

General Purpose Standing Committee No. 3

# **Inquiry into the privatisation of prisons and prison-related services**

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## Terms of reference

The terms of reference for the inquiry are:

That General Purpose Standing Committee No. 3 inquire into and report on the privatisation of prisons and prison-related services in NSW, including:

1. The impact of privatisation on:
  - a) public safety and rates of escape
  - b) the incidence of assault on inmates and staff
  - c) disciplinary breaches
  - d) overcrowding
  - e) prisoner classification levels
  - f) rehabilitation programmes, mental health support services and recidivism rates
  - g) staffing levels and employee conditions
2. The comparative economic costs of operating public and private facilities and the impact of privatisation on publicly managed prisons
3. Accountability mechanisms available in private prisons
4. Future plans to privatise prisons or prison services in NSW, including the Court Escort Security Unit
5. The use and effectiveness of private security guards in perimeter security of prisons
6. The experience of privatisation of prisons and prison services in other Australian and overseas jurisdictions
7. Any other relevant matter.

The terms of reference were self-referred by the Committee on 17 December 2008.

## Committee Membership

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|                                       |                        |                     |
|---------------------------------------|------------------------|---------------------|
| <b>Hon Amanda Fazio MLC</b>           | Australian Labor Party | <i>Chair</i>        |
| <b>Hon John Ajaka MLC</b>             | Liberal Party          | <i>Deputy Chair</i> |
| <b>Hon Greg Donnelly MLC</b>          | Australian Labor Party |                     |
| <b>Ms Sylvia Hale MLC<sup>1</sup></b> | The Greens             |                     |
| <b>Hon Trevor Khan MLC</b>            | The Nationals          |                     |
| <b>Hon Roy Smith MLC</b>              | The Shooters Party     |                     |
| <b>Hon Helen Westwood MLC</b>         | Australian Labor Party |                     |

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<sup>1</sup> Ms Sylvia Hale participated for Ms Lee Rhiannon for the duration of the Inquiry.

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## Chair's foreword

I am pleased to present this report into the privatisation of prisons and prison-related services in New South Wales.

This Inquiry arose after a decision by the NSW Government to privatise Parklea and Cessnock prisons and the Court Escort Security Unit (CESU), expected to save \$15 million per annum. Concerns were raised regarding a wide range of issues, including the morality of privatising prisons, the profit motive of corporations and corresponding impact on the welfare and rehabilitation of inmates in private prisons. Many arguments raised during the Inquiry were ideological, and many were based on misconceptions; therefore the Committee has attempted to base this report's recommendations on facts, figures, and experiences in other jurisdictions, rather than on any philosophical views of privatisation.

The Committee received in excess of 450 submissions to this Inquiry. A large proportion of those were from prison officers concerned about changes to their employment conditions and job security. While the Committee acknowledges that individual officers may be disadvantaged as a result of privatisation, we emphasise that prisons are run for the benefit of inmates, not prison officers; and remind readers that the impact of privatisation on inmates has been the primary focus of this Inquiry.

On 1 May 2009, after submissions to this Inquiry had closed and midway through the drafting of this report, the Government overturned its decision to privatise Cessnock prison. The Committee supports the decision in relation to Cessnock, and recommended in relation to Parklea that privatisation be delayed for three months to give the Department of Corrective Services and the union an opportunity to negotiate the comprehensive implementation of The Way Forward.

The Committee considered the Department of Corrective Services' package of reforms known as 'The Way Forward', designed to improve the efficiency and effectiveness of public corrective services. The Committee supports these reforms, and recommends that other than Junee and Parklea, the NSW Government should not privatise any existing or future correctional centres in New South Wales if they operate under The Way Forward.

A number of recommendations have been made to increase transparency and improve accountability in private prisons. We believe that these will alleviate many of the public's concerns raised during the Inquiry, and may also serve to eliminate existing misconceptions regarding private prisons. The Committee also recommended privately managed prisons should revert back to public management where they fail to meet their fundamental contractual obligations.

I thank the individuals and organisations who provided submissions and gave evidence at the hearings for their assistance and ongoing concern regarding the challenging issues raised during the inquiry. I also thank the Commissioner of Corrective Services and his staff for their cooperation during the Inquiry, and for facilitating the Committee's visits to Parklea, Cessnock, Junee and Dillwynia prisons,

and the management and staff of GEO for the opportunity to visit Junee prison. Finally, I would like to thank the staff of the Committee Secretariat for their assistance and professionalism.

I commend this report to the Government.



**Hon Amanda Fazio MLC**  
Committee Chair

## Executive summary

The privatisation of prisons refers to the contracting out of the operation of a prison to private enterprise. Unlike typical models of privatisation, which are characterised by an independence from government authority, in the case of prisons the government retains ultimate responsibility of the centre.<sup>2</sup>

On 11 November 2008 the NSW Government announced plans to privatise Parklea and Cessnock prisons (referred to as the ‘2008 decision’). It also announced plans to privatise the Court Escort Security Unit (CESU), and conduct a feasibility study into replacing Grafton prison with a privately financed, constructed and operated centre.<sup>3</sup>

On 1 May 2009, after submissions to this Inquiry had closed and midway through the drafting of this report, the Government overturned its decision to privatise Cessnock prison. However, it confirmed that the privatisation of Parklea would still proceed, and put a six month hold on its plans to privatise the CESU, allowing the Department of Corrective Services (DCS) a chance to achieve \$5 million in cost savings before finalising any decision to privatise the Unit. This is referred to as the ‘2009 decision’.

Throughout this report, the Committee examines the arguments for and against the privatisation of prisons and prison-related services, and considers the experience of prison privatisation in other Australian and overseas jurisdictions. The Committee’s findings are summarised below.

### The decision to privatise (Chapter 3)

Chapter 3 examines the Government’s initial decision to privatise Parklea and Cessnock prisons. It considers the Government’s approach and the public response to the 2008 decision, as well as the broad arguments both for and against privatisation.

The Committee considers that there was inadequate information provided to and consultation with stakeholders prior to the 2008 decision, and is of the view that the decision to privatise may have been more positively received if the Government had properly informed and consulted with stakeholders regarding the 2008 decision.

Given that Parklea Correctional Centre was not provided with an opportunity to implement The Way Forward before the decision was made to privatise the centre, the Committee has recommended that any move to privatise Parklea be delayed for three months to allow DCS and the Prison Officers Vocational Branch of the Public Service Association to negotiate the comprehensive implementation of The Way Forward in all Corrective Services institutions.

The Committee is concerned for the officers at Cessnock Correctional Centre that have already taken up the Department’s offer to transfer to another location. We believe that some of those staff may be significantly disadvantaged; especially if they have already sold their home and moved their family, yet wish to return to Cessnock. The Committee acknowledges that the Government has offered to

<sup>2</sup> Lenny Roth *Privatisation of Prisons*, Background Paper No 3/2004, NSW Parliament, p 3

<sup>3</sup> Submission 258, NSW Department of Corrective Services, p 4

consider any requests to transfer back to the prison on a 'case-by-case' basis, however believes that more needs to be done to compensate staff who have suffered financial hardship from acting upon the 2008 decision. A recommendation has therefore been made that the NSW Government provide adequate assistance and/or compensation to all former Cessnock Correctional Centre employees who have been disadvantaged by accepting a voluntary redundancy or transfer as a result of the decision.

It is the Committee's view that there is considerable weight in the argument that the Government, whether in respect to publicly or privately managed prisons, must adopt a service delivery model which emphasises fulfilling the principles of sentencing, improves inmate welfare, and achieves lower rates of recidivism in a cost effective manner.

A range of evidence was also submitted regarding the experiences of prison privatisation in other jurisdictions. It is clear that in some instances prison privatisation has failed, however it is also clear that in other instances it has succeeded. It is important to consider these experiences in context, as overseas private prison systems may differ from Australian systems.

The Committee believes that there is a sound argument for introducing competition to the public prison sector, and we agree that a combination of public and private operators can be beneficial for stimulating much needed innovation and efficiencies.

#### **Comparative economic costs (Chapter 4)**

The 2008 decision to contract out the management and operation of Parklea and Cessnock prisons and the CESU was expected to save approximately \$15 million per annum.<sup>4</sup> Chapter 4 examines how the expected savings were calculated, and the difficulties in comparing economic costs of prison administration.

The greatest concern heard by the Committee in relation to claims of cost savings is that no two prisons are identical. Every prison varies in size, age, design and inmate classifications, therefore rather than comparing 'apples with apples', attempted comparisons are being made between 'apples and oranges'.

Inquiry participants also raised concerns regarding the costing methodology used by DCS to calculate and compare the costs of managing inmates at New South Wales prisons. The Committee acknowledges that DCS has made an effort to improve its costing methodology over recent years, however is of the view that DCS did not fully explain how departmental overheads are calculated and applied to each prison. It has therefore been recommended that DCS publish details of its costing methodology, focusing on the allocation of departmental overheads to both Junee and public prisons.

The Committee emphasises that the achievement of cost savings are, in and of themselves, not sufficient to justify the privatisation of prisons.

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<sup>4</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Ron Woodham, NSW Department of Corrective Services, Question 179, p47

## **The impact of privatisation (Chapter 5)**

Chapter 5 examines specific potential impacts of privatisation listed under the Committee's terms of reference, as well as some other key impacts raised in evidence regarding prison staff and their families, affected communities, inmate health services, and the flow-on effect of privatisation on public prisons.

The majority of submissions received were from prison officers and their families concerned about the impact of privatisation on their jobs. Affected officers have been given three options – to transfer, take a voluntary redundancy, or stay and apply for a job with the incoming provider. However, it is clear that for many staff, none of these options are satisfactory, and many prison officers will be left with no choice other than accept a financially disadvantageous option.

A common concern raised during the Inquiry was the impact of privatisation on recidivism rates. Measuring the effect of an individual (public or private) prison's rehabilitation programmes on recidivism levels is difficult, and may not be feasible, given that inmates rarely spend the entire length of their sentence at one prison. However, a closely related area that is possible to measure is re-entry, that is, ensuring that inmates are released into a stable job and accommodation. Re-entry services play a key role in reducing recidivism, therefore the Committee recommends that the Government introduce re-entry performance indicators for both public and private prisons in New South Wales.

The Committee also understands that previous privatisations within other New South Wales industries have occurred with three-year guarantees for jobs and corresponding protection for wages and conditions,<sup>5</sup> and has recommended that the NSW Government consider providing a similar guarantee to prison officers affected by the privatisation of Parklea Correctional Centre.

## **Contract transparency, monitoring and accountability (Chapter 6)**

A general theme of submissions to the Inquiry was the public's concerns regarding the lack of transparency, and perceived lack of accountability, of private prisons. Chapter 6 considers the importance of transparency in the prison sector, and the need for adequate and independent monitoring mechanisms. It examines factors required for a good contract, which can be vital in ensuring a private prison's success. It also considers the rights of third parties to enforce private prison contract provisions, and the risk and cost to government of contract failure.

The Committee found that there is a general lack of information available regarding the private prison at Junee, which has been a barrier to independently assessing the performance of the prison. While the Committee acknowledges the concerns that private contractors may have regarding commercial-in-confidence provisions, it notes that other jurisdictions have made their private prison contracts available to the public, and recommends that New South Wales do so as well.

A number of recommendations have been made to increase monitoring and accountability in private (and in some instances, also public) prisons. These include the reinstatement of a NSW Inspector General of Prisons, the establishment of a Prisons Parliamentary Oversight Committee and on-site departmental monitors, publication of results against Key Performance Indicators, and confidential inmate and staff surveys.

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<sup>5</sup> Mr Steve Turner, Assistant General Secretary, Public Service Association of New South Wales, Evidence, 23 February 2009, p 26

Further, the Committee agrees that a well written, prescriptive contract that clearly defines the government's expectations and requirements of a private prison and private contractor is essential if a private prison is to operate successfully.

### **Workplace practices and The Way Forward (Chapter 7)**

Chapter 7 examines the causes of high levels of overtime experienced in public prisons, including consideration of staffing levels and budget allocation. It also discusses 'The Way Forward' package of workplace reforms, which were introduced to improve the efficiency and effectiveness of public corrective services.

The Committee notes that DCS's own figures show that actual overtime expenditure exceeded \$20 million in every year since 1999/2000, and exceeded \$40 million in each of the previous two years. To continue to set the overtime budget at a figure that had been significantly exceeded in every year for nearly a decade appears to be unrealistic and suggests an ongoing failure of management to address the issue.

The Committee acknowledges the efficacy of the use of casual prison officers where they have been provided with training equivalent or similar to that of permanent officers. The use of such officers may assist in reducing the Department's overtime expenditure, and more importantly, may minimise such detrimental outcomes as prisoner lock-downs caused by the unavailability of staff from time to time.

However, despite the engagement of casual staff being a central component of The Way Forward, evidence given to the Committee by the POVB indicated that there was still not acceptance of the necessity for this reform to be introduced across all prisons in New South Wales. Concerns were also raised by the POVB regarding the use of centralised rostering. The Committee is concerned, based on the evidence as a whole, that the reluctance of the POVB to embrace workplace reform has unreasonably frustrated the achievement of the primary objectives of the operation of the prison system.

The Committee is of the view that The Way Forward paves the way for positive and much-needed reforms, and supports the expeditious roll-out of the reforms across the State. The Committee also believes that apart from Junee and Parklea, all existing and future New South Wales prisons (including Grafton prison) should remain in the public sector under The Way Forward. It further recommends that the NSW Government monitor the private sector management of Parklea and Junee Correctional Centres, and should they fail to meet their fundamental contractual obligations, those centres should revert back to public management.

The Committee has also recommended that DCS publish details of the implementation of The Way Forward and the cost savings achieved through the implementation of The Way Forward for each correctional centre in New South Wales, with details of the implementation to be published on the Department's website biannually with the first report of progress to occur by 1 November 2009.



### **Privatisation of other prison services (Chapter 8)**

Chapter 8 considers the potential privatisation of the Court Escort Security Unit (CESU), and the use and effectiveness of private perimeter security guards at New South Wales prisons.

Inquiry participants argued that the CESU already runs as efficiently as possible, and that the overtime costs incurred by the Unit are largely unavoidable. The Committee is of the opinion that the Government's 'second chance' offer to DCS to identify \$5 million in savings within five months is unrealistic, and recommends that the Government extend the offer timeframe to one year. As part of this, the Committee has recommended that DCS submit a review after six months to advise the Government of its actions and progress in attempting to achieve the target.

## Summary of recommendations

- Recommendation 1** **25**  
That any move to privatise Parklea Correctional Centre be delayed for three months to allow the Department of Corrective Services and the Prison Officers Vocational Branch of the Public Service Association to negotiate the comprehensive implementation of The Way Forward in all correctional centres.
- Recommendation 2** **26**  
That the NSW Government provide adequate assistance and/or compensation to all former Cessnock Correctional Centre employees who have been disadvantaged by accepting a voluntary redundancy or transfer as a result of the November 2008 decision to privatise the centre.
- Recommendation 3** **57**  
That the Department of Corrective Services publish details of its costing methodology, focusing on the allocation of departmental overheads to both public and private New South Wales prisons.
- Recommendation 4** **76**  
That the NSW Government introduce re-entry performance indicators at all correctional centres in New South Wales.
- Recommendation 5** **80**  
That the NSW Government provide a three-year wage guarantee for the existing staff members at Parklea Correctional Centre who secure a position with the incoming private provider.
- Recommendation 6** **85**  
That the NSW Government consider the need to have an independent health service provider at all New South Wales prisons.
- Recommendation 7** **92**  
That all private correctional centre contracts in New South Wales be made publicly available on the Department of Corrective Service's website.
- Recommendation 8** **93**  
That the Department of Corrective Services report the results of all New South Wales correctional centres against common Key Performance Indicators in the Department's Annual Report. Key Performance Indicator data should also be published on the Department's website.
- Recommendation 9** **94**  
That the NSW Government ensure that private correctional centre contracts in New South Wales are made fully accessible under the *Freedom of Information Act 1989* (NSW).
- Recommendation 10** **97**  
That the position of NSW Inspector General of Prisons be reinstated to report on both public and private prisons.

- Recommendation 11** 97  
That the NSW Corrections Inspectorate be removed from the control of the Department of Corrective Services and placed under the authority of another government department such as the Attorney General's Department or the Department of Premier and Cabinet.
- Recommendation 12** 98  
That the Department of Corrective Services annually conduct confidential inmate and officer surveys at all New South Wales correctional centres to assess satisfaction and identify issues with service quality.
- Recommendation 13** 98  
That the NSW Government establish a Prisons Parliamentary Oversight Committee, with powers and authority similar to the Committee of the Independent Commission Against Corruption.
- Recommendation 14** 100  
That the Department of Corrective Services employ departmental monitors on-site at all private correctional centres in New South Wales.
- Recommendation 15** 125  
That other than Junee and Parklea Correctional Centres, the NSW Government should not privatise any existing or future correctional centres in New South Wales if they operate under The Way Forward.
- Recommendation 16** 125  
That the NSW Government monitor the private sector management of Parklea and Junee Correctional Centres, and should they fail to meet their fundamental contractual obligations, the centres revert back to public management.
- Recommendation 17** 125  
That the Department of Corrective Services publish details of the implementation of The Way Forward and the cost savings achieved through the implementation of The Way Forward for each correctional centre in New South Wales. Details of the implementation of The Way Forward are to be published on the Department's website biannually with the first report of progress to occur by 1 November 2009.
- Recommendation 18** 132  
That the NSW Government give the Department of Corrective Services one year to identify \$5 million in savings per annum in the Court Escort Security Unit, before it considers privatising the Unit. The Department should provide the Government with an update after six months to advise of the actions and progress it has made toward achieving this target.

## List of acronyms

|             |  |
|-------------|--|
| <b>CAP</b>  | Community Against Privatisation                    |
| <b>DCS</b>  | NSW Department of Corrective Services              |
| <b>KPI</b>  | Key Performance Indicator                          |
| <b>PAC</b>  | NSW Legislative Assembly Public Accounts Committee |
| <b>PFI</b>  | Public Finance Initiatives                         |
| <b>PLF</b>  | Performance Linked Fee                             |
| <b>POVB</b> | Prison Officers Vocational Branch                  |
| <b>PPP</b>  | Public Private Partnership                         |
| <b>PSA</b>  | Public Service Association of New South Wales      |

# Chapter 1 Introduction

This chapter provides an overview of the Inquiry process, including the methods used by the Committee to encourage participation by members of the public, interested organisations and government agencies. It also includes an outline of the structure of the report.

## Terms of reference

- 1.1 The Inquiry terms of reference were adopted by the General Purpose Standing Committee No. 3 (the Committee) on 17 December 2008, under the Committee's power to make a self-reference.
- 1.2 The terms of reference required the Committee to examine the impact of privatisation on prisons and prison-related services in New South Wales, the comparative economic costs of operating public and private prisons, accountability mechanisms, and the experience of prison privatisation in other Australian and overseas jurisdictions. The terms of reference are reproduced on page iv.

## Terminology

- 1.3 For ease of reference, this report uses the term "prison" rather than "correctional centre", the latter term being the official term used by the government in New South Wales.
- 1.4 Similarly, the report uses the term "prison officers", rather than the official terminology of "correctional centre officers".

## Conduct of the Inquiry

### Submissions

- 1.5 The Committee called for submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph* on 14 January 2009, and in regional newspapers in Junee and Cessnock on 17 January 2009. The Committee also sought submissions by writing directly to relevant individuals and organisations.
- 1.6 The Committee received a total of 453 submissions, including 11 supplementary submissions. A large number of submissions were from staff working in prisons or their families, illustrated below:
  - 180 from staff who work in prisons (including prison officers, nurses, counsellors and other support staff)
  - 44 from organisations
  - 21 from family members of prison officers and inmates
  - Three from academics

- One from a current inmate
- 204 from members of the general public or from authors who did not fall within any of the above categories.

1.7 Of the 453 submissions and supplementary submissions received by the Committee:

- 235 were fully public
- 211 were partially confidential
- 7 were fully confidential.

1.8 Confidential submissions have been kept confidential in their entirety<sup>6</sup>. Partially confidential submissions are those where some of the information contained is suppressed while the remainder is published. The majority of requests for partial confidentiality were to suppress the name of the author, as they were from prison officers still currently employed by the Department or their families.

1.9 Public and partially confidential submissions were published on the Committee's website. A full list of submissions is at **Appendix 1**.

### **Public hearings**

1.10 The Committee held four public hearings at Parliament House on 23 February, 20 March, 27 March and 1 April 2009.

1.11 During those hearings, the Committee took evidence from a range witnesses including representatives from the NSW Department of Corrective Services (DCS), WA Department of Corrective Services, SA Department of Corrective Services, NSW Police, the Public Service Association, academics, community and justice groups, non-government organisations, and operators of private prisons.

1.12 A list of witnesses is set out in **Appendix 2** and published transcripts are available on the Committee's website. The list of documents tabled at the public hearings is provided at **Appendix 3**.

1.13 The Committee extends its thanks and appreciation to all the individuals, agencies, organisations and representative bodies that contributed to this Inquiry either by making a submission or by appearing at a hearing.

### **Site visits**

1.14 The Committee conducted the following site visits to New South Wales prisons:

- 9 April 2009 – Parklea and Dillwynia prisons

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<sup>6</sup> With the exception of certain information in the submission from The GEO Group Pty Ltd, managers of Junee prison, which the Committee has published because it is considered essential for this report and is unavailable through other sources.

- 15 April 2009 – Cessnock prison
- 22 April 2009 – Junee prison.

**1.15** The Committee was taken on a tour of each facility to gain a better understanding of how each prison operates. Senior DCS staff and relevant union officials accompanied the Committee on each visit.

## Recent reviews relevant to the privatisation of prisons

**1.16** The Committee notes that there are some other relevant reviews into the privatisation of prisons that have been conducted over the past decade.

