioner, rather than the prisons, that should be departing the public sector.

Those issues aside, there is significant evidence to show that private prisons are less safe and are of a lower standard than are our State-run prisons. Privatisation can compromise officer safety and impact on inmates' conditions. We know that if privatisation goes ahead and a prison is understaffed, an inexperienced casual prison officer at Parklea or Cessnock may suffer violence at the hands of an inmate. Less supervision can lead to more intimidation and abuse between prisoners. The Government has said that private prisons are staffed by more casuals than permanent staff and that operators make savings on staffing costs. That is consistent with the experience elsewhere.

In the United Kingdom, private prisons staff earn between 30 per cent and 50 per cent less than do officers in State-run prisons, and receive lower levels of training. A report by the Bureau of Justice Assistance of the United States National Council on Crime and Delinquency 2001 found that, on average, staffing levels were 15 per cent lower in private prisons. It also found that private prisons have a higher rate of assaults, both of prisoners on other prisoners and prisoners against prison staff. A 2003 report by the United Kingdom National Audit Office that examined the operational performance of private prisons found that the rate of assaults was higher in private prisons than in public prisons. In 2002 the chief inspector reported rising levels of violence between prisoners in Kilmarnock private prison in Scotland and that the understaffing of the prison contributed to that. There was also a high turnover in staff of approximately 18.6 per cent in 2003. A BBC television program in 2005 about Kilmarnock reported understaffing and failure to carry out suicide watches and searches.

A 2001 United States Justice Department study reported that there are 49 per cent more assaults on staff and 65 per cent more assaults on prisoners in private prisons. A 2008 report from the United Kingdom prison service ranks 10 of the 11 privately run prisons in England and Wales in the bottom quarter of all prisons on security and maintaining order and control. In 2000 the privately operated Metropolitan Women's Prison in Victoria was returned to State control after being described by the then Minister of Corrections as presenting a very clear risk to community safety because of repeated operational deficiencies, including a failure to implement fundamental security and drug-prevention obligations. One officer who emailed me recently wrote:

The minister

that is Mr Hatzistergos—

acknowledges that prisons are dangerous and unpredictable environments, then why is the minister allowing the frontline of Corrective Services core service to be weakened [sic]. That is maintaining the safe secure and humane custody of inmates and the community at large are at risk now because poorly trained security guards are now manning frontline areas where previously custodial staff with eleven weeks of training at taxpayers' expense held the responsibility.

Leaving aside the question of the State's responsibility for public services including police and prisons, from a purely economic viewpoint there is little evidence of significant savings flowing from private operators running prisons. Overseas auditors who conducted comparisons found only small cost savings. Private companies have to pass profit on to shareholders, which is an extra cost, as is the higher interest rate that private companies pay on any credit finance. In a study of Queensland prisons, cost savings were found to be at a maximum of 9 per cent in Australia. That cost saving is often at the expense of officers and inmates. There is no guarantee that a private prison will be run any more economically than is a public prison that is well run. If a private operation goes bust, government always has to take it over, despite what the contract may say.

The commissioner has said that women's prisons will not be privatised in New South Wales because female inmates have high support needs so the State wants to keep control of the programs in those facilities. Implicitly these programs are more expensive to run, so we can conclude that the Government does not believe that the private sector will be prepared to run them to the same level, or, as well, which in my view is an argument against privatisation. Many countries have re-nationalised their prisons. Canada transferred its one private prison back to the public sector in 2006. The Ontario provincial government's community safety and correctional services minister, Monte Kwinter, said:

After five years, there has been no appreciable benefit from the private operation of the Central North Correctional Centre. We carefully studied its overall performance compared with the publicly operated Central East Correctional Centre (CECC) in Kawartha Lakes and concluded the CECC performed better in key areas such as security, health care and reducing reoffending rates. As a result, the government will allow the contract with the private operator to expire.

New Zealand's one private prison, which was a remand centre, was transferred to the public prison service in 2005. There can also be other costs, such as occurred in England after a fire at Yarl's Wood private detention centre for asylum seekers. It was run by Group 4—one of the companies that expressed an interest in tendering to run Cessnock and Parklea. Group 4 already had a bad reputation. When it started its private prison escort business in the United Kingdom, it managed to lose seven prisoners in one week. The disturbance at Yarl's Wood began after a woman was left medically untreated, became agitated and was restrained. A disturbance followed and a fire broke out. The police were called, but were not given primacy over the situation for some time by the private operator, Group 4. After fire destroyed the building, there was a wrangle over who would pay the insurance company. Group 4 decided to sue the Bedfordshire Fire and Police services. The *New Statesman* newspaper commented that:

[Group 4's] insurers followed the logic of profit maximisation and blew a hole in New Labour's justification for passing public services to private contractors.

In Treasury theory, the risk of a venture going wrong was meant to be taken along with the contract. In the case of Yarl's Wood, Group 4 had gambled on making profits at the public's expense and lost.

However, Group 4's insurers unearthed an obscure piece of legislation, the Riot Damages Act 1886, which allows companies to sue the police for riot damage. Group 4 has claimed not merely for the cost of rebuilding the detention centre, but also for the loss of revenue brought about by its closure. The Bedfordshire police are, the insurers' lawyers insist, responsible for a prison over which they had no control and for a riot that Group 4 prevented its officers from tackling for five hours.

Yarl's Wood was subject to an investigation by the UK Prisons and Probations Ombudsman, resulting in a 460-page report.

Soon, Yarl's Wood was due to open again, and Group 4 started advertising for new staff, with little to no experience necessary, for £6.95 an hour.

The bill will prevent the use of contractors for the transport of prisoners and prevent a management agreement for a private operator to manage a correctional centre from being entered into unless both Houses of Parliament approve it. [*Time expired.*]