**1.17** In July 1999 the NSW Department of Corrective Services, in consultation with Australasian Correctional Management, published a review of the first four years of operation at the Junee Correctional Centre. The review provided an historical record of how Junee developed from the time it became operational; identified and illustrated differences in the way Junee operated compared with public prisons; and identified innovative aspects at Junee.<sup>7</sup>

**1.18** The NSW Auditor-General conducts regular financial audits of Correctional Centres in NSW. In its 2002 to 2004 reports to Parliament, the Auditor-General found that average costs between Junee prison and New South Wales public prisons could not readily be compared due to differences such as age and size of facilities, and the gender and needs of inmates. It recommended that DCS develop a more rigorous methodology to compare costs between public and private prisons.<sup>8</sup>

**1.19** The NSW Legislative Assembly's Public Accounts Committee conducted an inquiry in September 2005 into whether the private prison at Junee was providing value for money compared to public correctional centres. The inquiry arose as a result of the comments in the Auditor-General's reports to Parliament regarding difficulties in comparing public prisons against the privately operated centre at Junee. It found that the new Kempsey and Dillwynia prisons, which operated under The Way Forward, were comparable in cost to Junee. The Committee recommended that the Government maintain at least one private prison in New South Wales for the purposes of benchmarking.<sup>9</sup>

## Report structure

**1.20** **Chapter 2** provides an overview of the public and private prison system in Australia, and considers the meaning of the term 'privatisation' in the context of prisons.

**1.21** **Chapter 3** looks at the Government's initial decision to privatise Parklea and Cessnock prisons, and its subsequent decision to keep Cessnock in the public sector. It discusses the

<sup>7</sup> Margaret Bowery, *Prisons in NSW: Junee – a four-year review*, Research Publication No. 42, NSW Department of Corrective Services, July 1999

<sup>8</sup> *Auditor-General's Report to Parliament 2004*, Volume 4, p 240

<sup>9</sup> NSW Legislative Assembly Public Accounts Committee, *Value for Money from NSW Correctional Centres*, Report No. 156 (13/53), September 2005

public reaction to these decisions, and examines the broad arguments for and against privatisation.

- 1.22** The difficulties in comparing the economic costs of public and private prisons is addressed in **Chapter 4**.
- 1.23** In **Chapter 5**, the specific impact of privatisation on inmates and prison officers in the context of quality and standards is discussed. The impact of privatisation on local communities and the public prison system is also considered.
- 1.24** The importance of transparency in the prison sector is examined in **Chapter 6**, along with mechanisms for monitoring and accountability in private prisons, and the need for a well-defined contract.
- 1.25** **Chapter 7** explores the workplace practices in public prisons, and discusses The Way Forward package of reforms.
- 1.26** The final chapter, **Chapter 8**, considers the potential privatisation of the Court Escort Security Unit, and the use and effectiveness of private security guards in perimeter security.



## Chapter 2 Background

This chapter explains the term ‘privatisation’ and outlines different private prison contract models. The private prison system in Australia is also outlined. In particular the New South Wales prison system, the privately managed Junee Correctional Centre, and The Way Forward model are discussed as a preface to the state’s privatisation debate and as background to more detailed consideration in the following chapters.

### Definition of ‘privatisation’

- 2.1** The privatisation of prisons refers to the contracting out of the operation of a prison to private enterprise. This may also include the contracting out of the design, construction or finance of a new prison.<sup>10</sup>
- 2.2** While privatisation is generally characterised by an independence from government authority, control or revenue, in the case of prisons the government retains ultimate responsibility for the centre.<sup>11</sup> As Commissioner Ron Woodham from the NSW Department of Corrective Services (DCS) states:
- A major misconception in the debate surrounding ‘privatisation’ of prisons is the notion that when a contract is awarded, the Department of Corrective Services loses its authority and hands over all responsibility for the operations of such centres to a private provider. The reality is that the centre continues to operate under the strict control of the Commissioner and to a standard equivalent to and sometimes exceeding the public system. ‘Privatisation’ in this context is a misnomer and its use encourages the false assumption that correctional centres are to be sold to the private sector.<sup>12</sup>
- 2.3** Commissioner Woodham emphasised that by privatising prisons and prison-related services in New South Wales, ‘the State has not “contracted out” of its responsibilities but simply “contracted in” certain services’.<sup>13</sup>
- 2.4** The Committee recognises, however, that the privatisation of a prison does place in the hands of the private sector day-to-day control over inmates as well as decisions relating to the delivery of services within the privatised centre.

### Contract models

- 2.5** A number of privatisation models are employed by governments around the world to provide infrastructure and services. These include private finance initiatives (PFIs) and public private partnerships (PPPs).<sup>14</sup>

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<sup>10</sup> Roth L, *Privatisation of Prisons*, Background Paper No 3/2004, NSW Parliament, p 2

<sup>11</sup> Roth L, *Privatisation of Prisons*, p 3

<sup>12</sup> Submission 258, Department of Corrective Services, p 3

<sup>13</sup> Submission 258, p 3

- 2.6** PPPs refer to arrangements in which the private sector is involved in the delivery of government services.<sup>15</sup> In Australia, PPPs have been employed to complete various government projects, including hospitals, major toll roads and new schools.<sup>16</sup>
- 2.7** PPPs have also been undertaken to establish private prisons. Queensland and South Australia, for example, are engaged in contracts for prison management only, whereas the contract for Junee Correctional Centre in New South Wales covered design, construction and management.<sup>17</sup> Both models differ significantly from the ‘build, own, operate and transfer’ (BOOT) scheme used in Victoria, and the ‘design, finance, construct and manage’ (DCFM) model used in Western Australia. Under these models, the private operators pay for and own the facility, while the government pays the principle and interest over the term of the contract.<sup>18</sup>
- 2.8** In its inquiry into the Value for Money from the NSW Correctional Centres, the Legislative Assembly Public Accounts Committee commented on the contract model used in New South Wales, which has a shorter term compared to BOOT or DCFM:

The successful contractor needs to rebid regularly rather than simply renew the option. This keeps market forces in play and provides an incentive for the contractor to minimise costs while improving performance and maintaining accountability. However, this model requires an upfront capital outlay by the public sector.<sup>19</sup>

## Private prisons in Australia

- 2.9** The privatisation movement began in the United States (US) in the mid 1980s and today the US has over 100 private prisons.<sup>20</sup> The United Kingdom (UK) currently has 11 private prisons and South Africa has two of the largest private prisons in the world.<sup>21</sup> New Zealand previously had one privately run prison before the government resumed control in 2004.

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<sup>14</sup> Submission 437, Mr Stuart Turnbull, p 13

<sup>15</sup> NSW Legislative Assembly, Public Accounts Committee (PAC), *Inquiry into Public Private Partnerships*, Report No 15/53 (159), June 2006, p 1

<sup>16</sup> PAC, *Inquiry into Public Private Partnerships*, p 1; Submission 437, p 13

<sup>17</sup> NSW Legislative Assembly, Public Accounts Committee, *Value for Money from NSW Correctional Centres* (hereafter referred to as the PAC report), Report No 13/53 (No 156), September 2005, p 5

<sup>18</sup> PAC Report, p 5

<sup>19</sup> PAC Report, p 5

<sup>20</sup> Roth L, *Privatisation of Prisons*, p 4. Note: the US Bureau of Justice Statistics recently cited that there over 400 private correctional facilities in the US. However, these include any facility housing inmates for federal or state correctional authorities such as prisons, prison farms and hospitals, boot camps and community correctional facilities. James J Stephan, *Census of State and Federal Correctional Facilities, 2005*, US Department of Justice, Bureau of Justice Statistics, October 2008, p 1, accessed 5 May 2009 <[www.ojp.usdoj.gov/bjs/pub/pdf/csfcf05.pdf](http://www.ojp.usdoj.gov/bjs/pub/pdf/csfcf05.pdf)>

<sup>21</sup> Roth L, *Privatisation of Prisons*, p 5

- 2.10** Australia's first privately run prison opened in Queensland in January 1990.<sup>22</sup> Today, seven private prisons operate across the nation, housing a total of around 4,400 inmates.<sup>23</sup> There are two each in Victoria and Queensland, and one each in New South Wales, South Australia and Western Australia. Victoria previously had a third private prison, the Metropolitan Women's Prison, however the Victorian Government took back control of the prison in 2000 as a result of poor performance by the private operator. This will be considered further in Chapters 3 and 6.
- 2.11** Australia has the highest proportion of inmates in private prisons of any country, at around 17 per cent (illustrated in Table 2.1). The UK has almost 11 per cent of its inmates in private prisons.<sup>24</sup> While the US has by far the highest number of prisoners in privately run facilities, this represents only about seven per cent of its total inmate population.<sup>25</sup>
- 2.12** Within Australia, Victoria has the highest proportion of inmates in private prisons, followed by Queensland and Western Australia. The privately run Junee prison in New South Wales holds about eight per cent of the State's prisoners. Table 2.1 provides a jurisdictional breakdown of private prison populations in Australia.<sup>26</sup>

**Table 2.1 Jurisdictional breakdown of private prison populations in Australia 2007-08**

| Jurisdiction      | Private prison population | Total prison population | %           |
|-------------------|---------------------------|-------------------------|-------------|
| New South Wales   | 769                       | 9634                    | 8           |
| Queensland        | 1284                      | 5491                    | 23.4        |
| South Australia   | 139                       | 1855                    | 7.5         |
| Victoria          | 1426                      | 4177                    | 34.2        |
| Western Australia | 779                       | 3802                    | 20.5        |
| <b>Australia</b>  | <b>4398</b>               | <b>26455</b>            | <b>16.6</b> |

- 2.13** Most private prisons in Australia hold medium-security and minimum-security prisoners. The Arthur Gorrie and Borallon Correctional Centres in Queensland hold maximum-security remand and reception prisoners, while Junee Correctional Centre also holds maximum-security remand prisoners.<sup>27</sup>

<sup>22</sup> Roth L, *Privatisation of Prisons*, p 10

<sup>23</sup> Australian Productivity Commission, *Report on Government Services 2009* (hereafter referred to as the *ROGS Report 2009*), Table 8A.1

<sup>24</sup> This percentage was calculated using inmate population figures from HM Prison Services, *Monthly Population Bulletin - April 2009* and the method cited in Roth L, *Privatisation of Prisons*, p 17

<sup>25</sup> James J Stephan, *Census of State and Federal Correctional Facilities, 2005*, US Department of Justice, Bureau of Justice Statistics, October 2008, p1, accessed 5 May 2009, <[www.ojp.usdoj.gov/bjs/pub/pdf/csfcf05.pdf](http://www.ojp.usdoj.gov/bjs/pub/pdf/csfcf05.pdf)>

<sup>26</sup> *ROGS Report 2009*, Table 8A.1. Note: NT, ACT and Tasmania do not have private prisons. The table also does not refer to the Australian Government's privately managed immigration detention centres.

<sup>27</sup> Deputy Commissioner Gerry Schipp, Corporate Services, Department of Corrective Services (DCS), Evidence, 23 February 2009, p 9

**2.14** Since the Metropolitan Women's Prison was taken over by the Victorian government in 2000, all privately run prisons in Australia now hold male inmates only.<sup>28</sup>

**2.15** In 2007-08 the reported total expenditure on Australian prisons was \$2.6 billion nationally.<sup>29</sup> Of this figure, almost half was spent on New South Wales prisons. Table 2.2 outlines the total net expenditure on prisons across the states,<sup>30</sup> and Table 2.3 outlines the total expenditure in New South Wales over the past five years.

**Table 2.2 Total net recurrent and capital expenditure on prisons in 2007-08**

| <b>Jurisdiction</b>     | <b>\$'000</b>           |
|-------------------------|-------------------------|
| ACT                     | 26,446                  |
| New South Wales         | 1,008,698               |
| Northern Territory      | 57,985                  |
| Queensland              | 528,152                 |
| South Australia         | 147,887                 |
| Tasmania                | 59,034                  |
| Victoria                | 425,512                 |
| Western Australia       | 371,479                 |
| <b><i>Australia</i></b> | <b><i>2,625,194</i></b> |

**Table 2.3 Total net recurrent and capital expenditure on prisons in New South Wales over the past five years<sup>31</sup>**

| <b>Year</b> | <b>\$'000</b> |
|-------------|---------------|
| 2003-04     | 837,263       |
| 2004-05     | 893,759       |
| 2005-06     | 954,520       |
| 2006-07     | 966,825       |
| 2007-08     | 1,008,698     |

<sup>28</sup> Roth L, *Privatisation of Prisons*, p 11

<sup>29</sup> *ROGS Report 2009*, p 8.3. Note: this figure is based on total net recurrent and capital expenditure (including periodic detention centres) and net of revenue derived from own sources. It excludes payroll tax and expenditure on transport/escort services.

<sup>30</sup> *ROGS Report 2009*, Table 8A.6. Note: these figures are based on total net recurrent and capital expenditure (including periodic detention centres) and net of revenue derived from own sources. It excludes payroll tax and expenditure on transport/escort services.

<sup>31</sup> *ROGS Report 2009*, Table 8A.25. Note: these figures are based on total net recurrent and capital expenditure (including periodic detention centres) and net of revenue derived from own sources. It excludes payroll tax and expenditure on transport/escort services.

**2.16** The comparability of costs between inmates in public and private prisons will be considered in Chapter 4.

### **Private prison operators in Australia**

**2.17** There are three private operators currently managing Australia's private prisons. They are all subsidiaries of multinational corporations that manage prisons in the US, UK, South Africa and Europe. They are:

- The GEO Group Australia Pty Ltd
- G4S Australia and New Zealand
- Serco Asia Pacific.

**2.18** The GEO Group Australia Pty Ltd (GEO) is a subsidiary of the US-based The GEO Group, Inc. GEO manages Arthur Gorrie Correctional Centre in Queensland, Fulham Correctional Centre in Victoria and Junee Correctional Centre in New South Wales. The company also manages a custody centre in Melbourne and provides health services to nine public prisons in Victoria.<sup>32</sup>

**2.19** G4S Australia and New Zealand (G4S) is a subsidiary of G4S plc. It operates Mount Gambier Prison in South Australia and Port Phillip Correctional Centre in Victoria. Both prisons were previously run by GSL Custodial Services Pty Ltd before it was acquired by G4S plc in 2008.<sup>33</sup> G4S is also currently contracted by the Department of Immigration and Citizenship to operate all immigration detention facilities in Australia and on Christmas Island.<sup>34</sup>

**2.20** Serco Asia Pacific is a subsidiary of Serco Group plc, and now manages Acacia Prison in Western Australia and Borallon Correctional Centre in Queensland. Prior to Serco, Acacia Prison was operated by Australian Integrated Management Services while Borallon was run by Management and Training Corporation.<sup>35</sup>

### **The prison population in New South Wales**

**2.21** New South Wales imprisons around 180 people per hundred thousand of the adult population. While this rate is marginally above the national average in both Australia (163 per 100,000) and in the UK (141 per 100,000), it is around one quarter of the rate in the US.<sup>36</sup> In

<sup>32</sup> The GEO Group Australia Pty Ltd, <[www.thegeogroupinc.com.au](http://www.thegeogroupinc.com.au)> (accessed 5 May 2009)

<sup>33</sup> G4S Australia and New Zealand, <[www.au.g4s.com/index.asp](http://www.au.g4s.com/index.asp)> (accessed 5 May 2009)

<sup>34</sup> G4S Australia and New Zealand, <[www.au.g4s.com/our\\_services/our\\_services.asp?content=ds#](http://www.au.g4s.com/our_services/our_services.asp?content=ds#)> (accessed 5 May 2009)

<sup>35</sup> Roth L, *Privatisation of Prisons*, p 11

<sup>36</sup> *ROGS Report 2009*, Table 8A.4; International Centre for Prison Studies World Prison Population List (7th ed), <[www.kcl.ac.uk/depsta/law/research/icps/downloads/world-prison-pop-seventh.pdf](http://www.kcl.ac.uk/depsta/law/research/icps/downloads/world-prison-pop-seventh.pdf)> (accessed 5 May 2009)

New South Wales the proportion of adult population imprisoned climbed from 2.1 per cent above the national rate in 1997-98 to 10.2 per cent in 2006-07.<sup>37</sup>

**2.22** In 2007-08 an average of 9,634 inmates were held in 32 prisons across the state (refer to Table 2.4). This is an increase of 34 per cent since 1997-98, indicating a steady rise in prisoner population over the past decade.<sup>38</sup>

**Table 2.4 Relationship between inmate numbers, officer numbers and overtime from 1998-99 to 2007-08<sup>39</sup>**

| Year    | Inmates (daily average) | Correctional officers (average) | Overseers (average) | Total correctional officers and overseers | Staff to inmate ratio |
|---------|-------------------------|---------------------------------|---------------------|---|-----------------------|
| 1998/99 | 6,835                   | 2,633                           | 328                 | 2,961                                     | 2.31                  |
| 1999/00 | 7,272                   | 2,727                           | 323                 | 3,050                                     | 2.38                  |
| 2000/01 | 7,531                   | 2,969                           | 356                 | 3,325                                     | 2.26                  |
| 2001/02 | 7,788                   | 3,079                           | 348                 | 3,427                                     | 2.27                  |
| 2002/03 | 7,983                   | 3,272                           | 340                 | 3,612                                     | 2.21                  |
| 2003/04 | 8,367                   | 3,385                           | 367                 | 3,752                                     | 2.23                  |
| 2004/05 | 8,927                   | 3,372                           | 390                 | 3,762                                     | 2.37                  |
| 2005/06 | 9,101                   | 3,410                           | 435                 | 3,845                                     | 2.37                  |
| 2006/07 | 9,468                   | 3,621                           | 445                 | 4,066                                     | 2.33                  |
| 2007/08 | 9,634                   | 3,711                           | 476                 | 4,187                                     | 2.30                  |

**2.23** Of the State's total inmate population, roughly 8 per cent are held at the privately run Junee Correctional Centre.

### Junee Correctional Centre

**2.24** The prison privatisation movement came to New South Wales in the early 1990s, when legislation was passed to allow private companies to manage correctional facilities within the State. Consequently, Junee Correctional Centre opened in 1993 and became the first – and currently, only – private prison in New South Wales. As previously presented in Table 2.1, New South Wales houses one of the lowest proportions of private prison populations in Australia.

**2.25** Junee prison has been run by GEO since its inception. It became the first prison in Australia to be designed, constructed and managed by the private sector under a single contractual arrangement.<sup>40</sup> Ownership of the prison, however, has remained with the NSW Government.

<sup>37</sup> *Auditor-General's Report to Parliament 2008*, Volume Five, p 187

<sup>38</sup> *ROGS Report 2009*, p 8.33

<sup>39</sup> Submission 258, p 36

- 2.26** Junee prison is a medium/minimum security institution for males and has the capacity to hold 790 inmates (650 in medium security and 140 in minimum security).<sup>41</sup> While the prison is predominantly classified as medium security, it currently holds around 90 remandees who are considered maximum security.<sup>42</sup>
- 2.27** GEO also provides the health care of inmates at Junee prison. It employs a full-time doctor, a part-time dentist and nursing staff to provide 24-hour medical services and inpatient care. This is discussed further in Chapter 5.
- 2.28** Eight industry programmes currently operate at the prison, providing inmates with employment and training opportunities to assist them when they are released. The prison also has an education partnership with the Riverina Institute of TAFE.<sup>43</sup>

## Overview of The Way Forward

- 2.29** The Way Forward is a workplace reform package developed by the Department of Corrective Services to improve the safety, security and cost effectiveness of public prisons in NSW. The reform package was first introduced in 2003, and currently operates at Kempsey, Dillwynia and Wellington prisons. The Way Forward will also be implemented at the soon-to-be-opened prison at Nowra. Other prisons across the State are expected to follow after the Department announced its state-wide roll out of the package on 18 August 2008.
- 2.30** As outlined by a number of inquiry participants,<sup>44</sup> The Way Forward has resulted in various significant operational changes including:
- a modernised industrial consent award, providing in a new simplified custodial rank structure and flat overtime rate
  - leaner staff to inmate ratio
  - new rolling “let-go and lock in” procedures for releasing and returning inmates to cells
  - centralised rosters for all correctional centres
  - new management plans
  - the closure and refurbishment of a number of centres
  - engaging casual correctional officers rather than offering overtime
  - a new leave policy aimed at reducing absenteeism (including provisions for carer’s leave, family and community services leave, workers compensation and sick leave).

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<sup>40</sup> Roth L, *Privatisation of Prisons*, p 11

<sup>41</sup> Submission 258, p 11

<sup>42</sup> Deputy Commissioner Gerry Schipp, Evidence, 23 February 2009, p 9

<sup>43</sup> The GEO Group Australia Pty Ltd, <[www.thegeogroupinc.com.au/Junee.htm](http://www.thegeogroupinc.com.au/Junee.htm)> (accessed 5 May 2009); Mr Domonique Karauria, Executive General Manager Operations, GEO, Evidence, 20 March 2009, p 19

<sup>44</sup> Submission 102, Public Service Association of NSW, p 18; Submission 111, Unions NSW, p 14

**2.31** The Way Forward is further examined in Chapter 7.

## Recidivism rates

**2.32** The Committee's terms of reference require consideration of the impact of privatisation on recidivism rates. This section outlines the current recidivism rates in Australia and New South Wales. Chapter 5 discusses recidivism in the particular context of privatisation.

**2.33** Recidivism refers to repetitious criminal activity and describes the extent to which a convicted person re-offends under the criminal justice system.<sup>45</sup> In Australia, recidivism generally measures the number of offenders returning to prison following conviction by a court within two years of release from corrective services.<sup>46</sup>

**2.34** In Australia, the recidivism rate is 38.2 per cent for prisoners who were released in 2005-06.<sup>47</sup> This compares with 39.1 per cent of prisoners who returned to prison following their release in 2003-04.<sup>48</sup> In New South Wales, the recidivism rate in 2005/06 was 43 per cent, significantly higher than the national average.

**2.35** Table 2.5 shows the percentage of prisoners released during 2005-06 who returned to prison under sentence within two years.<sup>49</sup>

**Table 2.5 Percentage of prisoners released during 2005-06 who returned to prison under sentence within two years**<sup>50</sup>

| Jurisdiction       | Prisoners returning to prison % |
|--------------------|---------------------------------|
| ACT <sup>51</sup>  | -                               |
| New South Wales    | 43.0                            |
| Northern Territory | 44.8                            |
| Queensland         | 33.6                            |
| South Australia    | 33.2                            |
| Tasmania           | 36.0                            |
| Victoria           | 35.6                            |
| Western Australia  | 37.1                            |

<sup>45</sup> Payne J, *Recidivism in Australia: Findings and Future Research*, Research and Public Policy Series No. 80, Australian Institute of Criminology 2007, p vii; PAC Report, p 34

<sup>46</sup> *Auditor-General's Report to Parliament 2008*, Volume Five, p 189

<sup>47</sup> *ROGS Report 2009*, p C.10

<sup>48</sup> *ROGS Report 2009*, p C.10

<sup>49</sup> This refers to all prisoners who served a term of sentenced imprisonment, including prisoners subject to correctional supervision following release. *ROGS Report 2009*, Table C.1

<sup>50</sup> *ROGS Report 2009*, Table C.1

<sup>51</sup> No figures reported as the ACT did not have a prison during this time period. The majority of inmates convicted in the ACT were held in New South Wales prisons.



| Jurisdiction     | Prisoners returning to prison % |
|------------------|---------------------------------|
| <i>Australia</i> | <i>38.2</i>                     |

**2.36** The rate of recidivism in New South Wales has decreased from 43.8 per cent in 2007.<sup>52</sup> However, it still continues to be higher than most other Australian jurisdictions, ranking second highest among the other states and territories for the last four years.<sup>53</sup>

<sup>52</sup> *Auditor-General's Report to Parliament 2008*, Volume Five, p 189

<sup>53</sup> *Auditor-General's Report to Parliament 2008*, Volume Five, p 189 and *ROGS Report 2009* Table C.2



## Chapter 3 The decision to privatise

On 11 November 2008 the NSW Government announced its plans to privatise Parklea and Cessnock prisons (hereafter referred to as the ‘2008 decision’). It also announced plans to privatise the Court Escort Security Unit, and conduct a feasibility study into replacing Grafton prison with a privately financed, constructed and operated centre.<sup>54</sup>

On 1 May 2009, after submissions to this inquiry had closed and midway through the drafting of this report, the Government overturned its decision to privatise Cessnock prison. However, it confirmed that the privatisation of Parklea would still proceed. This will be referred to as the ‘2009 decision’.

This chapter examines the Government’s reasons for these decisions. It considers the Government’s approach and the public response to the 2008 decision, as well as the broad arguments both for and against privatisation. The Court Escort Security Unit is considered in Chapter 8.

### Rationale for the 2008 decision

- 3.1** The Committee was told that the decision to privatise Parklea and Cessnock prisons arose from independent advice based on a market-testing exercise overlooked by NSW Treasury. The NSW Government was advised that contracting out the management and operation of these two facilities would be more cost-effective than continuing to operate them publicly.<sup>55</sup> Specifically, the Government was advised that approximately \$15 million per annum could be saved through the privatisation of Parklea, Cessnock, and the Court Escort Security Unit (CESU).<sup>56</sup> The sources of these savings are considered throughout this report.
- 3.2** In addition to cost savings, NSW Department of Corrective Services (DCS) Commissioner Ron Woodham informed the Committee that the decision to privatise was to establish benchmarks to improve the standard of the State’s publicly run prisons, and encourage innovation through competition.<sup>57</sup> Commissioner Woodham cited a recent study by Blumstein, Cohen and Seth<sup>58</sup> which supports the role of a private benchmark, and found that:

... States with some of their prisoners in privately owned or operated facilities experience lower rates of growth in the cost of housing their public prisoners in addition to direct savings from using the private providers. The study suggested also that the greater the percentage of inmates in private prisons the greater the cost savings for the publicly managed prisons.<sup>59</sup>

<sup>54</sup> Submission 258, NSW Department of Corrective Services, p 24

<sup>55</sup> Commissioner Ron Woodham, Department of Corrective Services (DCS), Evidence, 23 February 2009, p 2

<sup>56</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 179, p 47

<sup>57</sup> Commissioner Woodham, Evidence, 23 February 2009, p 13

<sup>58</sup> Blumstein J, Cohen M and Seth S, ‘Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons,’ *Vanderbilt Law and Economics Research Paper No. 03-16*, 2007

<sup>59</sup> Commissioner Woodham, Evidence, 23 February 2009, p 13

- 3.3** The impact of introducing private competition into the public sector is discussed at the end of this chapter.

### **Why Parklea and Cessnock?**

- 3.4** Commissioner Woodham provided a combination of reasons as to why Parklea and Cessnock were specifically chosen for privatisation. Broadly, these related to the size, location, function and performance of each centre.
- 3.5** With regard to size, the Committee was informed that both prisons were sufficiently 'large enough to make the venture commercially worthwhile for a private tenderer'.<sup>60</sup> The prisons also met the criteria regarding location, which needed to be 'located in either the metropolitan area or in an area close to a regional city where staff would have a better chance of alternative employment'.<sup>61</sup>
- 3.6** Neither centre provided highly specialised or strategic functions, which was also an important consideration, as the specific expertise required to carry out those functions would likely be difficult for a private operator to supply.<sup>62</sup>
- 3.7** Finally, with regard to performance, Commissioner Woodham advised that none of the better performing prisons would be considered for privatisation. He then proceeded to depict a number of performance issues at Parklea and Cessnock to illustrate why they were chosen, including high levels of overtime, sick leave, industrial disputation and resistance to change.<sup>63</sup> In response to a question on notice asking whether overtime was one of the main reasons behind the move to privatise Cessnock and Parklea prisons, the Commissioner replied 'No'.<sup>64</sup>
- 3.8** Additionally, the Commissioner cited several troubling incidents that had occurred at these centres, including inmates escaping at Parklea while officers allegedly watched cricket on television; officers playing video games while on duty instead of guarding inmates; and intimidation and harassment of staff at Cessnock who had attempted to introduce workplace reforms.<sup>65</sup>

### **Response to the Government's reasons**

- 3.9** The reasons provided by the Commissioner for choosing Parklea and Cessnock were met with scepticism by some inquiry participants, who rejected a number of the claims and questioned the relevance of the specified incidents.

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<sup>60</sup> Commissioner Woodham, Evidence, 23 February 2009, p 13

<sup>61</sup> Commissioner Woodham, Evidence, 23 February 2009, p 13

<sup>62</sup> Commissioner Woodham, Evidence, 23 February 2009, p 13

<sup>63</sup> Commissioner Woodham, Evidence, 23 February 2009, p 14

<sup>64</sup> Answers to questions on notice taken during evidence 27 March 2009, Commissioner Woodham, Question 15, p 9

<sup>65</sup> Commissioner Woodham, Evidence, 23 February 2009, pp 14-15

**3.10** For example, one submission author highlighted that the referred escapes at Parklea occurred more than eight years ago.<sup>66</sup> The allegation that officers were watching television at the time was also strongly disputed, with Mr Matt Bindley, State Chairperson, Prison Officer Vocational Branch (POVB), Public Service Association (PSA), arguing:

The accusation that somebody was watching cricket in the monitor room when somebody escaped is ludicrous. That room is a monitor room; it only holds closed-circuit TV monitors which are reflective of what is happening in the jail. There is no way that you could get outside reception to Channel 9, for argument's sake, to watch the cricket.<sup>67</sup>

**3.11** In answer to a direct request to provide evidence to the Committee that substantiated his claim that officers were watching cricket on television at the time of the escape, the Commissioner did not provide evidence of the allegation that the guards were watching television.

**3.12** Commissioner Woodham's reference to intimidation and harassment at Cessnock was similarly branded irrelevant as the incidents apparently occurred around 16 years ago.<sup>68</sup>

**3.13** Inquiry participants also called into question the broader reasoning provided by the Commissioner for choosing Parklea and Cessnock for privatisation. According to some officers, they were told that the reason for choosing these centres was solely based on location.<sup>69</sup> Mr Stewart Little, Senior Industrial Officer, PSA, said:

... we were told that they were picked out because the private operators liked the geography of them. That is what was put to us. It certainly was not put to our members at either location that it was due to sick leave and overtime, or anything like that. It was told to the staff there that the private operators liked the geography.<sup>70</sup>

**3.14** The claim that Cessnock has a history of industrial disputation was also challenged, with one prison officer declaring: 'I have worked at Cessnock for over a decade and could count on one-hand days lost due to industrial action'.<sup>71</sup> This was supported by Mr Tony Howen, POVB Cessnock, PSA, who advised that Cessnock prison has had three strikes of one day's duration in the last 10 years.<sup>72</sup>

**3.15** In its submission, DCS presented a starkly different figure, claiming that Cessnock had lost 334.92 days to industrial action and imposition of work bans since January 2007. It also

<sup>66</sup> Submission 250, Name suppressed, p 2

<sup>67</sup> Mr Matt Bindley, State Chairperson, Prison Officers Vocational Branch (POVB), Public Service Association (PSA), Evidence, 23 February 2009, p 39

<sup>68</sup> Submission 277, Mr Gregory Sullivan, p 1

<sup>69</sup> For example, Submission 119, Mr Paul Jones, p 8

<sup>70</sup> Mr Stewart Little, Senior Industrial Officer, PSA, Evidence, 23 February 2009, p 38

<sup>71</sup> Submission 180a, Name suppressed, p 1

<sup>72</sup> Mr Tony Howen, Delegate, POVB Cessnock, PSA, Evidence, 1 April 2009, p 2

claimed that Parklea lost 502.39 days in the same period, and that Junee lost none.<sup>73</sup> However it is clear that the Department's definition of 'days lost to industrial action' is significantly different to the PSA's. The Department was not questioned by the Committee on the methodology used for arriving at the Department's figures.

**3.16** In questions on notice, the Committee asked DCS to identify how many "man days" were lost to industrial disputes at NSW prisons since 2000. The Department was only able to provide information from July 2002, and provided its answer in terms of number of officers involved and number of hours lost. The Department did not provide information regarding Junee, however in relation to Parklea and Cessnock it reported that:

- 1434.56 hours were lost at Parklea (with 925 officers involved)
- 408.34 hours were lost at Cessnock (with 173 officers involved).<sup>74</sup>

#### *Committee comment*

**3.17** The Committee is of the view that some of the evidence introduced by Commissioner Woodham was of little assistance to the Committee due to its age and apparent lack of relevance.

**3.18** The Committee notes that some of the allegations made by Commissioner Woodham were satisfactorily explained by representatives of the POVB, and in consequence the Committee is of the view that some of the Commissioner's evidence had a tendency either to distract or in some cases mislead the Committee.

**3.19** The Committee is also of the view that some of Commissioner Woodham's evidence had a tendency to inflame an already tense industrial relations environment and was therefore unhelpful to the proper administration of prisons in New South Wales.

#### **Overtime**

**3.20** One of the biggest sources of contention raised throughout the Inquiry concerned the naming of overtime as a key reason for privatisation.

**3.21** DCS exceeded its overtime budget by more than \$20 million in 2007-08, and \$23 million in 2006-07. This over-expenditure was widely reported in the media, with prison officers accused of 'robbing taxpayers money' and being accustomed to a 'culture of overtime'.<sup>75</sup>

**3.22** Figures showing actual versus budgeted overtime for the last nine financial years, however, indicate that the actual figure has exceeded the budgeted figure in every year by between

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<sup>73</sup> Submission 258, pp 19-20. The Department further states that their records show that only 36 days have been lost due to industrial action at Junee since 2001.

<sup>74</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 45, 'Summary of Industrial Action by Correctional Centre July 2002 – Feb 2009' attachment

<sup>75</sup> See for example 'Rorts in NSW prisons costing taxpayers \$40m', *The Daily Telegraph*, 18 August 2008; 'Jail overtime rorts must stop: NSW Govt', 18 August 2008 <<http://www.abc.net.au/news/stories/2008/08/18/2338303.htm>> (accessed 15 February 2009)

44 per cent and 128 per cent, suggesting that the overtime budget has never reflected the real level of overtime use. For example, the overtime budget for 2006-07 was set at \$20 million, despite actual overtime expenditure having substantially exceeded this figure in each year since at least 1999-00, including exceeding \$40 million in each of the two previous years, 2004-05 and 2005-06.<sup>76</sup>

**3.23** In response to questioning from the Committee regarding these reports, Commissioner Woodham replied, 'orting is not a word I use, but manipulation, yes',<sup>77</sup> further expressing the opinion that: '[s]ome correctional officers have factored in overtime as part of their regular income and, in some cases, have aligned mortgages and their lifestyles to this income'.<sup>78</sup>

**3.24** Evidence was submitted by Commissioner Woodham of prison officers undertaking excessive amounts of overtime, including one officer who earned a take-home pay of \$2,600 in one fortnight, and another working 158 overtime shifts in one year – 96 of which were double shifts.<sup>79</sup> The Commissioner told the Committee: '3,140 officers earned \$18 million last year and on the other side – the side we are really concerned about – 960 officers earned \$21 million'.<sup>80</sup>

**3.25** These statements sparked considerable protest from prison officers, many of who expressed the view that all overtime is controlled and approved by senior management. For example, Ms Sonja Saastomoinen stated in her submission:

It is ... reprehensible that Correctional staff are blamed for the levels of overtime, (an issue ultimately controlled by senior management, and which has nothing to do with junior staff). The Department has always had the power to say "NO" to a request for overtime ...<sup>81</sup>

**3.26** The author of Submission 438 expressed bewilderment at officers being blamed for 'orting' the system, maintaining that the majority of prison officers work overtime to help the Department:

They have blamed frontline workers, like me, for 'orting' overtime payments and causing a budget blow-out. It is impossible for Prison Officers to organise their own overtime shifts. The only 'crime' I have committed against the department is to be awoken by a phone call at 6.15am on my day off and agree to come to work to fill a void left by long term staff shortages.<sup>82</sup>

**3.27** The Cessnock Sub-Branch of the POVB claimed that management have regularly pressured officers into working overtime, asserting in their submission that staff have often been told

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<sup>76</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 31, p 11

<sup>77</sup> Commissioner Woodham, Evidence, 23 February 2009, p 21

<sup>78</sup> Commissioner Woodham, Evidence, 23 February 2009, p 16

<sup>79</sup> Commissioner Woodham, Evidence, 23 February 2009, p 16

<sup>80</sup> Commissioner Woodham, Evidence, 23 February 2009, p 17

<sup>81</sup> Submission 9, Sonja Saastomoinen, p 1

<sup>82</sup> Submission 438, Name suppressed, p 2

(for example) that ‘no one goes home until we get two volunteers to take this bloke to the hospital’.<sup>83</sup>

- 3.28** Inquiry participants argued that any blame for overtime problems should lay squarely with management. Mr Steve Turner, Assistant General Secretary, PSA, said: ‘[T]he simple fact is that an inability to manage overtime is no reason to privatise a fundamental part of our justice system’.<sup>84</sup> He added:

If they think someone is rorting sick leave, then look at that person and sort him out. There is nothing that can be put into an award that will stop someone from managing sick leave. That is management's role to perform.<sup>85</sup>

- 3.29** In response to the accusation of overtime manipulation, Mr Bindley informed the Committee that DCS uses an equalisation system to produce a computer-generated list for allocating overtime: ‘[i]t is gauged on the last time you did overtime or you rejected overtime as to where you are on the list. The person who rightfully should be called next for overtime is on top of the list’.<sup>86</sup>

- 3.30** Another objection raised during the inquiry is based on the understanding that it has been the Department’s preference to utilise overtime rather than create permanent jobs.<sup>87</sup> Further to this, it was highlighted that the union has previously tried to impose overtime bans, however DCS took them to the Industrial Relations Court, where the bans were ordered to be lifted.<sup>88</sup>

- 3.31** The majority of submission authors were adamant that the real reasons behind high levels of overtime are a result of insufficient staffing levels and inadequate budget allocation. This will be examined in more detail in Chapter 7 - Workplace practices and The Way Forward. The introduction of centralised rostering will also be discussed in that chapter.

### *Committee comment*

- 3.32** Ultimately overtime is a management responsibility. The Commissioner’s explanation as to why the annual overtime budget was not adjusted to recognise the real level of overtime expenditure indicates a serious flaw in the Department’s budgetary processes.

### **Women’s prisons**

- 3.33** The Committee was told that no women's prisons in New South Wales would be privatised. Commissioner Woodham explained the reasons for this being:

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<sup>83</sup> Submission 59, Cessnock Sub-Branch, POVB, PSA, p 8

<sup>84</sup> Mr Steve Turner, Assistant General Secretary, PSA, Evidence, 23 February 2009, p 25

<sup>85</sup> Mr Turner, Evidence, 23 February 2009, p 29

<sup>86</sup> Mr Bindley, Evidence, 23 February 2009, p 39

<sup>87</sup> Submission 253, Mr Matthew Sweeny, p 1; Mr Turner, Evidence, 1 April 2009, p 3

<sup>88</sup> Submission 136, Name suppressed, p 2; Mr Bindley, Evidence, 23 February 2009, p 37



The women's facilities have special programs; they are different to the men. Whereas the men are higher risk and lower need, the women are most definitely higher need and less risk. We want to keep control of those programs for the women.<sup>89</sup>

**3.34** The Commissioner said that another reason why there has been no intention to privatise women's facilities is due to the additional costs involved as a result of women's support services, given that over 70 per cent have been abused (either as a child or adult).<sup>90</sup>

**3.35** This announcement has been met with scepticism by the Women in Prison Advocacy Network. Public Officer and Treasurer, Ms Kat Armstrong, told the Committee:

I know that Commissioner Woodham has said that women's prisons will not be privatised. He might not be the commissioner forever and things change. If men's prisons become privatised, I cannot see why it then would not lead to women.<sup>91</sup>

### **Announcement of the 2008 decision**

**3.36** According to evidence received by the Committee, the decision to privatise Parklea and Cessnock came as a surprise to most stakeholders.

#### **Union reaction**

**3.37** Both the PSA and Unions NSW expressed the view that the Government's decision to privatise these prisons appears to be an attack on the union.<sup>92</sup>

**3.38** Reports that the NSW Government was considering privatising additional prisons were released in the media on 18 August 2008.<sup>93</sup> According to Mr Little, that was the first time the PSA had heard about it:

I am pretty sure of the day because we read all this stuff in the media that morning, which obviously have been fed to the media over the weekend. We attended a meeting with the Commissioner that day and that was the first we heard that Treasury was market testing.<sup>94</sup>

**3.39** The PSA advised the Committee that on the same day that the Mini-Budget was handed down in November 2008, Commissioner Woodham phoned the General Secretary to confirm that

<sup>89</sup> Commissioner Woodham, Evidence, 23 February 2009, p 20

<sup>90</sup> Commissioner Woodham, Evidence, 23 February 2009, p 20

<sup>91</sup> Ms Kat Armstrong, Public Officer and Treasurer, Women in Prison Advocacy Network, Evidence, 20 March 2009, p 79

<sup>92</sup> Mr Turner, Evidence, 23 February 2009, p 26; see also Submission 111, Unions NSW, p 8

<sup>93</sup> See for example 'Rorts in NSW prisons costing taxpayers \$40m', *The Daily Telegraph*, 18 August 2008

<sup>94</sup> Mr Little, Evidence, 23 February 2009, p 30

the privatisation of Parklea and Cessnock would be proceeding.<sup>95</sup> Mr Turner told the Committee:

We were as shocked as everyone else. The mini-budget does not say that two prisons were to be privatised. We got a phone call that afternoon saying that Parklea and Cessnock were to be privatised. We looked at the mini-budget, but all it said was that we are going to move forward with the Way Forward.<sup>96</sup>

**3.40** The PSA noted that they have been in active negotiations with the Department on the Way Forward (outlined in Chapter 2) since 2003, however they maintain that privatisation had never been part of the Way Forward until very recently.<sup>97</sup> This was also observed by Unions NSW:

The "market testing" of Parklea and Cessnock correctional centres and "non-core" operations in court security and escort were added to a very recent incarnation of the Way Forward dated 18 August 2008.<sup>98</sup>

### **Community reaction**

**3.41** In general, the 2008 decision to privatise Parklea, Cessnock and the Court Escort Security Unit has not received much public support. Indeed, in the case of the Cessnock community, there has been strong opposition. During the Inquiry, the Committee received several thousand signatures on community petitions opposing the privatisation plan. In addition to this, Unions NSW provided details of a January 2009 poll conducted by Essential Research, which found that only 19 per cent of respondents surveyed out of 1,003 people supported the privatisation of Cessnock and Parklea, while 20 per cent supported the privatisation of prisoner transport.<sup>99</sup>

**3.42** Prison officers and community members in Parklea and Cessnock appeared equally surprised about the decision as the union, evident in the submission from one officer which stated: 'I do not appreciate finding out about the privatisation of Cessnock Correctional Centre via the media whilst on holidays, extremely insensitive!'<sup>100</sup>

**3.43** Prison officers criticised the Department's handling of the situation, as illustrated in Submission 298:

To date, the department has dictated privatization and casualization, the moving of staff, the provision of possible redundancies with little or no consideration to peoples personal feelings, we have been ill informed, ill treated, disrespected, disregarded, defamed and mis managed to the point that we find ourselves today.<sup>101</sup>

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<sup>95</sup> Submission 102, PSA, p 19

<sup>96</sup> Mr Turner, Evidence, 23 February 2009, p 30

<sup>97</sup> Mr Turner, Evidence, 23 February 2009, p 30

<sup>98</sup> Submission 111, p 14

<sup>99</sup> Submission 111, p 9

<sup>100</sup> Submission 107, Community Against Privatisation (CAP), p 24

<sup>101</sup> Submission 298, Name suppressed, p 1

- 3.44** The Committee was further informed that the Cessnock City Council was not consulted or informed at any stage of the decision. Cessnock Councillor Graham Smith confirmed this in evidence:

As far as I am aware the General Manager has received no formal correspondence from the Commissioner or the Minister advising him that this decision has been taken and that privatisation will be continuing.<sup>102</sup>

- 3.45** The impact of prison privatisation on communities, and in particular the expected impact of privatisation on the Cessnock community, is discussed in Chapter 5.

#### **Actions since the 2008 decision**

- 3.46** At the Inquiry's third hearing on 27 March 2009, Commissioner Woodham informed the Committee that 48 staff had accepted the Department's offer to leave Cessnock prison,<sup>103</sup> either by transferring to another facility or by taking a voluntary redundancy. The options to transfer, accept a voluntary redundancy, or apply for a position with the incoming provider are discussed in Chapter 5.
- 3.47** The Committee was also informed that on Sunday 15 May 2009, at approximately 9.00pm, staff at Cessnock were 'locked out' of the prison while 107 inmates were transferred out to other prisons.<sup>104</sup>
- 3.48** According to the Community Against Privatisation (CAP), the stress of the sudden transfer was so great that one inmate was hospitalised with a suspected heart attack. Additionally, CAP stated that inmates were not given 24 hours notice (as required by DCS policy) to notify their families, and that their personal possessions were not transferred with them (as also required by DCS policy).<sup>105</sup>
- 3.49** According to media reports, the Department said it had moved the inmates to downsize Cessnock prison in preparation for privatisation.<sup>106</sup> Community members and the PSA questioned why this had to occur in the middle of the night.<sup>107</sup>

<sup>102</sup> Mr Graham Smith, Councillor, Cessnock City Council, Evidence, 20 March 2009, p 49

<sup>103</sup> Commissioner Woodham, Evidence, 27 March 2009, p 50

<sup>104</sup> Ms Tanya Roe, Spokesperson, CAP, Evidence, 20 March 2009, p 34

<sup>105</sup> Supplementary submission 107a, pp 1-2

<sup>106</sup> 'Prison workers defy IR Commission', *ABC news*, 18 March 2009 <<http://www.abc.net.au/news/stories/2009/03/18/2519700.htm>> (accessed 11 May 2009); "Stealth" transfers inflame jail dispute', *The Herald*, 17 March 2009 <<http://www.theherald.com.au/news/local/news/general/stealth-transfers-inflame-jail-dispute/1460667.aspx>> (accessed 11 May 2009)

<sup>107</sup> Supplementary submission 107a, pp 1-2; Mr Turner, Evidence, 1 April 2009, p 3

**Stakeholder consultation**

**3.50** The Government's lack of stakeholder consultations in deciding to privatise Parklea and Cessnock prisons has been severely criticised by inquiry participants. Ms Marie Howell, Spokesperson for Community Against Privatisation, described the Government's approach to the situation as 'privatisation by stealth'.<sup>108</sup>

**3.51** Due to the lack of consultation and information provided, a number of key stakeholders remain uncertain as to if, when and how privatisation might affect them. For example, the Prisoners Aid Association of New South Wales, who currently provide banking and property services to inmates at Parklea (among other prisons), commented:

We are concerned about how we would be required to operate were the Centres to be privatised. Would funding continue to be provided by the Department of Corrective Services or would we be required to negotiate with the private contractor? Would access for our workers to correctional centres become more difficult?<sup>109</sup>

**3.52** Mr Craig Baird, Manager of the Prisoners Aid Association, stressed that these questions should be answered and decided before any contract is entered into, to ensure continuity of access for the Association's clients.<sup>110</sup>

**3.53** More generally, inquiry participants agreed that stakeholder consultation is essential before such important decisions are made. For instance, Mr Brendan Lyon, Executive Director from Infrastructure Partnerships Australia, stated: 'Obviously, key stakeholders, as with any major reform, should be consulted as you move down the path of tendering'.<sup>111</sup>

**3.54** Professor Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales, maintained that if the Government wants privatisation to be successful, it must consult with industry stakeholders who have the necessary information and expertise to advise on an effective contracting regime:

[The Government should] sit down and call for submissions not simply on whether there should be privatisation but, if there is, what should go into it – what the safeguards should be, what the performance measures should be, how we should be able to check whether those measures are being met, the rehabilitation measures and so on, the step-in powers, when a prison is so poorly run that the State has to step in with its own officers. All of those issues need discussion ...<sup>112</sup>

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<sup>108</sup> Ms Marie Howell, Spokesperson, CAP, Evidence, 20 March 2009, p 34

<sup>109</sup> Submission 245, Prisoners' Aid Association of New South Wales, p 2

<sup>110</sup> Mr Craig Baird, Manager, Prisoners Aid Association of New South Wales, Evidence, 20 March 2009, p 70

<sup>111</sup> Mr Brendan Lyon, Executive Director, Infrastructure Partnerships Australia, Evidence, 27 March 2009, p 84

<sup>112</sup> Mr Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales, Evidence, 23 February 2009, p 55

*Committee comment*

- 3.55** The Committee considers that there was inadequate information provided to and consultation with stakeholders prior to the 2008 decision. We believe that the decision to privatise may have been more positively received if the Government had properly informed and consulted with stakeholders regarding the 2008 decision.
- 3.56** The Committee recommends that any move to privatise Parklea be delayed for three months to allow DCS and the POVB the opportunity to negotiate the comprehensive implementation of The Way Forward in all correctional centres.

**Recommendation 1**

That any move to privatise Parklea Correctional Centre be delayed for three months to allow the Department of Corrective Services and the Prison Officers Vocational Branch of the Public Service Association to negotiate the comprehensive implementation of The Way Forward in all correctional centres.

**The 2009 decision**

- 3.57** On 1 May 2009 the Government announced it would reverse its plans to privatise Cessnock prison, due to economic uncertainty in the region. In response to a question in the Legislative Council after this decision was made, Corrective Services Minister, the Hon John Robertson MLC, stated:

The community of Cessnock has been hit hard by the economic downturn with the closure of Pacific Brands and the loss of 80 local jobs, creating an uncertain future for many Cessnock families. In light of this instability the New South Wales Government took the decision to leave Cessnock Correctional Centre under public sector operation.<sup>113</sup>

- 3.58** The Minister advised that The Way Forward would be implemented at Cessnock (as well as all other New South Wales prisons), in order to produce the required cost savings and efficiencies; and the privatisation of Parklea would proceed to provide benchmarks to judge the performance of New South Wales public prisons.<sup>114</sup> The Way Forward reforms are considered in Chapter 7.
- 3.59** Minister Robertson further advised that the Department would consider any transferred officers wishing to return to Cessnock on a case-by-case basis. With regard to staff who have already accepted voluntary redundancies, he stated:

For those individuals who have accepted a voluntary redundancy and completed the process, including being paid out, the department will consider any application for re-employment. If staff members are re-employed, they will be required to repay the

<sup>113</sup> NSWPD (*Proof, Legislative Council*), 5 May 2009, p 14567

<sup>114</sup> NSWPD (*Proof, Legislative Council*), 5 May 2009, p 14567

relevant portion of their severance pay if still within the period covered by their separation payment.<sup>115</sup>

### *Committee comment*

- 3.60** The Committee is concerned for staff that have already transferred to another location. We believe that some of those staff may be significantly disadvantaged, especially if they have already sold their home and moved their family, yet wish to return to the area. The Committee notes the Government's offer to consider any requests to transfer back to Cessnock on a 'case-by-case' basis, and is concerned that more needs to be done to compensate staff who have suffered financial hardship from acting upon the 2008 decision.
- 3.61** We therefore recommend that the NSW Government provide adequate assistance and/or compensation to all former Cessnock prison officers who have been disadvantaged in any way by accepting a voluntary redundancy or transfer as a result of the 2008 decision.
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### **Recommendation 2**

That the NSW Government provide adequate assistance and/or compensation to all former Cessnock Correctional Centre employees who have been disadvantaged by accepting a voluntary redundancy or transfer as a result of the November 2008 decision to privatise the centre.

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## **Arguments for and against privatisation**

- 3.62** The Committee heard strong arguments both for and against privatisation. Many of these were ideological, and many were based on misconceptions of how the private prison system operates in New South Wales. These arguments (with the exception of costs, which are considered in Chapter 4) are summarised below.

### **Morality of private prisons**

- 3.63** A key argument against privatisation is that the coercive powers of the state should not be placed in private hands. A submission by a serving prison officer summarised this view:

... the setting and enforcing laws of society are inherently and essentially the functions of the state and ... incarceration of offenders is an integral part of the legal process. The management of prisons and functions of prison officers cannot be reduced to the carrying out of mere administrative or routine tasks. By its very nature, it involves the coercion by one group of people over another, and it is asserted that it is simply wrong for the state to allocate the responsibility of coercion to a private contractor. In the words of one US critic, '[t]o remain legitimate and morally significant, the authority to govern behind bars, deprive citizens of liberty, to coerce them must remain in the hands of government authorities'.<sup>116</sup>

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<sup>115</sup> NSWPD (*Proof, Legislative Council*), 5 May 2009, p 14567

<sup>116</sup> Submission 126, Name suppressed, pp 2-3

**3.64** One of the foremost ideological arguments presented in the majority of submissions is that it is morally wrong to profit from the imprisonment or punishment of others. This view was exemplified in submissions with statements such as '[p]rofit from the misery of humans is perverse and should not be tolerated'<sup>117</sup> and '[t]hat any company ... should benefit financially from incarcerating people should be abhorrent to us all'.<sup>118</sup>

**3.65** Likewise, in evidence before the Committee, Mr Michael Poynder, Coordinator, Justice Action, called profiting from prisons 'obscene':

... there is an inherent obscenity about corporations making profits out of the misery of others. Prisoners are unhappy people. It is probably the worst place in our society that someone could be put and to make money out of it, we think, is something that is morally obscene.<sup>119</sup>

**3.66** However, as pointed out in a NSW Parliamentary Library paper by Lenny Roth, there are a number of defences to this argument. One is that there are many privately operated businesses that profit from the misfortune of others, including hospitals, lawyers, panel beaters and funeral directors. Another is that there is no moral distinction between other private organisations that already profit from providing services to prisons, such as food, maintenance and clothing. A third argument is that public prison officers are paid for their labour, and as such also profit from the imprisonment of others. Finally, it has been argued that if private operators can improve the quality of prisons, then it should not matter if they also profit.<sup>120</sup>

### **Profit motives of corporations**

**3.67** Another major argument against privatisation raised in evidence is that private prison operators are only interested in making a profit, and this would therefore affect the quality of service:

A private corporation is not in the business of being humanitarian. It's in the business of increasing profit and market share.<sup>121</sup>

**3.68** Many inquiry participants insisted that companies would cut corners wherever possible in order to make a profit.<sup>122</sup> For example, the author of Submission 103 declared: 'A private company will move in to make money and that's all. They will do that by slashing staff, slashing programmes, employing inmates in low paid work and charging the inmates' families wherever they can'.<sup>123</sup>

<sup>117</sup> Submission 343, Mr David Walker, p 1

<sup>118</sup> Submission 115, Mr Keith Perkins, Australian Labor Party, Dubbo Branch, p 1

<sup>119</sup> Mr Michael Poynder, Coordinator, Justice Action, Evidence, 23 February 2009, p 41

<sup>120</sup> L Roth, *Privatisation of Prisons*, p 45

<sup>121</sup> Submission 136, Name suppressed, p 2; Submission 437, Mr Stuart Turnbull, p 23

<sup>122</sup> See for example Submission 2, Ms Belinda Kedeya, p 1

<sup>123</sup> Submission 103, Name suppressed, p 3

**3.69** Participants emphasised that private corporations owe their primary duty to shareholders.<sup>124</sup> For example, the Police Association of New South Wales noted, ‘company directors would be acting contrary to their fiduciary duties if they were to engage in projects that they knew would be likely to not be profitable’.<sup>125</sup> This argument was also raised by the PSA:

For-profit companies must serve the interests of shareholders and do not have an intrinsic commitment to the public good. In a choice between corporate profits and achieving rehabilitation of inmates private providers are not only inclined to choose profits but are under a statutory obligation to give this objective priority. To quote Ira Robins of the American Bar Association “the private sector is more interested in doing well than doing good”.<sup>126</sup>

**3.70** This generally negative and distrusting view of private providers was observed throughout the course of the Inquiry, as reflected by Ms Armstrong:

I cannot see why when they are there trying to make money they would be out of pocket to ensure that prisoners who, let's be real, they do not care about anyway – they are just there to make money from them because that is what it is about – why they would then be out of pocket to ensure that they get the services that they need?<sup>127</sup>

**3.71** Similarly, in the context of rehabilitation, the Police Association of New South Wales asked: ‘Why would a provider go beyond a contract of service unless it was in the context of negotiation for increased financial benefits?’<sup>128</sup>

**3.72** Concerned that inmates’ conditions could be harmfully affected in a private prison, the Hon Justice John Dowd, President, International Commission of Jurists Australia, stressed to the Committee that ‘[p]eople are sent to prison as punishment and, it is trite to say, not for punishment’.<sup>129</sup> A similar distinction was made in Submission 347, which questioned whether governments should be sending offenders to prison for ‘retributive incarceration or rehabilitative detention?’<sup>130</sup>

**3.73** In response to these concerns, DCS again emphasised that any private prison in New South Wales will still operate under the strict control of the Commissioner. As mentioned in Chapter 2, the Department stressed that it has not ‘contracted out’ its responsibilities; it has merely ‘contracted in’ additional services.<sup>131</sup>

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<sup>124</sup> For example Mr Poynder, Evidence, 23 February 2009, p 43

<sup>125</sup> Submission 109, Police Association of New South Wales, p 1

<sup>126</sup> Submission 102, p 12

<sup>127</sup> Ms Armstrong, Evidence, 20 March 2009, p 81

<sup>128</sup> Submission 109, p 2

<sup>129</sup> Hon Justice John Dowd, President, International Commission of Jurists Australia, Evidence, 27 March 2009, p 6

<sup>130</sup> Submission 347, Name suppressed, p 5

<sup>131</sup> Submission 258, p 3



- 3.74** The concerns about the profit motive of corporations were also rejected by Infrastructure Partnerships Australia, who argued that many private operators have proven to be successful in meeting (and in numerous instances, improving) government standards in other sectors of society, such as transport and health.<sup>132</sup>

### **Accountability**

- 3.75** The accountability of private operators was another concern raised by inquiry participants opposed to privatisation. Bishop Kevin Manning from the Diocese of Parramatta commented: ‘The State is answerable to its citizens for the way prisons are conducted but no comparable accountability seems to be required of private corporations’.<sup>133</sup>
- 3.76** A similar view was enunciated by Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre (PIAC):

Capacity of the state and private citizens to call to account private contractors is much more limited than is the capacity of private citizens to call to account the government. We cannot throw out private prisons once every four years. They are not elected whereas you are. If we think you fail in accountability, we can do something about that if we are concerned about it.<sup>134</sup>

- 3.77** The main argument in defence of this is that most private prison operators have five-year contracts, after which the contract can be put out to re-tender. If an operator fails to perform or meet required standards, it is highly unlikely that their contract will be renewed. Mr Lyon argued that this would never be possible under public sector operation, ‘where it is very difficult to take meaningful action when service qualities are found to be lacking’.<sup>135</sup>
- 3.78** Further, in extreme cases of underperformance (such as the Metropolitan Women’s prison in Victoria – to be discussed later in this chapter), operators can have their contracts terminated.
- 3.79** Another defensive argument is that private operators are exposed to the same, if not more intense, scrutiny as public prisons.<sup>136</sup> Accountability mechanisms are examined in Chapter 6.

### **Effect on justice policy**

- 3.80** A number of submissions received by the Committee opposing privatisation were actually based on misconceptions of how the private prison system operates in Australia. The main misconception is that private operators are paid a per diem rate for each bed filled, and therefore it is in their interests to detain inmates as long as possible. For example, comments were frequently made in evidence such as: ‘Citizens are being incarcerated in greater numbers

<sup>132</sup> Submission 428, Infrastructure Partnerships Australia, p 13

<sup>133</sup> Submission 272, Bishop Kevin Manning, Diocese of Parramatta, p 1

<sup>134</sup> Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence (PIAC), 27 March 2009, p 42

<sup>135</sup> Mr Lyon, Evidence, 27 March 2009, p 78

<sup>136</sup> Submission 428, G4S Australia Pty Ltd, p 3

and for longer periods to satisfy the demand for growth that all corporations must have to survive'.<sup>137</sup> Other submissions asserted that the introduction of the profit motive to the prison system might lead to private providers seeking to promote tougher sentencing laws in order to increase demand for their services.

**3.81** While there was some evidence of this occurring in the United States, it is not the case in New South Wales. This was clarified by Mr Pieter Bezuidenhout, Managing Director of the GEO Group Australia Pty Ltd (GEO),<sup>138</sup> who informed the Committee that GEO is paid a fixed fee for a bed capacity. Mr Bezuidenhout advised that it is a matter for corrective service departments to fill private prison beds, and that companies are paid the same amount whether their prison is full or empty. Additionally, he stressed 'even immaterial of that, we do not have the power to decide on prison sentence duration and who we want and who we keep',<sup>139</sup> as again that is a matter for the courts and the Department.

**3.82** Another misconception raised in evidence are that private operators (and particularly the private operator at Junee) often refuse to accept difficult inmates, only choosing to take the 'cream of the crop'<sup>140</sup> or that they are only given inmates from easier classifications. These suggestions were also refuted by Mr Bezuidenhout:

The last misnomer I want to address is a conglomerate of issues where people say that private prisons choose the inmates that they take; that they only manage the easier inmates; we benefit from tougher sentences; we are involved in punishing the inmates; and we get better classifications. None of this is true. We have not refused inmates and we cannot legally. Contractually we are not allowed to refuse inmates. We do not manage easier inmates. We have the same classification as Cessnock – minimum, medium, remands, maximum; they are all involved in the facility.<sup>141</sup>

### **Global financial crisis**

**3.83** Numerous submission authors objected to privatisation on the grounds that the existing private operators on the market are multinational corporations.<sup>142</sup> Given the current economic climate, inquiry participants questioned the logic of sending profits overseas:

If these two jails are privatised they will be run by overseas, shareholder driven companies who will force hard-working Australians out of work onto lower wages. These corporations will send their profits to their overseas shareholders in either the USA or UK so how does this assist us in the current financial crisis?<sup>143</sup>

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<sup>137</sup> Mr Poynder, Evidence, 23 February 2009, p 41

<sup>138</sup> GEO currently operates a number of private prisons around Australia, including the Junee Correctional Centre.

<sup>139</sup> Mr Pieter Bezuidenhout, Managing Director, GEO, Evidence, 20 March 2009, p 10

<sup>140</sup> Submission 437, p 201

<sup>141</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

<sup>142</sup> For example, Submission 257, Ms Lyndsay Kruse; Submission 291, Name suppressed; Submission 298 and Submission 351, Name suppressed

<sup>143</sup> Submission 252, Ms Anita Malesevic, p 1

- 3.84** On the other hand, Mr Lyon proposed that the global financial crisis was in fact even more of a reason to go down the path of privatisation, due to the cost savings and efficiencies that it can bring:

With the global economic crisis creating even greater pressures on the stretched State Government balance sheet now is a prudent time to re-examine more innovative ways to achieve greater efficiencies in the public sector without compromising service quality. It is an opportune time to look at services which the Government currently provides which could be provided just as well or better and more efficiently by the private sector.<sup>144</sup>

- 3.85** As mentioned at the beginning of this chapter, cost savings are a key factor in the Government's decision to privatise. This will be considered separately in Chapter 4.

### Human rights

- 3.86** Australia has ratified or is signatory to a number of international human rights instruments, including the *UN Standard Minimum Rules for Treatment of Prisoners*, which prioritises prisoner health, safety and dignity.<sup>145</sup> It has also developed *Standard Guidelines for Corrections in Australia 1996*, based on the *UN Standard Minimum Rules*, which sets standards for the conduct of prisons in Australia.<sup>146</sup>
- 3.87** It was suggested during the Inquiry that while inmates in government run prisons obtain certain rights under these human rights instruments, the same cannot be said for inmates in privately run facilities.<sup>147</sup>
- 3.88** The reason for this was outlined by the Community Justice Coalition, who informed the Committee that the obligations owed by Australian governments under these instruments are non-delegable to private prisons: '[a] corporation has no contractual duty under human rights law to enforce these standards unlike the State'.<sup>148</sup> Similarly, Justice Dowd stated:

Our primary concern is that human rights bind governments either legally or morally. Human rights do not bind a private contractor and cannot bind a private contractor because these are non-delegable rights, that is, you can enter into a contract with somebody but contracts are enforceable by various mechanisms – monitoring by injunction, by damages. "Damages", is of course, an interesting word because you can define "damages" as money. "Money", that is what damages are about. That is what you can do with a contract. You cannot impose human rights on a contractee running a prison system or otherwise.<sup>149</sup>

<sup>144</sup> Mr Lyon, Evidence, 27 March 2009, p 78

<sup>145</sup> Submission 429, Community Justice Coalition, p 1

<sup>146</sup> Australian Institute of Criminology, 'Standard guidelines for corrections in Australia: 1996', available at <[http://www.aic.gov.au/research/corrections/standards/aust-stand\\_1996.html](http://www.aic.gov.au/research/corrections/standards/aust-stand_1996.html)> (accessed 30 April 2009)

<sup>147</sup> Submission 263, Mr Paul Pearce MP, Member for Coogee, p 5

<sup>148</sup> Submission 429, p 1

<sup>149</sup> Justice Dowd, Evidence, 27 March 2009, p 2

**3.89** Mr Peter Dodd, Solicitor, PIAC, recommended that if privatisation were to proceed, there should be increased legislative protection to protect the human rights of inmates.<sup>150</sup> This is considered in Chapter 6.

**3.90** Private operator G4S agreed that the human rights of inmates are paramount, and advised that this has been a key consideration in their prisons:

An understanding by every employee of their human rights obligations and corporate social responsibilities is a prerequisite for every position within G4S and it features prominently in all training programs. Additionally, in Victoria (the only state so far with such a charter), compliance with the Human Rights Charter is strictly enforced.<sup>151</sup>

**3.91** It is worth noting the comments of Mr Gary Sturgess, Executive Director, The Serco Institute, when he gave evidence regarding the impact of privatisation in the UK:

As a result, the first people to defend prison contracting were the prisoners themselves. I cite an early letter written to the *Observer* about the Wolds, which was the first contract prison. He wrote:

“As someone who is committed to penal reform and as a prisoner, I prefer to adopt a ... pragmatic approach to this issue. Today I will spend 18 hours locked in my cell and I will spend tomorrow in exactly the same way. I look with envy at the Home Office tender document for the Wolds ... which demanded the delivery of a regime guaranteeing a minimum of 12 hours per day out of cell.”

In fact, by the time Wolds opened it was 14. A life-sentenced prisoner later recalled the debate that had taken place across the prison network when Wolds was opened. He wrote:

“Many prisoners were sceptical about private prisons at first ... But the message began to spread that they were preferable to State-run prisons. A conversation with a prison auxiliary helped me understand why. He had transferred prisoners to a private prison. 'You should see the difference,' he said. 'As soon as the cons get out of the van they are greeted with a "Good Morning, Mr Smith, would you like to come this way?" They're reminded that they're people first and prisoners second. Their whole demeanour changes. They're polite in return to the staff, and to each other.' I had to admit I had never been to a prison like that.”<sup>152</sup>

### **Contractual arrangements**

**3.92** It was argued that one of the key advantages in privatising prisons lies in the ability to specify contract requirements, and re-tender or terminate a contract if a provider is not performing up

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<sup>150</sup> Mr Peter Dodd, Solicitor, Health Policy and Advocacy, PIAC, Evidence, 27 March 2009, p 40

<sup>151</sup> Submission 427, p 5

<sup>152</sup> Mr Gary Sturgess, Executive Director, The Serco Institute, Evidence, 27 March 2009, pp 31-32

to standard. As noted by Mr Bezuidenhout:

That is one of the major advantages that private outsourced operations offer the Government. If you do not perform in a public jail, you cannot take it back from the public.<sup>153</sup>

- 3.93** Likewise, the Inspector of Custodial Services in Western Australia, Mr Richard Harding, commented in one of his reports: ‘One of the attractions of private sector participation in prison management is that a poor performer can be replaced’.<sup>154</sup>
- 3.94** Contractual arrangements grant governments the ability to stipulate minimum service outcomes and quality conditions. Unlike public prisons, failure to comply with these requirements results in financial penalties. (These are referred to as ‘Performance Linked Fees’ and are discussed in Chapter 6). As mentioned earlier, in extreme cases it may also result in the government stepping in to take over the prison.
- 3.95** The Serco Institute observed that this forces governments to focus on determining the exact standards and services needed, rather than simply managing existing forms of service delivery.<sup>155</sup> Mr Sturgess stated:
- ... in writing a contract and specifying what you want in that contract a government gets a chance to decide afresh "How do I want this prison to be run?" None of the old ways of doing things remain. You have got a chance to decide completely fresh "How do I want this to operate?" What happened in the United Kingdom was that government said "I don't want that many hours out of cells. I want that many hours out of cells. If you do not deliver that we will financially penalise you."<sup>156</sup>
- 3.96** Mr Sturgess also commented on the positive effect that the threat of financial sanctions has on private operators: ‘If you don't achieve your KPIs in the public sector, you can trot out a load of excuses ... Here you get heavily fined. So it does focus the mind’.<sup>157</sup>
- 3.97** The Institute’s submission also made the distinction that ‘contracting enables government to pay for outcomes and outputs rather than just funding inputs. Government pays only for the delivery of services to a standard that has been specified in advance’.<sup>158</sup>
- 3.98** Inquiry participants highlighted the importance of a well-written contract to ensure that standards are properly defined, assessed and adhered to.<sup>159</sup> This will be considered in more detail in Chapter 6.

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<sup>153</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 5

<sup>154</sup> Submission 407, The Serco Institute, p 36

<sup>155</sup> Submission 407, p 27

<sup>156</sup> Mr Sturgess, Evidence, 27 March 2009, p 34

<sup>157</sup> Submission 407, p 23

<sup>158</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Gary Sturgess, Executive Director, The Serco Institute, Question 4, p 6

<sup>159</sup> Submission 428, p 13

### Competition and innovation

- 3.99** Another strong argument in support of privatisation is that the introduction of private providers into the public sector stimulates competition and innovation, thus increasing efficiencies. As mentioned previously, this was one of the reasons cited by Commissioner Woodham for the NSW Government's decision to privatise more prisons (see paragraph 3.2).
- 3.100** Several inquiry participants suggested that rather than focusing on the question of privatisation, the Government should actually be focusing on the introduction of competition: 'it is competition that delivers value-for-money benefits, not privatisation'.<sup>160</sup>
- 3.101** In evidence, Mr Lyon asserted that competition drives innovation, which drives efficiency gains; and that therefore '[o]ne of the simplest methods to improve efficiency, save money and increase the value of services is to introduce competition within an industry'.<sup>161</sup>
- 3.102** The Committee received evidence that in the UK, competition and contracting has been capable of delivering savings of up to 30 per cent, without negatively impacting on the quality of service.<sup>162</sup> These efficiencies and cost savings are a result of competition brought by a mixed economy, as opposed to a public (or private) sector monopoly:
- ... there is no magic in the private sector per se. Private sector monopolies have all the same problems that any other kind of monopoly has; they tend to act in their own interests ... Overwhelmingly, what makes the difference is that people have to develop a solution, knowing that other people who are competing with them want to develop a better solution.<sup>163</sup>
- 3.103** Mr Bezuidenhout also supported having a 'mixed economy' of public and private operators:
- You need a mixed economy. We are competing not only with the competitors out there are, we are continuously competing with our colleagues in the public system. When I say "competing" it is like being on a treadmill. Because the innovation you introduce today, will be adopted tomorrow by somebody. You cannot stand still and sit on your laurels and not do anything else.<sup>164</sup>
- 3.104** Similarly, in evidence, Assistant Commissioner Luke Grant, Offender Services and Programs, DCS, referred to studies that found that efficiencies and savings in public prisons increased when there was a larger proportion of private to public prisons, as a result of greater exposure to competition.<sup>165</sup> Commissioner Woodham also expressed support for this concept, in

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<sup>160</sup> Submission 407, p 5

<sup>161</sup> Submission 428, p 8

<sup>162</sup> Mr Sturgess, Evidence, 27 March 2009, p 31

<sup>163</sup> Mr Sturgess, Evidence, 27 March 2009, p 38

<sup>164</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 13

<sup>165</sup> Assistant Commissioner Luke Grant, Offender Services and Programs, DCS, Evidence, 23 February 2009, p 9

explaining why the Government does not intend to privatise all New South Wales prisons:

My view is that we do not need to do it; that by having a number of prisons run by the private sector, it really lifts the game of the public sector and that most people in the public sector realise now that they have to be able to compete with the private sector.<sup>166</sup>

- 3.105** The 2005 NSW Public Accounts Committee report into the value for money from NSW Correctional Centres also agreed with this view, and recommended that the Government maintain at least one private prison in NSW for benchmarking purposes, and ‘to encourage the development of innovative management techniques’.<sup>167</sup>
- 3.106** It was pointed out to the Committee that it is not necessary for a private provider to win a tender for efficiencies to be gained. Mr Sturgess commented: ‘[W]here the public sector wins in a fair competition it is quite capable of delivering the same kinds of productivity and service improvements’.<sup>168</sup> Using the example of the Way Forward reforms in New South Wales (discussed in Chapter 7), the Serco Institute suggested that even the threat of competition can be enough to drive change and induce efficiencies.<sup>169</sup>
- 3.107** Specific examples of prison efficiencies gained through innovation brought about by competition will be considered in Chapter 5.

### Corporate reputation

- 3.108** Another argument in favour of privatisation is that the success of private operators relies on maintaining a good image and reputation, and therefore they would not ‘shirk humane responsibility’<sup>170</sup> as some participants have suggested.
- 3.109** This point was enunciated by Mr Lyon, who asserted that the most valuable asset of a service company is its corporate reputation, stating:

These reputations, both internationally and domestically, are contingent on performance. Private companies that operate prisons generally do not wish to operate only one prison. Being businesses, they are always looking for growth opportunities ... If private companies are reprimanded because of poor quality standards, this adversely affects their image and reputation, and also their opportunities for growth and future corporate success. No private sector company would want that.<sup>171</sup>

<sup>166</sup> Commissioner Woodham, Evidence, 23 February 2009, p 5

<sup>167</sup> NSW Public Accounts Committee, *Value for Money from NSW Correctional Centres*, Report No 13/53 (No 156), September 2005, p vii

<sup>168</sup> Mr Sturgess, Evidence, 27 March 2009, p 38

<sup>169</sup> Submission 407, p 5

<sup>170</sup> Mr Lyon, Evidence, 27 March 2009, p 77

<sup>171</sup> Mr Lyon, Evidence, 27 March 2009, p 77

**A 'fresh start'**

- 3.110** The Serco Institute noted that another advantage of privatising a public prison is the opportunity to make a 'fresh start':

At least some of the benefits of competition and contracting seem to come from the opportunity that they provide for an organisation to press the reset button and make a 'fresh start' with a service that is performing poorly or just coasting.<sup>172</sup>

- 3.111** In order to achieve this, some contractors in some jurisdictions have hired all new staff when they have taken over a prison, sometimes even opting to primarily hire staff without any prior experience in corrections.<sup>173</sup> This has been in order to create an entirely new workplace culture overnight, and is discussed further in Chapter 5.

- 3.112** The difficulty faced by public prisons in making such swift and significant changes is discussed in Chapter 7.

***Committee comment***

- 3.113** The Committee heard a range of evidence in favour of and against privatisation. The Committee sees one benefit of this Inquiry being to highlight some of the misconceptions surrounding the private management of prisons in Australia.

- 3.114** It is also the Committee's view, having heard the evidence, that there is considerable weight in the argument that the Government, whether in respect to publicly or privately managed prisons, must adopt a service delivery model which emphasises fulfilling the principles of sentencing, improves inmate welfare, and achieves lower rates of recidivism in a cost effective manner.

- 3.115** While debate should be encouraged, it should also be properly informed. Transparency about the operation of private prisons will go a long way in eliminating misconceptions. This is discussed in Chapter 6.

**The experience of private prisons in Australia and overseas**

- 3.116** The Committee heard a range of both positive and negative experiences of private prisons in Australia and overseas. This section provides a brief summary of the main examples and literature raised in evidence, with a focus on general qualitative outcomes. It does not test the evidence or draw conclusions; it merely serves to highlight the different experiences of prison privatisation in other jurisdictions.

- 3.117** Specific examination of qualitative outcomes and the factors leading to them are considered in Chapter 5 – The impact of privatisation. Quantitative outcomes are considered in Chapter 4.

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<sup>172</sup> Submission 407, p 25

<sup>173</sup> Mr Brian Lawrence, Manager, Acacia Prison Contract, Court Security and Custodial Services, WA Department of Corrective Services, Evidence, 27 March 2009, p 71



## Literature

- 3.118** Inquiry participants quoted a range of international literature to support their arguments either for or against prison privatisation. For instance, to support their argument against privatisation, several submission authors cited US studies by the National Institute of Corrections (1998) and Bureau of Justice Assistance (2001), to note that:

... both suggested that there was no definitive evidence in the research to support the conclusion that privately operated facilities were significantly cheaper or better in quality.<sup>174</sup>

- 3.119** On the other hand, witnesses in favour of privatisation quoted a 2002 Harvard Law Review article, which found that:

... none of the more rigorous studies find quality at public prisons lower on average and most find private prisons outscoring public prisons on most quality indicators.<sup>175</sup>

- 3.120** This same study found that: '[the main savings come from reducing labour costs, both through lower wages and through more efficient use of labour].'<sup>176</sup>

## United States

- 3.121** Several examples were submitted during the Inquiry in relation to private prisons in the US, most of which were negative. One example, referred to by several inquiry participants, involved a recent case where two Pennsylvanian judges pleaded guilty to accepting more than \$US2.6M from a private juvenile detention centre, in return for giving hundreds of youths and teenagers longer sentences.<sup>177</sup>

- 3.122** Another example cited in evidence involved a private prison in Colorado, where upon investigation of a prison riot, the State Auditor found that there had only been 33 prison wardens guarding 1122 prisoners. This equated to approximately one seventh of the warden to inmate ratio found in Colorado's public prisons.<sup>178</sup>

- 3.123** In its submission, the PSA discussed one incident where a private prison in West Texas had 29 areas of non-compliance and was under investigation for civil rights violations. Further, after passing an inspection conducted by the state regulator, it was revealed that the same regulator was a paid consultant for the private operator.<sup>179</sup>

<sup>174</sup> For example, Submission 272, p 2; Submission 107, p 20

<sup>175</sup> 'Developments in the Law - The Law of Prisons', *Harvard Law Review* (2002) Vol. 115: 1838-1961

<sup>176</sup> 'Developments in the Law - The Law of Prisons', *Harvard Law Review* (2002) Vol. 115: 1838-1961

<sup>177</sup> 'US judges admit jailing children for money', *ABC News*, 13 February 2009, <<http://www.abc.net.au/news/stories/2009/02/13/2490498.htm>> (accessed 2 May 2009)

<sup>178</sup> Funnell W, Jupe R & Andrew J, *In Government We Trust: Market failure and the delusions of privatisation*, Sydney, University of New South Wales Press, 2009, p 236

<sup>179</sup> Submission 102, p 6

**3.124** The PSA also referred to an incident in Tennessee, where guards reportedly placed inmates into solitary confinement, ‘thereby by adding 30 days to an inmate’s sentence and earning the company an extra US\$1000’.<sup>180</sup>

**3.125** As discussed earlier in this chapter, the private prison system in the US is substantially different to that of Australia’s, where private operators are not paid on a per prisoner basis. This was acknowledged by the Police Association of New South Wales:

... it is difficult to make comparisons between NSW and the prisons in say, the United States, where systems are radically different and prison populations are massive.<sup>181</sup>

### **United Kingdom**

**3.126** A negative experience, raised in the Community Against Privatisation submission, concerned the UK Government taking back control of the private Ashfield prison, after an independent report was released ‘citing low pay, poor training for an unacceptably high level of reported assaults on inmates and poor discipline’.<sup>182</sup>

**3.127** However, the Committee also heard about positive private prison experiences in the UK. For example, the Serco Institute noted one study conducted on behalf of the Home Office which measured the quality of prison life. The study compared four public prisons and one private prison, and found that the private prison:

... strongly outperformed the public sector facilities on all five ‘relationship’ measures (respect, humanity, support, relationships and trust), and matched or outperformed the others on ‘regime’ measures (fairness, order, safety, wellbeing, prison development, family development and decency).<sup>183</sup>

**3.128** Another positive experience is the Wolds prison, as illustrated by the following case study, based on information provided in the Serco Institute’s submission and answers to questions taken on notice by Mr Sturgess.

#### **HM Prison Wolds**

HM Prison Wolds opened in 1992, and was the first privately operated prison in the United Kingdom. The impetus behind the decision to contract out the prison was largely driven by a group of public officials who sought to introduce groundbreaking prison innovations from the United States, and had previously been prevented from doing so due to resistance by a conservative union.

<sup>180</sup> Submission 102, p 6

<sup>181</sup> Submission 109, p 4

<sup>182</sup> Submission 107, p 8

<sup>183</sup> Submission 407, pp 14-15

The new prison focused on improving the quality of life of prisoners through a variety of innovations. This included significantly increased time out-of-cells and more time spent engaged in purposeful activity. Inmates were treated more humanely by prison officers, who wore softer, non-military style uniforms and nametags; called inmates by their first names; and even ate their meals together with the prisoners.<sup>184</sup>

A philosophy of ‘direct supervision’ was implemented at the Wolds, based on the view that treating inmates more positively and through closer contact with prison officers would reduce disruptive behaviour. These innovations, together with large association spaces and a much higher (one third) proportion of female prison officers compared to public prisons, formed what came to be commonly known as the Government’s ‘decency agenda’.

In 1998 the Chief Inspector of Prisons wrote his second report on the prison, and stated: “Many prisoners, with long experience of time served in many public sector prisons over many years, described to me and my team the cultural shock that they had experienced, stepping out of the usual escort van bringing them from court, into a spotlessly clean reception area, where they were treated as human beings by firm, fair and friendly staff.”<sup>185</sup>

The Inspector went on to comment on the positive environment and experience at the Wolds, and described a ‘general feeling that rehabilitation really is an achievable aim for all except for the most intransigent’.

## Canada

- 3.129** The Committee was informed about an experiment conducted in Ontario where the Government constructed two identical prisons, contracting one out to a private provider, and leaving the other to be run by the Government.<sup>186</sup> The purpose was to assess the advantages and disadvantages of introducing private management into the prison sector.
- 3.130** PricewaterhouseCoopers (PwC) produced the final report on the performance of these two prisons. It found that the private operator had operated in ‘material compliance’ with its contractual obligations, and that its performance was generally satisfactory. PwC advised that extending the private contract for another five-year term appeared to be economically advantageous.<sup>187</sup>
- 3.131** However, the report also found that in relation to quality outcomes, the publicly run prison performed better in the key areas of security, health care and reducing recidivism. As a result

<sup>184</sup> Bottomley A K, James A, Clare E, Liebling A, *Monitoring and Evaluation of Wolds Remand Prison and comparisons with public-sector prisons, in particular HMP Woodhill*, Centre for Criminology and Criminal Justice, University of Hull and the Institute of Criminology, University of Cambridge, 1997, p 18

<sup>185</sup> Submission 407, p 14

<sup>186</sup> See for example Submissions 257 and 437

<sup>187</sup> Ministry of Community Safety and Correctional Services, *Central North Correctional Centre Review and Comparison to Central East Correctional Centre*, 18 April 2006, p 5

of this, the Ontario Government chose not to extend the private operator's contract, and instead took over operation of the prison.<sup>188</sup>

### Victoria

- 3.132** The two main Victorian examples raised in evidence concerned the Metropolitan Women's prison (Deer Park) and the Port Phillip prison.
- 3.133** Deer Park is one of the more prominent private prison examples in Australia. It is the only women's prison in the country that has been operated by a private provider, and also the only private Australian prison that has been taken over by the Government.
- 3.134** The prison first opened in 1996. After a series of problems at the centre, the Victorian Government terminated the private operator's contract in 2000 and took over control of the prison.<sup>189</sup> Some of the problems experienced included 'attempts to reduce children's visitation rights, high levels of electronic surveillance, excessive medication of inmates, [and] poor staff training and retention'.<sup>190</sup> The Community Against Privatisation noted that the Victorian Correctional Services Commissioner had described the prison as 'violent, overcrowded and riddled with drugs'.<sup>191</sup>
- 3.135** The PSA further commented that inadequate staffing arrangements were in place, and that '[d]espite increased use of casuals, the lock down method was used frequently to fill staffing gaps and became "accepted management practice"'.<sup>192</sup>
- 3.136** Deer Park is also discussed in Chapter 6 in the context of public accountability.
- 3.137** The other main Victorian experience raised in evidence concerned the death of five inmates at the privately operated Port Phillip prison. All five deaths occurred within the first six months of the facility opening in 1997. Four of the inmates committed suicide, while the fifth died from a suspected drug overdose.<sup>193</sup> A Coroners Inquest found that both the Victorian Department of Justice and the private prison operator (G4S) 'contributed to the deaths by failing to provide a safe environment for inmates'.<sup>194</sup>
- 3.138** However, positive evidence regarding Port Phillip was also received. For example, the private operator (G4S) informed the Committee that inmates at Port Phillip are given 11.5 hours out-of-cell time, which is double that of many public prisons.<sup>195</sup> G4S also described their relational approach to inmates, involving staff name tags and the ability of inmates to address staff by

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<sup>188</sup> Submission 257, p 4

<sup>189</sup> L Roth, *Privatisation of Prisons*, p 84

<sup>190</sup> Submission 113, Australian Lawyers Alliance, p 12

<sup>191</sup> Submission 107, p 10

<sup>192</sup> Submission 102, p 17

<sup>193</sup> 'Coroner makes finding on Port Phillip', *ABC news*, 27 April 2000 <<http://www.abc.net.au/worldtoday/stories/s121747.htm>> (accessed 1 May 2009)

<sup>194</sup> Submission 113, p 12

<sup>195</sup> Submission 427, p 3

their first name. Likewise, inmates are also addressed by name, rather than number. According to G4S, '[t]hese seemingly small measures have proved important in relaxing tension in our prisons'.<sup>196</sup>

### Western Australia

**3.139** The Committee received evidence that the only private prison in Western Australia, Acacia prison, experienced difficulties in its early days, however has since overcome these problems.

**3.140** One such difficulty was outlined by the PSA, who quoted an article by Jane Andrews to provide an example of how some prison management decisions can effectively constitute the allocation of additional punishment:

Private prison management can also exercise quasi-judicial powers by placing a prisoner in solitary confinement, a practice that amounts to punishment but which does not have to be sanctioned directly by the state. At the Acacia prison in Western Australia the contractor AIMS Corporation came under criticism from the state's inspector, Richard Harding, when he discovered that there was evidence that 'some inmates had been locked in their cell, with the electricity off as a form of punishment'.<sup>197</sup>

**3.141** It was however acknowledged by the WA Government that AIMS Corporation was not meeting expectations, and as such, the contract was put out to re-tender and awarded to another provider, Serco.<sup>198</sup> In evidence, Mr Brian Lawrence, Manager of the Acacia Prison Contract, WA Department of Corrective Services, informed the Committee of a range of positive arrangements that have since been put in place at Acacia. For example:

One of the things they did very early on at that prison was they introduced what we call a pro-social environment. As a prison officer, when they introduced it I thought, "My God, what are we doing?" Staff and prisoners interact. They are on a first name basis. Because it is an open campus style facility, the whole atmosphere of the prison is very good.<sup>199</sup>

**3.142** Serco (among other private operators) has also introduced a range of other successful innovations, which are being implemented into public prisons. This is known as 'cross-fertilisation' and will be considered in Chapter 5.

**3.143** Mr Lawrence advised that the Acacia prison performs better than the public system in all 12 of the Department's key performance indicators, and that they have the best at-risk management programme in the State.<sup>200</sup> According to Assistant Commissioner Grant, this was

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<sup>196</sup> Submission 427, p 4

<sup>197</sup> Submission 102, p 5

<sup>198</sup> Mr Lawrence, Evidence, 27 March 2009, p 71

<sup>199</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

<sup>200</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

further supported in a recent report by Inspector Richard Harding, which noted that the quality of services at Acacia is now being run at 'a very high standard'.<sup>201</sup>

### **Queensland**

- 3.144** One example, provided by the Australian Lawyers Alliance, concerned the Arthur Gorrie prison in Brisbane where there were five suicides within 18 months. In their submission, the Lawyers Alliance quoted an article by Professor Paul Moyle, which found that:

Inmates [at Borallon] have reported they have spent up to 20 hours in their cells, have nominal exercise regimes, poor quality programs, delays in getting access to books from the library, inadequate basic facilities and a high incidence of assaults within the centre.<sup>202</sup>

- 3.145** The Committee invited representatives from Queensland Corrective Services to participate in this Inquiry. Unfortunately however Queensland was in a pre-election period at the time of public hearings, and was unable to send any departmental witnesses to attend.

### **South Australia**

- 3.146** In evidence, Mr Greg Weir, Deputy of Strategic Services and Deputy of the South Australian Department of Correctional Services, reported positive experiences at Mount Gambier prison, South Australia's only private prison.

- 3.147** Mr Weir commented that the prison has been 'operationally effective and has resulted in value-for-money outcomes', adding that data collected through performance monitoring 'support[s] the conclusion that Mount Gambier provides safe, secure and humane care, and it meets the needs of prisoners'.<sup>203</sup>

- 3.148** To verify the independence of these findings, Mr Weir advised that in addition to departmental monitoring, the private prison's performance was also assessed through confidential inmate and staff surveys, independent visiting justices, and the Ombudsman – whom the prisoners have access to through toll-free hotlines. Mr Weir stated: '[t]he advice of our department is that the prison has continued to play an effective role in our overall correctional system'.<sup>204</sup> He further added:

The general feedback from inmates, and there is a pretty high response rate from prisoners, many of whom are down there for quite a prolonged period, is pretty positive with respect to their relationship with staff.<sup>205</sup>

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<sup>201</sup> Assistant Commissioner, Evidence, 23 February 2009, p 18

<sup>202</sup> Submission 113, p 12

<sup>203</sup> Mr Greg Weir, Deputy of Strategic Services and Deputy of SA Department of Correctional Services, Evidence, 27 March 2009, p 12

<sup>204</sup> Mr Weir, Evidence, 27 March 2009, p 12

<sup>205</sup> Mr Weir, Evidence, 27 March 2009, p 14

## Junee

- 3.149** The Committee heard mixed responses regarding the experience at Junee prison. For instance, some inquiry participants provided anecdotal evidence regarding issues with food and clothing,<sup>206</sup> and access to welfare and medical services.<sup>207</sup> Anecdotal evidence from inmates was also provided by Mr Poynder from Justice Action:

... Junee is seen as having wide fluctuations and very inconsistent. It tends to depend, I suppose looking at it from the outside, on what money is available at the time. Some prisoners say it is wonderful, it is a really good place to go and then the next bunch of prisoners will say it is shocking, it is terrible, the service is bad. It tends to be those that go there for a short period of time who might have got there at the time when there is plenty of money floating around in the system actually are generally satisfied. Those that tend to be there for a longer period of time talk about peaks and troughs and inconsistencies.<sup>208</sup>

- 3.150** Other inquiry participants referred to the 2007-08 annual report of the NSW Ombudsman, which found that in recent years the number of complaints received from Junee has been significantly higher than from other similar sized centres.<sup>209</sup> The Ombudsman reported that at one stage, the supply of toilet paper within the prison had run out, resulting in inmates using the remaining rolls as prison currency and stealing them out of cells. It noted that management at Junee were unaware of this situation, however as soon as they found out they rectified the problem.<sup>210</sup>
- 3.151** Concern was also raised in evidence regarding random urinalysis at Junee, where 34.21 per cent of samples tested in September 2007 were found positive for drugs.<sup>211</sup> In response to questioning from the Committee regarding this figure, Mr Domonique Karauria, Executive General Manager Operations, GEO Group Australia, replied:

The simple explanation for it is that as a reception centre our population varies. Of course, we are required under departmental legislation to random test our inmates on a monthly basis. We will have spikes and we will have troughs in terms of positive returns. For the month of February this year we had no positive returns.<sup>212</sup>

- 3.152** Also highlighted during the Inquiry was the fact that Junee prison does not have specific welfare officers. This was discussed by Reverend Rodney Moore, Chaplaincy Coordinator,

<sup>206</sup> Mr Collins, Evidence, 23 February 2009, p 48

<sup>207</sup> Ms Armstrong, Evidence, 20 March 2009, p 81; Submission 309, POVB Goulburn, p 6; Mr Collins, Evidence, 23 February 2009, p 48

<sup>208</sup> Mr Poynder, Evidence, 23 February 2009, p 46

<sup>209</sup> For example, Submissions 351 and 438

<sup>210</sup> NSW Ombudsman, *Annual Report 2007/08*, p 128

<sup>211</sup> NSW Department of Corrective Services, *Annual Report 2007/08*, p 124

<sup>212</sup> Mr Domonique Karauria, Executive General Manager Operations, GEO, Evidence, 20 March 2009, p 22

## NSW Department of Corrective Services:

... the experience at Junee has been that because there are no specific welfare officers with training and expertise the company has expected custodial officers to fill that role – one, I would say, that has not always been totally successful.<sup>213</sup>

**3.153** Reverend Moore noted that as prison officers are not professionally trained in welfare work, the result has been that chaplaincy at Junee has necessarily undertaken a greater role in providing support to inmates than it does at other prisons.<sup>214</sup>

**3.154** However, in support of Junee, Assistant Commissioner Grant provided positive reports that the prison performs as well as, if not better than, New South Wales public prisons in relation to a number of indicators, including escape rates, assault rates and disciplinary problems.<sup>215</sup> These specific indicators are considered separately in Chapter 5.

*Committee comment*

**3.155** The Committee notes the range of evidence regarding the experiences of prison privatisation in other jurisdictions. It is clear that in some instances prison privatisation has failed, however it is also clear that in other instances it has succeeded.

**3.156** While we are of course concerned about the negative experiences that have occurred, we believe that these experiences must be considered in context, as overseas private prison systems may differ from Australian systems. Negative experiences can be used as lessons for what not to do in New South Wales. Equally, the positive experiences can also be learnt from, to determine what *to* do.

**Is it really a matter of public vs private?**

**3.157** While some experiences of prison privatisation in other jurisdictions have demonstrated that privatisation can have appalling results, others have demonstrated that it can be extremely successful. This was acknowledged by Professor Aronson, in summing up the relevant academic literature: '[P]rivatisation is never efficient, it is always efficient, it never works, it always works et cetera'.<sup>216</sup>

**3.158** Professor Aronson pointed out that this is also the case with government. In response to the question of whether privatisation is essentially a 'good' or 'bad' idea, the Professor stated, 'it is too big a question and too grand the answer'.<sup>217</sup>

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<sup>213</sup> Reverend Rodney Moore, Chaplaincy Coordinator, NSW Department of Corrective Services, Civil Chaplaincies Advisory Committee NSW, Evidence, 27 March 2009, p 46

<sup>214</sup> Reverend Rodney Moore, Chaplaincy Coordinator, Civil Chaplaincies Advisory Committee NSW, Evidence, 27 March 2009, p 46

<sup>215</sup> Assistant Commissioner Grant, Evidence, 23 February 2009, p 18

<sup>216</sup> Mr Aronson, Evidence, 23 February 2009, p 53

<sup>217</sup> Mr Aronson, Evidence, 23 February 2009, p 52



**3.159** Several other inquiry participants shared the view that governments should refrain from focusing on whether or not a prison should be run privately or publicly, and should instead focus on quality and outcomes.<sup>218</sup> For example, Mr Lyon commented:

We see this issue not so much about whether a prison is privately or publicly run, but ensuring that the corrective facilities are humane, effective and efficient. Where there is demonstrable evidence that the public or the private sector can achieve these better than the other, a decision based on those outcomes should be the focus.<sup>219</sup>

**3.160** Mr Weir also agreed that it is irrelevant whether a prison is operated publicly or privately, contending that rather the key factors for success are about good management practices:

... about good management practices. So having clear roles and functions, clear accountability, a strong focus on a good culture, a strong focus on staff development and accountability, clear procedures and policies and monitoring and ensuring that the behaviours and the performance is focused on the outcomes the public wants ...<sup>220</sup>

**3.161** A similar view was enunciated in the submission from the NSW Council of Social Services (NCOSS), which focused on health services for inmates. NCOSS Director, Ms Alison Peters, told the Committee: ‘We are ... saying it is not about whether they are public or government services, or private services; it is about what is best to meet the health needs of particularly vulnerable and disadvantaged groups of workers’.<sup>221</sup>

## Conclusion

**3.162** The experience of prison privatisation from around the world demonstrates that privatisation can fail, however it can also be very successful. In terms purely of economic efficiency and effectiveness, it appears that the success of a prison does not come down to a matter of whether it is run publicly or privately, but whether or not there are well-defined performance expectations and appropriate safeguards, monitoring and transparency. These are considered in Chapter 6.

**3.163** The direct evidence in relation to cost and effectiveness does not overwhelmingly support privatisation. In some cases private prisons perform well, in other cases they perform poorly. The same can be said for public prisons. We note the Government’s 2009 decision to proceed with the privatisation of Parklea prison. In evaluating the weight of arguments and evidence from other Australian and international jurisdictions, we do not believe that there is enough evidence to warrant objecting to that decision altogether. The Committee believes that there is a sound argument for introducing competition to the public prison sector, and we agree that a combination of public and private operators can be beneficial for stimulating much needed innovation and efficiencies.

<sup>218</sup> Reverend Moore, Evidence, 27 March 2009, p 45; Mr Lyon, Evidence, 27 March 2009, p 76; Mr Weir, Evidence, 27 March 2009, p 19

<sup>219</sup> Mr Lyon, Evidence, 27 March 2009, p 76

<sup>220</sup> Mr Weir, Evidence, 27 March 2009, p 19

<sup>221</sup> Ms Alison Peters, Director, Council of Social Services of New South Wales, Evidence, 20 March 2009, p 77

**3.164** In later chapters we steer our focus away from whether or not a prison is run publicly or privately, and instead focus on what factors should be in place to ensure quality standards and outcomes in the operation of all prisons in New South Wales.

## Chapter 4 Comparative economic costs

The 2008 decision to contract out the management and operation of Parklea and Cessnock prisons is expected to save approximately \$15 million per annum.<sup>222</sup> As discussed in Chapter 3, these expected savings formed the primary basis of the decision to contract out (‘privatise’) the management and operation of Cessnock and Parklea prisons, and are included in term of reference 2 for the Committee’s inquiry. This chapter examines how the expected savings were calculated, and the difficulties in comparing economic costs of prison administration.

### Cost savings

- 4.1 As touched upon in Chapter 3, the introduction of private providers into the public prison sector can deliver significant savings through the introduction of competition (see paragraphs 3.99 – 3.107). An example was provided from Mr Gary Sturgess, Executive Director of the Serco Institute, that savings of up to 30 per cent have been achieved in private prisons in the United Kingdom.<sup>223</sup>
- 4.2 The Committee heard similar evidence from Mr Brendon Lyon, Executive Director, Infrastructure Partnerships Australia, who cited more modest cost savings of around 11 to 15 per cent in the United Kingdom, and five to 15 per cent saving in the United States.<sup>224</sup>
- 4.3 The claim that contracting out the management of prisons to the private sector delivers savings to governments was discussed extensively during the Inquiry. While some inquiry participants refuted this claim, others, such as Mr Lyon, wholly supported it:
- ... the truth is that there is no robust evidence, none whatsoever, to demonstrate that the private sector operates prisons on average, in Australia or overseas, at greater cost than the public sector.<sup>225</sup>
- 4.4 With regard to the Australian experience, in addition to the New South Wales, the Committee also heard from witnesses involved in managing private prison contracts in Western Australia and South Australia. Both representatives claimed that the privately managed prisons in their jurisdictions returned significant savings. For example, Mr Brian Lawrence, Manager, Acacia prison contract in Western Australia, informed the Committee that Acacia prison is approximately \$15 million per annum cheaper to run than that State’s cheapest public facility.<sup>226</sup>

<sup>222</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Ron Woodham, NSW Department of Corrective Services, Question 179, p 47

<sup>223</sup> Mr Gary Sturgess, Executive Director, The Serco Institute, Evidence, 27 March 2009, p 33

<sup>224</sup> Mr Brendon Lyon, Executive Director, Infrastructure Partnerships Australia, Evidence, 27 March 2009, p 77

<sup>225</sup> Mr Lyon, Evidence, 27 March 2009, p 77

<sup>226</sup> Mr Brian Lawrence, Manager, Acacia Prison contract, Court Security and Custodial Services, Department of Corrective Services, Western Australia, Evidence, 27 March 2009, p 68

4.5 Likewise, Mr Greg Weir, Director Strategic Services, Department of Corrective Services, South Australia, told the Committee that the privately operated Mt Gambier prison is 'extremely price competitive' and 'very much a value for money outcome' when compared with other medium security facilities.<sup>227</sup> Mr Weir explained what he meant by 'value for money':

It is a combination of the price you pay for the services you get, and the risks being appropriately managed. Price is one factor that has taken into account. When we have done our value-for-money assessment and benchmark, we have also looked at factors, for example, or returning services to government whenever we do benchmarking. Our advice has remained around that Mount Gambier contract—that compared to other options, it remains value for money. If the services were poor and the price was the same price as it currently is, I would not describe that as value for money.<sup>228</sup>

4.6 With regard to the private prison at Junee, Commissioner Woodham told the Committee that it is run 'much cheaper' than prisons in the public system.<sup>229</sup> A 2005 NSW Public Accounts Committee report (PAC Report) into the value for money from NSW Correctional Centres calculated that the cost of managing inmates at Junee was \$91.75 per day, compared to the New South Wales public prison average of \$187.80.<sup>230</sup> That report and its cost methodologies are examined later in this chapter.

### Difficulties in comparing costs

4.7 The greatest concern heard by the Committee in relation to claims of cost savings is that no two prisons in New South Wales, or even Australia, are identical. Therefore rather than comparing 'apples with apples', attempted comparisons are really made between 'apples and oranges'.

4.8 This difficulty was identified in the 2004 Auditor-General's report, which noted that costs between prisons were not readily comparable for the following reasons:

- the Department's maximum security facilities have higher operating costs than for medium/minimum security facilities like Junee
- the Department's female prisoner facilities cater for the special needs of prisoners, and have a higher cost structure than male only facilities like Junee
- the Department's correctional centres are generally older and not as cost efficient as newer correctional centres.<sup>231</sup>

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<sup>227</sup> Mr Greg Weir, Director Strategic Services, Department of Corrective Services South Australia, Evidence 27 March 2009, p 14

<sup>228</sup> Mr Weir, Evidence 27 March 2009, p 16

<sup>229</sup> Commissioner Ron Woodham, NSW Department of Corrective Services, Evidence, 23 February 2009, p 5

<sup>230</sup> NSW Public Accounts Committee, *Value for Money from NSW Correctional Centres* (hereafter referred to as the PAC Report), Report No 13/53 (No 156), September 2005, p 1

<sup>231</sup> *Auditor-General's Report to Parliament 2004*, Volume Four, p 240

**4.9** As outlined in Chapter 1, comparison difficulties identified in the Auditor-General's reports to Parliament formed the basis for the PAC Report, which will be discussed later in this chapter.

**4.10** The comparison difficulties were also noted in evidence during this Inquiry by Mr Sturgess, who, while strongly supportive of the savings flowing from privatisation, acknowledged the difficulties in finding suitable comparators:

One of the great challenges ... lies in the difficulty of finding a suitable comparator. Even if two prisons with the same security classification were constructed at around the same time, using similar design, it is probably that their roles and their populations would differ.<sup>232</sup>

**4.11** The reason why the age of a prison, for example, affects cost comparisons, is that the design and layout of older prisons is less efficient than modern centres. This was illustrated by Mr Turner, Assistant General Secretary, Public Service Association of NSW (PSA):

When you are talking about how a brand new prison can work, if you go to Kempsey it has cells, the officers can sit in a watch area and meet people in and out and guard and move people around a lot safer than they can in a prison built in the 1800s.<sup>233</sup>

**4.12** Mr Turner pointed out the inherent problems that arise from trying to compare the 'modern-built prison' at Junee against some of the public prisons in New South Wales, which include 'some of the oldest prisons in the Southern Hemisphere'.<sup>234</sup> Mr Turner explained that the improved layout of newer facilities allows them to operate on lower staff to inmate ratios.<sup>235</sup> This is evident from Table 4.1, which summarises the impact of design on staff numbers, and shows that generally, newer prisons require fewer staff than older ones.

**Table 4.1** Age and inmate, staff numbers, selected New South Wales prisons<sup>236</sup>

| Prison     | Date built | No. inmates | No. staff |
|------------|------------|-------------|-----------|
| Goulburn   | 1863       | 530         | 260       |
| Bathurst   | 1888       | 560         | 120       |
| Grafton    | 1899       | 220         | 120       |
| Long Bay   | 1909       | 650         | 230       |
| Junee      | 1993       | 750         | 180       |
| Kempsey    | 2004       | 650         | 125       |
| Wellington | 2006       | 630         | 126       |

<sup>232</sup> Submission 407, The Serco Institute, p 5

<sup>233</sup> Mr Steve Turner, Assistant General Secretary, Public Service Association of NSW, Evidence, 23 February 2009, p 27

<sup>234</sup> Mr Turner, Evidence, 23 February 2009, p 25

<sup>235</sup> Submission 102, Public Service Association of NSW, p 9

<sup>236</sup> Submission 102, p 9

- 4.13** In evidence, Mr Weir also acknowledged that newer centres are cheaper to run, stating that ‘the design and layout does have very much an effect on the costs of operating a prison’.<sup>237</sup> He suggested that the reason for this was not only related to staff, but also the movement of prisoners:

I think it is fair to conclude that whether a prison be publicly or privately operated, as was mentioned before, the design can have a significant effect on the ongoing costs of operation. It is not just about staffing, obviously; it is about sometimes, in terms of roles and functions, the movement of prisoners, the management of the flow of prisoners through the system, energy costs.<sup>238</sup>

- 4.14** Based on this, some inquiry participants contended that the only reason Junee was cheaper to run was due to it being a modern-built facility, rather than through any efficiencies brought about by the private contractor. However, this argument was rejected by Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia (GEO) who told the Committee:

In the Department's submission it makes mention of the cost of running Mid North Coast, which is Kempsey, which is a fairly new design-built facility. I have not been privileged to be there but I understand it is a very efficient design. To the best of my knowledge, and to the best of my recollection, the cost of that jail is \$171 per day compared with \$124 at Junee. So even there in a new jail, newly designed and newly constructed by the Department, where they have taken on board all the latest design inputs, it is still significantly different - \$50 per day. That again would equate to – if we use the numbers at Junee – to something like \$15 million more than it would cost us to run the facility.<sup>239</sup>

- 4.15** Another factor impacting on accurate cost comparisons relates to the classification and varying needs of inmates. This was raised by Mr Matt Bindley, Chairperson of the Prison Officers Vocational Branch (POVB) of the PSA, who noted that more staff are required at prisons that house certain types of inmates, and as such they necessarily have higher costs:

Some inmates are a lot more labour intensive than others. Traditionally, inmates that require to do programs and who are on protection or segregation are a lot more staff labour intensive than the average run-of-the-mill inmate who is a category-sentenced inmate. When you look at things like that you could say that places like Long Bay that are very heavily orientated to programs have a lot more staff than a place like Bathurst. Both those places are old centres. Bathurst is a sentence jail with normal inmates that does not require the number of staff that Long Bay does due to the nature of the beast. You referred to the nature of illness. I think statistics will show that remand inmates generally go to hospital a lot more often, whether for detoxification for drugs or alcohol or other substances that they have abused. The assault rates appear to be higher in a lot of remand centres than they are in correctional centres where the inmates are sentenced. A lot of that is due, number one, to the high numbers of inmates in these centres, and the other factor would be the unpredictability: a lot of inmates do not know what is happening in their life. They

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<sup>237</sup> Mr Weir, Evidence, 27 March 2009, p 18

<sup>238</sup> Mr Weir, Evidence, 27 March 2009, p 18

<sup>239</sup> Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia, Evidence, 20 March 2009, p 12

are uncertain, they get frustrated with the judicial system, and there is a gang element as well.<sup>240</sup>

- 4.16** The Hon Justice John Dowd, President, International Commission of Jurists Australia, raised similar concerns based on the needs of inmates at Long Bay or the Metropolitan Remand & Reception Centre (MRRC) versus those at Junee:

You get someone running the Long Bay complex or the MRRC. It is a very different proposition to running a Junee-type prison. You cannot compare one with the other – a small prison, as I have indicated, with relatively minor problems, with the enormous high turnover, high visiting, and mental health problems that you get at Long Bay. You are not comparing apples with apples ...<sup>241</sup>

- 4.17** This was also highlighted by the Department of Corrective Services in response to a question on notice asking which DCS prison is closest in size and nature of prison population to Junee:

There is no single NSW correctional centre that is strictly comparable to Junee. Parklea Correctional Centre, MRRC and MSPC are the only centres of a similar size to Junee. The mix of inmates at these centres in terms of classification, protection status and whether they are sentenced or unsentenced is very different.<sup>242</sup>

*Committee comment*

- 4.18** The Committee recognises the difficulties inherent in attempting to compare individual prisons, due to variations such as age, design and inmate classifications. We also accept that new, modern prisons are less expensive to run, and that therefore a direct comparison between Junee and public New South Wales prisons, of itself, is relatively meaningless.

- 4.19** However, given the evidence raised in Chapter 3 regarding efficiencies and innovations introduced by the private sector, the Committee is satisfied that Junee would cost less to operate by a private contractor than by the Department of Corrective Services. Based on this, we are confident that the private management of prisons will also likely produce greater cost savings and efficiencies than if they were to remain in the public system.

- 4.20** The Committee emphasises that based upon the evidence received that the achievement of cost savings are, in and of themselves, not sufficient to justify the privatisation of prisons.

- 4.21** Moreover the Committee notes that the evidence received suggests that the privatisation of correctional facilities can assist in achieving the primary objectives of the operation of the prison system, which are:

1. fulfilling the principles of sentencing
2. improving inmate welfare and

<sup>240</sup> Mr Matt Bindley, Chairperson, Prison Officers Vocational Branch, PSA, Evidence, 23 February 2009, pp 35-36

<sup>241</sup> Hon Justice John Dowd, President, International Commission of Jurists Australia, Evidence, 27 March 2009, p 7

<sup>242</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Mr Woodham, Question 114, p30

3. lowering rates of recidivism  
in a cost effective manner.

### **Nature and size of prisons**

**4.22** In evidence Mr Bezuidenhout was asked by the Committee a question relating to the optimal size for correctional facilities. In answer to the question, he stated:

No. I do not have a strong view on it, but I will give you a practical example. In South Africa currently the Government is tendering for 3,000-bed jails. One jail has 3,000 beds. We are currently running – not the current ones being tendered, but previously tendered – the largest private jail in the world and that is a 3,024-bed jail in South Africa. I understand from comment – and Dom actually worked there – that those become very difficult to manage. So I think you can have an optimal size, but I do not know what that is. On a costs structure, certainly 3,000 would be desirable, but whether from an operational infrastructure point of view it is desirable, that may be debatable.<sup>243</sup>

### ***Committee comment***

**4.23** The Committee acknowledges that in addition to variations in age, design and inmate classification, the cost per inmate per day will be impacted by the size of the correctional facility. In evidence given before the Committee it is plain that there has been a significant increase in the prison population over the past decade. If this increase in inmate numbers continues over the next decade then the size and location of correctional facilities will need further investigation to determine the optimal operational size for correctional facilities.

### **Lack of clarity about private operator's costs**

**4.24** Another difficulty in comparing costs is the lack of available information regarding the private prison at Junee. For instance, the PAC Report, which looked at cost comparisons between New South Wales prisons, noted that the actual operating costs for Junee 'were not available as GEO is a private company that is in competition with other operators in Australia and this information is commercially sensitive'.<sup>244</sup> It therefore came up with its own calculations to determine how much the cost of managing inmates at Junee was per day.<sup>245</sup> The approach to this methodology is considered in the following section.

**4.25** The submission and answers to questions on notice from DCS provide the Committee with much more information on GEO's performance at Junee than was available to the PAC in 2005.

**4.26** However, the difficulties arising from the commercial-in-confidence nature of information regarding GEO's operations were raised again during this Inquiry. The Committee notes that

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<sup>243</sup> Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia, Evidence, 20 March 2009, p 12

<sup>244</sup> PAC Report, p 23

<sup>245</sup> PAC Report, p 1



GEO requested for its submission to the inquiry, and other information including answers to questions on notice to remain confidential on this basis. Because of the timing of the Inquiry, during which GEO were tendering for the management of Cessnock and Parklea prisons, the Committee agreed to GEO's request. The Committee has however decided to publish a few small sections of GEO's evidence which were considered essential for this report.

- 4.27** The Committee acknowledges the frustration of observers and other inquiry participants regarding the lack of publicly available information about GEO's operations, and the resultant difficulties in comparing the performance and cost of Junee and public prisons in New South Wales. The issue of transparency and accountability is discussed in more detail in Chapter 6.

### Cost per inmate

- 4.28** The usual means by which the cost of operating a prison is referred to as the 'average cost per inmate per day'. This forms the basis for the comparison between prisons, and assertions regarding relative value for money.

- 4.29** As mentioned earlier, in the 2005 PAC report the Committee formulated their own method to calculate the cost of managing inmates at Junee. This was done by dividing the 'quoted annual cost amounts' by the number of days in the year, to ascertain a 'cost to DCS of the management fee plus the allocation of department overheads'. It did not calculate the 'actual cost to the private operator'.<sup>246</sup> This methodology has been criticised by the PSA as being a flawed calculation 'which failed to allocate any departmental overheads to the Junee costs and discounted health costs twice'.<sup>247</sup>

- 4.30** The PAC recognised the difficulties in developing a suitable methodology, stating that:

The comparability of costs between correctional centres is a difficult task and stakeholders will always disagree over the methodology including which costs should be included and excluded.<sup>248</sup>

- 4.31** Dr Jane Andrew, University of Wollongong, also criticised the PAC methodology, arguing that the cost ascribed to Junee in the PAC report was an estimate, and based on insufficient information:

... there has been the creation of a figure in order to present some kind of comparative data, but there was not enough information to be able to make those comparisons clear, so it was an estimate in terms of the private prison.<sup>249</sup>

- 4.32** Dr Andrew noted the report's findings that the cost of managing prisoners at Junee was approximately \$91 per day, whereas the cost per day for prisoners in the public system was

<sup>246</sup> PAC Report, p 1, footnote 2

<sup>247</sup> Submission 102, p 8

<sup>248</sup> PAC Report, p 23

<sup>249</sup> Dr Jane Andrew, Senior Lecturer and Director Social Accounting, University of Wollongong, Evidence, 20 March 2009, pp 56-57

approximately \$185 per day, remarking to the Committee:

Obviously that looks significantly different and if I was the average taxpayer and I saw that I would think, "Wow, we're crazy to do it any other way", but on closer inspection we are not comparing the same things and we do not know where the \$91 figure came from.<sup>250</sup>

**4.33** Adding to this, Dr Andrew & Dr Damien Cahill, University of Sydney, raised the necessity of including departmental overheads in calculating the cost per inmate per day:

Any overhead costs to the public sector incurred through the management of individual prisons or the prison sector itself that are included in the costs per inmate of public prisons must also be included in the cost calculations for any private provider. This includes, but is not limited to, departmental overheads, as well as the costs associated with contract compliance, and any costs associated with the buildings and grounds of the private sector prison that are borne by the government.<sup>251</sup>

**4.34** To improve consistency in assessing and reporting performance, the PAC's Recommendation 6 recommended that:

- Individual correctional centres should be compared on the basis of direct costs and other relevant indicators for internal management purposes;
- The cost of outsourcing the management of the Junee Correctional Centre should be compared to direct costs of the publicly managed facilities; and
- The Report on Government Services issued by the Productivity Commission should be used to compare the performance of the Department of Corrective Services against other jurisdictions.<sup>252</sup>

**4.35** The Government's Response to Recommendation 6 noted that DCS was working on improvements to their method of calculating and reporting costs to make them more robust and comparable. This included:

- a. Vigilant use of activity codes to allocate costs to the inmate classifications in each correctional centre.
- b. [using] direct costs only (and exclude cost of health services) when using inmate cost per day in comparing correctional centres within DCS (including Junee Correctional Centre), with other jurisdictions and with other private sector providers.
- ...
- f. [ensuring] that key result indicators used for external reporting (ie Annual Report, Productivity Commission Report, State Budget Papers) are consistent

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<sup>250</sup> Dr Andrew, Evidence, 20 March 2009, p 56

<sup>251</sup> Submission No 172, Dr Jane Andrew, University of Wollongong & Dr Damien Cahill, University of Sydney, p 3

<sup>252</sup> PAC Report, Recommendation 6, p 30

and comparable with other jurisdictions and private-sector service providers.<sup>253</sup>

**4.36** Four years after the PAC report, DCS now allocates overheads to the direct cost per inmate per day to calculate a ‘fully absorbed cost’ per inmate per day. Deputy Commissioner Gerry Schipp, Corporate Services, DCS, explained the Department’s current methodology as it applies to Junee:

In the case of Junee, that is the cost of monitoring not only the costs that we pay directly to GEO but also the internal costs that are incurred in monitoring the contract. A percentage of the corporate overheads, not just obviously the corporate overheads of GEO themselves, are incorporated into the fee that we pay them. That is the fully absorbed comparison.<sup>254</sup>

**4.37** The ‘direct cost’ is the fee paid to GEO under the contract to manage Junee – \$100 per inmate per day. The Department advised the Committee that the ‘fully absorbed cost’ per inmate per day is \$124.29.<sup>255</sup> From this, the Committee infers that DCS attributes approximately \$24 per inmate per day to Junee for Departmental overheads and the cost of managing the contract.

**4.38** Mr Bezuidenhout affirmed that the \$100 per day per inmate includes the GEO management fee and health costs – ‘there are no additional charges including the cost of health in our case; it includes everything we do’,<sup>256</sup> encompassing food costs, pharmacy and prisoner hygiene costs.<sup>257</sup>

**4.39** Despite the difficulties in comparing prisons (discussed earlier), the Department provided the Committee with two cost comparisons. The first is the ‘fully absorbed’ cost per inmate per day at Junee compared with the cost at Bathurst, Grafton and Mid-North Coast (Kempsey) prisons, summarised in Table 4.2. These prisons were chosen as they have a number of overlapping attributes to Junee.<sup>258</sup>

**Table 4.2 Cost per inmate per day 2007-08<sup>259</sup>**

|                         | Junee CC<br>\$ | Bathurst CC<br>\$ | Grafton CC<br>\$ | Mid-North<br>Coast CC \$ |
|-------------------------|----------------|-------------------|------------------|--------------------------|
| <b>Medium security</b>  | 126.79         | 137.12            | 215.91           | 166.76                   |
| <b>Minimum security</b> | 112.78         | 169.89            | 178.27           | 186.20                   |

<sup>253</sup> Government Response to PAC Report No 13/53 (No 156), July 2006, p 4

<sup>254</sup> Deputy Commissioner Gerry Schipp, Corporate Services, DCS, Evidence, 23 February 2009, p 8

<sup>255</sup> Submission 258, NSW Department of Corrective Services, pp 21-22

<sup>256</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 8

<sup>257</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 7; Mr Frank Thorn, Executive General Manager Finance and Administration, The GEO Group Australia Pty Ltd, p 7

<sup>258</sup> Submission 258, p 4

<sup>259</sup> Submission 258, pp 21-22. The Committee notes that the figures in Table 4.1 do not include health costs for services provided by Justice Health within the publicly operated centres, whereas the Junee above include all health services provided at Junee by GEO Group.

|   |               |               |               |               |
|---|---------------|---------------|---------------|---------------|
| <b>Minimum security plus periodic detention</b> | 112.78        | 160.66        | 168.86        | 186.20        |
| <b>Total (derived)</b>                          | <b>124.29</b> | <b>141.27</b> | <b>187.96</b> | <b>171.23</b> |

4.40 The second comparison provided to the Committee by DCS is the minimum and medium security costs per day at Junee with the New South Wales average for the same classification, summarised in Table 4.3:

**Table 4.3 Minimum and medium cost per day, Junee and New South Wales<sup>260</sup>**

|                         | <b>Junee CC<br/>\$</b> | <b>New South Wales (ex Junee)<br/>\$</b> |
|-------------------------|------------------------|--|
| <b>Minimum security</b> | 126.79                 | 203.17                                   |
| <b>Medium security</b>  | 112.78                 | 171.66                                   |
| <b>Total (average)</b>  | 124.29                 | 184.03                                   |

4.41 Mr Bezuidenhout commented on these comparisons, and extrapolated that private management of Junee prison saves New South Wales approximately \$17 million per year based on the figures provided by DCS:

In the Department of Corrections submission they have indicated that the fully absorbed costs of Junee are \$124.29, against the statewide average for minimum and medium security prisons of \$184.03. That is a difference of \$60 per day per prisoner.

If you extrapolate that figure, if Junee was running at the average cost to the State for minimum and medium security jails, it would cost the taxpayers of this State something like \$17 million more every year. That is an irrefutable statement in the Department's submission. In fact, we are not sure how the Department allocated the fully absorbed costing to us, because the direct cost—that is a fixed figure that we charge the Department—is less than \$100 a day. I am not going to even try to extrapolate that figure to give you an indication of how much we truly save the State and the taxpayers of New South Wales. Those moneys can truly go to other worthwhile causes, such as education, hospitalisation, health services and transport.<sup>261</sup>

4.42 Dr Andrew was still sceptical during this Inquiry of the Department's updated costing methodology, telling the Committee that she and Dr Cahill believe the basis for the costings 'remain unclear'. Referring to the evidence given by representatives of DCS on the first day of public hearings, Dr Andrew said:

Although Mr Schipp made some statements about direct and absorbed costing methodologies and recommended those to the Committee in February, we remain unsure about the nature of these methodologies and whether they enable a real comparison between the public and private sector. Indeed, we would urge the Committee to re-read the transcript because we believe the costings still remain unclear.<sup>262</sup>

<sup>260</sup> Submission 258, p 22

<sup>261</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 3

<sup>262</sup> Dr Andrew, Evidence, 20 March 2009, p 54

- 4.43 Citing a lack of publicly available evidence of claims of improvements in costing methodology, Dr Andrew called on the Government to provide evidence that the new methodology is ‘robust enough to enable comparisons’ between diverse institutions run on very different models.<sup>263</sup>

*Committee comment*

- 4.44 The Committee believes that it is vitally important that the public can trust the methodology upon which claims of prospective cost savings, which underpinned the decision to privatise Cessnock and Parklea prisons, are made. The Committee believes that recommendations in Chapter 6 of this report, to increase transparency and accountability, may assist in this regard.
- 4.45 While we acknowledge that DCS has made an effort to improve its costing methodology since the PAC report in 2005, we also note that concerns about the new methodology remain. The Committee is of the view that DCS did not fully explain how departmental overheads are calculated and applied to each prison. We therefore recommend that DCS publish details of its costing methodology, focusing on the allocation of departmental overheads to both public and private prisons.

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**Recommendation 3**

That the Department of Corrective Services publish details of its costing methodology, focusing on the allocation of departmental overheads to both public and private New South Wales prisons.

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**Qualitative measures**

- 4.46 Inquiry participants noted that the overall cost savings of a prison should be viewed in conjunction with the overall quality of that prison’s services. This point was raised earlier in the comment by Mr Weir regarding how to determine what is really ‘value for money’ (paragraph 4.5).
- 4.47 The Report on Government Services produced by the Productivity Commission also cautions against a sole reliance on quantitative measures of quality:

Efficiency indicators are difficult to interpret in isolation and should be considered in conjunction with effectiveness indicators. A low cost per prisoner, for example, may reflect less emphasis on providing prisoner programs to address the risk of re-offending. Unit costs are also affected by differences in the profile of the prisoner and offender populations, geographic dispersion and isolation factors that limit opportunities to reduce overheads through economies of scale.<sup>264</sup>

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<sup>263</sup> Dr Andrew, Evidence, 20 March 2009, p 54

<sup>264</sup> Australian Productivity Commission, *Report on Government Services 2009*, p 8.23

**4.48** This point was similarly raised by Drs Andrew and Cahill, who stressed the importance of non-economic measures:

... an appropriate comparison of public and private prison management and provision must go beyond the issue of economic cost. An important trend among liberal democratic states has been the adoption of the principle of 'value for money' in the provision of public services. While this is, at face value, a laudable goal, research suggests that the goal of 'value' is often simply evaluated with reference to cost. As Grimsey and Lewis (2005:375) argue 'the value for money test frequently comes down to a simple, single point comparison between two procurement options ... the problem is that value for money is more often than not poorly understood and often equated with the lowest cost.'<sup>265</sup>

**4.49** In evidence, DCS maintained that the savings delivered by the private operators of Junee are not at the expense of performance:

From the available data it can be concluded that the operations of Junee by the current provider is significantly less expensive than if the public sector were to provide the service. This outcome is achieved without any degradation of performance.<sup>266</sup>

**4.50** The impact on the service quality provided in cheaper operating private prisons is considered in the next chapter.

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<sup>265</sup> Submission 172, p 4

<sup>266</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 122, p32

## Chapter 5 The impact of privatisation

Chapter 3 considered the broad potential impacts of privatisation on inmates. This chapter examines specific potential impacts of privatisation listed under the Committee's terms of reference, as well as some other key impacts raised in evidence regarding prison staff and their families, affected communities, inmate health services, and the flow-on effect of privatisation on public prisons.

### Prison staff and their families

**5.1** A large proportion of submissions received during the Inquiry were from prison officers and their families who were concerned about the impact of the 2008 decision, including on job security and the possibility of having to relocate.

**5.2** As part of its 2008 decision, the NSW Department of Corrective Services (DCS) advised that staff at Parklea and Cessnock had three available options. They could either:

- transfer to another location within the Department
- apply to work with the new provider, with a 12 month guarantee of salary maintenance, or
- take a voluntary redundancy.<sup>267</sup>

**5.3** Commissioner Ron Woodham from DCS explained these options to the Committee:

Those are the three main options. We are trying to place as many people as we can close to where they want to stay. By the end of next week there will be 48 people moving out of Cessnock. We have already offered voluntary redundancies at places like St Heliers, where a number of officers have taken up that option, and that will give people at Cessnock more places so they do not have to move away from their homes. I have also approved a number of extra staff to become parole officers in that area if they wish. We have parole officers at Maitland, Newcastle, on the Central Coast at Gosford, and at Muswellbrook, so hopefully they will not have to move away from where they live. We are doing everything we can there.<sup>268</sup>

**5.4** Commissioner Woodham reiterated previous public statements and correspondence to DCS staff that 'no single staff member will need to lose their job as a result of these reforms'.<sup>269</sup>

**5.5** In answers to questions taken on notice, the Commissioner provided further detail regarding the numbers of officers who had accepted redundancies or transfers. At 20 May 2009, there had been no offers of voluntary redundancy made to officers at Parklea prison. Table 5.1

<sup>267</sup> Commissioner Ron Woodham, Department of Corrective Services, Evidence, 27 March 2009, p 50

<sup>268</sup> Commissioner Woodham, Evidence, 27 March 2009, p 63

<sup>269</sup> Commissioner Woodham, Evidence, 23 February 2009, p 4

illustrates the redundancies offered and accepted at Cessnock prison:

**Table 5.1 Redundancies offered & accepted – Cessnock prison<sup>270</sup>**

|   | Offered   | Accepted  |
|---|-----------|-----------|
| <b>Custodial</b>                        | 32        | 22        |
| <b>Industries</b>                       | 8         | 2         |
| <b>Offender Services &amp; Programs</b> | 8         | 2         |
| <b>Administration</b>                   | 4         | 1         |
| <b>Total</b>                            | <b>52</b> | <b>27</b> |

5.6 Table 5.2 illustrates the number of staff at Parklea and Cessnock who have agreed to be relocated:

**Table 5.2 Transfers offered & accepted – Parklea and Cessnock<sup>271</sup>**

| CESSNOCK                                | Permanent transfers | Current temporary placements |
|---|---------------------|------------------------------|
| <b>Custodial</b>                        | 19                  | 5                            |
| <b>Offender Services &amp; Programs</b> | 2                   | 1                            |
| <b>Administration</b>                   | 1                   |                              |
| <b>Total</b>                            | <b>22</b>           | <b>6</b>                     |
| <b>PARKLEA</b>                          |                     |                              |
| <b>Custodial</b>                        | 34                  | 15                           |
| <b>Industries</b>                       | 2                   | 2                            |
| <b>Offender Services &amp; Programs</b> | 4                   | 8                            |
| <b>Administration</b>                   |                     | 1                            |
| <b>Total</b>                            | <b>40</b>           | <b>26</b>                    |

5.7 Cessnock staff have agreed to transfer to a number of locations, including prisons at Berrima, Broken Hill, Cooma, Goulburn, Long Bay and Mid North Coast, and district offices at Gosford, Newcastle, Maitland and Muswellbrook.<sup>272</sup>

5.8 Despite the Commissioner's assurances, Inquiry participants expressed apprehension about all three options. For example, concerns regarding the potential impact of transferring to another

<sup>270</sup> Answers to questions taken on notice during evidence, 27 March 2009, Commissioner Woodham, question 4, p 3

<sup>271</sup> Answers to questions taken on notice during evidence, 27 March 2009, Commissioner Woodham, question 5, pp 3-5

<sup>272</sup> Answers to questions taken on notice during evidence, 27 March 2009, Commissioner Woodham, question 5, pp 3-5



location were illustrated in Submission 438:

I know many of the staff at Cessnock Correctional Centre and this decision has mortified them, especially those with young families and established social networks, and this does not even touch on the financial difficulties they will experience should they be forced to move to Sydney. Many own homes in what is classed as a cheaper housing area. Imagine the prospect of selling your 4 bedroom family home in Cessnock for less than \$300,000.00 and facing the prospect of having to buy a 4 bedroom home in the Sydney metropolitan area.<sup>273</sup>

- 5.9** For a Cessnock prison officer with a family, the reality of transferring to another location could either mean that their family would have to be uprooted, breaking community ties and in many instances pulling children out of school; commuting significant distances each day; or potentially being separated from their families for extended periods of time.
- 5.10** The second option of applying for a job with the incoming provider also caused considerable angst among prison staff. One of the fears expressed by prison officers was based on the knowledge that private operators in other jurisdictions have, in some instances, chosen to employ all new staff.
- 5.11** The rationale for private providers taking this approach is so that they can quickly introduce a ‘radically different culture’ into an existing prison.<sup>274</sup> Some providers have even opted to employ staff with no prior experience or background in corrections to further facilitate this goal.<sup>275</sup> While this approach could be of significant benefit to other community members, it would clearly be undesirable to existing prison officers.
- 5.12** However, in response to this concern, Corrective Services Minister, the Hon John Robertson MLC, advised that the incoming provider will be required to invite all existing personnel at Parklea to participate in a merit selection process for available positions, and that existing staff will be given priority over external applicants of equal merit. Further, the Minister provided assurance that personnel who are unsuccessful in securing a position with the new provider will be given a position elsewhere in DCS, should they wish to stay with the Department.<sup>276</sup> The Commissioner also stated to the Committee:
- I would say that if they have a reasonable work record, with the number of people that have elected to leave Cessnock they will be offering the greater majority of staff, if not all, a job if they want one.<sup>277</sup>
- 5.13** The Committee notes that the Minister for Corrective Services was invited to appear before the Committee to give evidence but declined to do so.

<sup>273</sup> Submission 438, Name suppressed, p 5

<sup>274</sup> Submission 407, The Serco Institute, p 25

<sup>275</sup> Mr Brian Lawrence, Manager, Acacia Prison Contract, Court Security and Custodial Services, WA Department of Corrective Services, Evidence, 27 March 2009, p 71

<sup>276</sup> *NSWPD (Proof, Legislative Council)*, 6 May 2009, p 14681

<sup>277</sup> Commissioner Woodham, Evidence, 27 March 2009, p 62

- 5.14** Even if successful in securing a job with a private provider, concerns were raised regarding superannuation and wage rates. For instance, Mr Steve Turner, Assistant General Secretary, Public Service Association of New South Wales (PSA), highlighted that many of the affected prison officers are longer-term staff in old super schemes, and therefore unless they transfer to somewhere else within the public sector they will lose their superannuation entitlements.<sup>278</sup> With regard to wage rates, inquiry participants noted that the wage guarantee with the new provider only exists for a period of 12 months, after which there is no certainty as to what the wage rates might be. This is considered later in this chapter in the section ‘Staffing levels and employee conditions’.
- 5.15** The final option, to take a voluntary redundancy, was also criticised, as prison officers expected to face difficulties finding new jobs in the global financial crisis.<sup>279</sup> This particularly would have been the case for officers wishing to remain in Cessnock had it not been for the 2009 decision, as Cessnock currently has an unemployment rate of seven per cent (compared to the State average of 4.2 per cent), making it the most disadvantaged local government area in the Hunter region.<sup>280</sup> Further to this, as noted by the author of Submission 3, ‘[i]f they go on unemployment benefits, which a lot will, it will end up costing the taxpayers anyway’.<sup>281</sup>
- 5.16** The Committee also received evidence from teachers employed at Parklea and Cessnock voicing the same concerns. Additionally, teachers expressed concern that if they remained with the private operator, they may lose their status as permanent employees, which is what they told the Committee happened to teachers at Junee prison.<sup>282</sup>
- 5.17** These concerns and uncertainties have impacted severely on the morale of prison staff. The Committee received evidence about numerous officers becoming depressed and experiencing personal problems. For example, Mr Frank Darcy stated in his submission, ‘I know of at least 2 couples [that] are experiencing marital problems and there could be many more between now and August. Many are resorting to alcohol to deal with their depression’.<sup>283</sup>
- 5.18** Similarly, the Committee heard serious concerns about the welfare of colleagues from the author of Submission 5a:

Myself and a number of other staff are fearful that one (or more) ... work colleagues that are presently exhibiting severely depressed indications (their fragility is obvious at times, even to an untrained eye) may resort to more drastic means of coping with their anxiety.<sup>284</sup>

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<sup>278</sup> Mr Steve Turner, Assistant General Secretary, Public Service Association of New South Wales, Evidence, 1 April 2009, p 5

<sup>279</sup> Submission 263, pp 3-4

<sup>280</sup> Mr Tony Howen, Delegate, POVB Cessnock, PSA, Evidence, 1 April 2009, p 4

<sup>281</sup> Submission 3, Name suppressed, p 1

<sup>282</sup> Mr Robert Lipscombe, President, New South Wales Teachers Federation, Evidence, 20 March 2009, p 23

<sup>283</sup> Submission 274, Mr Frank Darcy, p 1

<sup>284</sup> Submission 5a, Name suppressed, p 5

*Committee comment*

- 5.19** The Committee considers that the refusal of the Minister to give evidence before the Committee hampered the Committee's capacity to understand the Government's reasoning behind the making of the 2008 decision.
- 5.20** The Committee notes the concerns raised by prison officers and their families. It is clear that for many staff affected by the decision to privatise, none of the three options available to them are satisfactory, and many prison officers will be left with no choice other than to accept a disadvantageous option. Whilst this is not a desirable outcome, the Committee emphasises that the primary goals of the operation of a prison system are to:
1. fulfil the principles of sentencing
  2. improve inmate welfare and
  3. lower rates of recidivism
- in a cost effective manner.

**Cessnock community**

- 5.21** While the decision to privatise Cessnock prison has been overturned, the concerns regarding the impact of privatisation on the Cessnock community are still relevant for understanding why the Government made its 2009 decision. They are also relevant for appreciating the concerns that other regional communities may have should they be affected by privatisation in the future.<sup>285</sup>
- 5.22** The Committee received numerous submissions during the Inquiry from residents of Cessnock concerned about how privatisation would affect their community, which – previously mentioned – is already significantly disadvantaged. Cessnock's Local Government area currently has the highest unemployment rate and lowest household income in the Lower Hunter region.<sup>286</sup> Adding to the disadvantage, in February 2009 the Pacific Brands factory was forced to close due to the global financial crisis, resulting in the loss of 83 local jobs.<sup>287</sup> The Community Against Privatisation further noted that regional jobs have been lost from the Health Service Laundry Division at Allandale.<sup>288</sup>
- 5.23** Anxious residents were also worried that privatising Cessnock prison would have a negative impact on local businesses, largely due to the likelihood of the new provider employing fewer staff and on lower wages,<sup>289</sup> thus reducing the amount of money being spent in the

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<sup>285</sup> For example, as discussed at the beginning of chapter 3, the NSW Government is conducting a feasibility study into replacing Grafton prison with a privately financed, constructed and operated centre.

<sup>286</sup> Submission 107a, CAP, p 1

<sup>287</sup> Mr Ryan, Evidence, 20 March 2009, p 35

<sup>288</sup> Submission 107a, p 1

<sup>289</sup> Submission 257, Ms Lyndsay Kruse, pp 4-5

community. This view was echoed by Mr Turner from the PSA:

... when you have a jail already in that community, which is the case at Cessnock, and you privatise it when the whole reason for privatising is to attack the unionised workforce, to have fewer workers on-site and pay them less, you are actually taking money out of the community, not putting more money into the community.<sup>290</sup>

- 5.24** Further, according to Councillor Graham Smith from Cessnock City Council, the impact of reduced staff numbers at the prison could have a negative flow-on effect to the community if families are then forced to relocate to find work:

Then there is the ripple effect which goes out into the community from changes such as this in terms of loss of enrolments in schools, which means that, in many cases, there will be staffing changes, there will be forced changes to teachers who are employed in the local schools – they will have to move: the effect on the real estate industry if a substantial number of houses come on the market; if there is a glut of housing, what is going to happen there and will the people who are moving out be able to sell or lease their houses: the loss of trade to local businesses.<sup>291</sup>

- 5.25** In response to these concerns, the Managing Director of the GEO Group Australia, Mr Pieter Bezuidenhout, asserted that GEO actually has a positive effect on the local communities in which their private prisons operate. Giving the example of Junee, Mr Bezuidenhout commented:

We employ local staff and we have had a community consultative committee in place since the inception of the jail and we return in excess of \$25 million annually into the local area in terms of buy-local policy; the salaries and wages that we pay. We do not buy on a national basis.<sup>292</sup>

- 5.26** The latter point raised by Mr Bezuidenhout was also emphasised by Commissioner Woodham, who noted that DCS are locked into government contracts; whereas private providers are not, and can therefore purchase goods locally:

... four out of the five people that are interested in tendering for these two jails now and have been selected to prepare a tender said they would even do things like buying motor vehicles at the local town. So it can be a very beneficial proposition.<sup>293</sup>

- 5.27** However, according to Councillor Smith, while the private prison at Junee promised a strong commitment to local community trade when it initially opened, anecdotally that has waned over time.<sup>294</sup>

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<sup>290</sup> Mr Turner, Evidence, 23 February 2009, p 26

<sup>291</sup> Councillor Graham Smith, Cessnock City Council, Evidence, 20 March 2009, p 44

<sup>292</sup> Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd, Evidence, 20 March 2009, p 4

<sup>293</sup> Commissioner Woodham, Evidence, 23 February 2009, p 12

<sup>294</sup> Clr Smith, Evidence, 20 March 2009, p 44

- 5.28** Mr Bezuidenhout gave further evidence of the positive support provided by the private prison in Junee to the community, in order to demonstrate how Parklea and Cessnock could likewise benefit:

We have undertaken over 250,000 hours of reparative work for the benefit of the shire and we have built better lives for the people in our community through our donations, our scholarships and our support.<sup>295</sup>

*Committee comment*

- 5.29** The Committee is of the view that the community concerns are genuine, however they would appear to be unfounded if one was to believe the information provided by GEO. It is important that the Government considers the impact of decisions on local communities and local community concerns, particularly in regional areas and in areas suffering economic disadvantage.

**Public safety and rates of escape**

- 5.30** The Committee did not receive any evidence that public safety would be compromised, or that rates of escape would significantly increase as a result of privatisation; although it did receive evidence of community concerns about the prospect, and claims by the PSA about safety.
- 5.31** DCS advised that from June 1997 to July 2008, the average annual escape rate for all categories of escape from Junee prison was 0.05 per 100 prisoner years, compared to the New South Wales annual average rate during the same period of 0.43.<sup>296</sup> Mr Bezuidenhout pointed out that this is one-tenth of the state average.<sup>297</sup>
- 5.32** With regard to the experience in other jurisdictions, Mr Weir from the South Australian Department of Correctional Services advised that in general, the performance of the private prison at Mount Gambier ‘has been consistent with our other prisons and in line with the sorts of targets and indicators that we monitor across our system’.<sup>298</sup>
- 5.33** Similarly, the Serco Institute submitted that evidence from the UK ‘suggests that rates of escape in the contract prisons are comparable to those in the public estate’.<sup>299</sup> Positive outcomes were also reported by G4S in relation to its maximum security complex at Port Phillip, which has not had a single escape since it opened in 1997.<sup>300</sup>
- 5.34** DCS further stated that essential security infrastructure at Junee (and at the prospective private prisons at Parklea and Cessnock) is provided by the NSW Government, to ensure

<sup>295</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

<sup>296</sup> Submission 258, NSW Department of Corrective Services, p 4

<sup>297</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 3

<sup>298</sup> Mr Greg Weir, Deputy of Strategic Services and Deputy of SA Department of Correctional Services, Evidence, 27 March 2009, p 12

<sup>299</sup> Submission 407, p 18

<sup>300</sup> Submission 428, G4S Australia Pty Ltd, p 2

consistently high standards across the state.<sup>301</sup> It maintained that the most important security element is the inmate classification and placement process, which it informed the Committee is done independently of the private operator.<sup>302</sup>

Rigorous and objective assessment of security risk is used as the basis for ensuring that inmates are appropriately matched to the level of security provided by the centre. The classification process is controlled from an independent unit in Sydney and decision making is not the responsibility of the private provider. Therefore the two most important security elements are independent of the private operator.<sup>303</sup>

**5.35** The Department praised the escape record at Junee Correctional Centre, and argued that it is proof that safety is not jeopardised through privatisation.<sup>304</sup>

### Incidence of assault on inmates and staff

**5.36** The rate of assaults by inmates at Junee varies in comparison to other comparable prisons,<sup>305</sup> with Junee outperforming some of those prisons in some areas, and underperforming in others. These are illustrated in the following tables provided in the Department's submission.

**Table 5.3 Assaults by prisoners on officers; 2001-02 to 2007-08<sup>306</sup>**

| Average annual assault rate per 100 prisoner years | Junee CC | Bathurst CC | Grafton CC | Mid-North Coast CC <sup>307</sup> |
|--|----------|-------------|------------|-----------------------------------|
| Serious assaults                                   | 0.00     | 0.00        | 0.00       | 0.00                              |
| Minor assaults                                     | 0.61     | 0.77        | 1.16       | 0.65                              |

**5.37** Table 5.3 shows that from 2001 to 2008, Junee had a lower average rate of minor assaults by prisoners on officers than the other three prisons, and had no serious assaults by prisoners on officers (neither did the other prisons). Referring to the comparison, Mr Bezuidenhout told the Committee 'if the department's is expressed as a ratio of one, Junee's figure is 0.57, almost 50 per cent less than the department's.'<sup>308</sup>

<sup>301</sup> Submission 258, p 4

<sup>302</sup> Submission 258, p 4

<sup>303</sup> Submission 258, p 4

<sup>304</sup> Submission 258, p 5

<sup>305</sup> As there is no identical centre to Junee, DCS has provided comparisons with Grafton, Bathurst and the Mid-North Coast prisons, as they have a number of overlapping attributes. The difficulty in comparing prisons was discussed in chapter 4.

<sup>306</sup> Submission 258, Table 3(a), p 6

<sup>307</sup> These results are only for a four year period as the Mid-North Coast prison opened on 15 July 2004.

<sup>308</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 3

**Table 5.4 Assaults by prisoners on prisoners; 2001-02 to 2007-08<sup>309</sup>**

| Average annual assault rate per 100 prisoner years | Junee CC | Bathurst CC | Grafton CC | Mid-North Coast CC <sup>310</sup> |
|--|----------|-------------|------------|-----------------------------------|
| Serious assaults                                   | 0.49     | 0.48        | 0.66       | 0.36                              |
| Minor assaults                                     | 15.72    | 16.97       | 15.06      | 16.19                             |

**5.38** Table 5.4 indicates that in the same period, Junee had a similar rate of average assaults by prisoners on prisoners as Bathurst, a lower rate than Grafton, yet a higher rate than the Mid-North Coast prison. In relation to minor prisoner on prisoner assaults, Junee had a marginally lower rate than the Bathurst and Mid-North Coast prisons, and a slightly higher rate than Grafton.

**5.39** DCS advised that the mix of inmates in a prison influences the rate of inmate assaults. The Department submitted that prisons with higher security classification inmates and larger numbers of mentally unstable inmates usually have higher assault rates, as do prisons with higher amounts of new receptions (as is the case at Junee), as many of those inmates may be agitated and withdrawing from drugs.<sup>311</sup> Taking these factors into consideration, DCS concluded:

The rate of assaults by inmates in the privately operated Junee Correctional Centre is within expectations. If anything it is lower than expected given the inmate mix.<sup>312</sup>

**5.40** The Committee also received evidence that assault rates at private prisons in the UK are marginally higher than the assault rates at public prisons.<sup>313</sup> However, the Serco Institute insisted these rates should not be taken at face value. It suggested that one possible explanation for the higher rates could be a result of different reporting protocols, noting that ‘the contract prisons face stiff financial penalties for failure to declare even minor altercations, whereas the public prisons have no such incentives’.<sup>314</sup> This is considered further in Chapter 6 in relation to Performance Linked Fees.

**5.41** To further support this argument, Serco referred to a 2004 study by Alison Liebling comparing four public prisons to one private prison (Doncaster), which had the second highest assault rates out of the five prisons. Liebling reported:

... when prisoners were asked whether they felt safe, Doncaster ranked equal with the best ... In short, there did not appear to be a strong correlation between what the statistical reports and what the prisoners were saying.<sup>315</sup>

<sup>309</sup> Submission 258, Table 3(b), p 6

<sup>310</sup> These results are only for a four-year period as the Mid-North Coast prison opened on 15 July 2004.

<sup>311</sup> Submission 258, p 5

<sup>312</sup> Submission 258, p 7

<sup>313</sup> Submission 407, p 15

<sup>314</sup> Submission 407, p 15

<sup>315</sup> Submission 407, p 15

*Committee comment*

**5.42** Based on the evidence provided during this Inquiry, the Committee is satisfied that there is no evidence to suggest that assaults on inmates and/or staff are likely to increase as a result of privatisation.

**Disciplinary breaches**

**5.43** The Committee's terms of reference 1(c) require it to examine the impact of privatisation on disciplinary breaches. Inquiry participants interpreted this to mean disciplinary breaches by inmates, as opposed to disciplinary breaches by staff.<sup>316</sup>

**5.44** In New South Wales, offences in custody are specified in the Crimes (Administration of Sentences) Regulation 1999. DCS advised that every charge is adjudicated by the General Manager of the prison, and recorded in an offender database.<sup>317</sup>

**5.45** The Committee was informed that the rate of inmate disciplinary breaches at Junee is slightly lower than the average for New South Wales public prisons. This is illustrated in Table 5.5.

**Table 5.5** Offences in custody<sup>318</sup>

|   | <b>Total offences 2007-08</b> | <b>Daily average population 2007-08</b> | <b>Offence rate per 100 inmates per year</b> |
|---|-------------------------------|---|--|
| <b>Junee CC</b><br>Total offences                 | 726                           | 769.3                                   | 94.4   |
| <b>NSW (excluding Junee CC)</b><br>Total offences | 9300                          | 8864.7                                  | 104.9  |

**5.46** The Department told the Committee that when these rates are considered in conjunction with assault statistics, the results suggest that inmates in private prisons could be expected to behave similarly to inmates in public centres.<sup>319</sup>

**5.47** In relation to South Australia, Mr Weir informed the Committee that inmates at the private Mount Gambier prison are subject to the same disciplinary processes as inmates in South Australian public prisons. As in New South Wales, the disciplinary processes in South Australia are outlined by legislation.<sup>320</sup>

**5.48** In addition to this, the SA Department of Correctional Services also has two supervisory staff on-site at the private prison that have a role in the oversight of the disciplinary process. (The

<sup>316</sup> Submission 258, p 7; Mr Weir, Evidence, 27 March 2009, p 12

<sup>317</sup> Submission 258, p 7

<sup>318</sup> Submission 258, Table 4(a), p 8

<sup>319</sup> Submission 258, p 8

<sup>320</sup> Mr Weir, Evidence, 27 March 2009, p 12



role of on-site departmental staff is discussed in Chapter 6). Mr Weir further advised:

I also point out that visiting tribunals visit all our prisons, interview prisoners, and are able to participate in the disciplinary process. The general feedback I have received from them is that compared to many of our other prisons there is nothing exceptional in our disciplinary processes or outcomes down there.<sup>321</sup>

- 5.49** The fact that inmate offences are defined in legislation and that strict rules apply equally to public and private prisons to govern disciplinary action was also pointed out by G4S, in order to refute any suggestion that private operators might give inmates more frequent or more severe disciplinary breaches.<sup>322</sup> G4S commented: '[p]rivate prison operators have no discretion to depart from the rules and every disciplinary decision is subject to review by the Corrective Services Department'.<sup>323</sup>

## Overcrowding

- 5.50** As discussed in Chapter 3, a number of submissions received during the Inquiry were based on the misconception that private operators are paid per prisoner. For example, the Committee frequently heard statements such as:

... privatised prisons usually operate on the basis of numbers, that is, privately run prisons are paid by the government per prisoner per bed. The temptation thus exists to maximise profits by maximising the number of prisoners.<sup>324</sup>

- 5.51** As clarified in that chapter, while this may be true in the US, it is not the case in Australia. Private operators in Australia are paid a flat rate for a bed capacity, and therefore have no interest in trying to overcrowd prisons in order to increase their profit. Even if they were paid per prisoner, inmate allocation is a matter for government:

... no prisons determine how many, or which, prisoners they receive. Prisoner placement is exclusively the responsibility of the state's Corrective Services Department, as is initial prisoner assessment.<sup>325</sup>

- 5.52** This was confirmed by Mr Bezuidenhout, who in response to questioning from the Committee as to whether there was any incentive for GEO to 'hang on to a prisoner', replied:

I think maybe there was a misunderstanding ... there are allegations made in some of the submissions that because we are a private operator it is in our interest to punish prisoners and keep them there longer. It is irrelevant to us because we are paid for 100 per cent capacity. But even immaterial of that, we do not have the power to decide on prison sentence duration and who we want and who we keep. Does that make it clear?<sup>326</sup>

<sup>321</sup> Mr Weir, Evidence, 27 March 2009, p 13

<sup>322</sup> Submission 427, p 3

<sup>323</sup> Submission 427, p 3

<sup>324</sup> Submission 429, Community Justice Coalition, p 3

<sup>325</sup> Submission 427, p 3

<sup>326</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 10

- 5.53** DCS informed the Committee that it centrally manages the placement of new receptions and transfers between prisons, and it monitors discharges.<sup>327</sup> As noted by Serco, ‘the extent to which prisons are overcrowded is entirely a matter of government policy’.<sup>328</sup> DCS advised that in the case of Junee, the average bed occupancy rate between July 2005 to June 2008 was 97.1 per cent.<sup>329</sup> This has allowed for a small vacancy buffer to exist at all times to accommodate new receptions.
- 5.54** Further, the Department stated that the inmate capacity at Junee has never exceeded its operational capacity; and that on several occasions since its inception, Junee has increased its operational capacity when requested to by DCS.<sup>330</sup>
- 5.55** This has been identical to the experience at the private Mount Gambier prison in South Australia, as outlined by Mr Weir:

When we have sought to increase capacity we have found G4S to be willing to do so, and it has responded appropriately, as we would expect any of our prisons to respond. From the original capacity of 110 it has now been increased to 159.<sup>331</sup>

*Committee comment*

- 5.56** The Committee notes that inmate allocation is a matter for government, and not a decision of the private contractor. Based on this fact, together with the information provided in this section, we are satisfied that there is no evidence that privatisation of prisons will result in overcrowding.

## Prisoner classification levels

- 5.57** An inmate’s classification refers to the security level of the inmate, for example minimum, medium or maximum security. DCS designates each prison to manage specific classifications of inmates, with the designation directly related to the prison’s perimeter security and supervisory arrangements.<sup>332</sup>
- 5.58** As mentioned in the earlier section on ‘Public safety and rates of escape’, private operators do not determine inmate classification levels. DCS officers from the Inmate Classification and Case Management Branch instead make these decisions. The Department advised:

For both privately and publicly operated centres, centre staff may participate in a process that generates a classification recommendation, but the final decision is always made by a delegated officer who is independent of the correctional centre. This

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<sup>327</sup> Submission 258, p 10

<sup>328</sup> Submission 407, p 16

<sup>329</sup> Submission 258, p 10

<sup>330</sup> Submission 258, p 10

<sup>331</sup> Mr Weir, Evidence, 27 March 2009, p 13

<sup>332</sup> Submission 258, p 13

process was put in place to ensure the objectivity and integrity of the classification process.<sup>333</sup>

- 5.59** DCS therefore maintained that the privatisation of prisons does not impact on prisoner classification levels.<sup>334</sup>
- 5.60** The Committee also received evidence that the same can be said for South Australia. Mr Weir commented that the Department runs the classification process at Mount Gambier, independently of the private operator, and that they have not experienced any issues in that regard.<sup>335</sup>

*Committee comment*

- 5.61** The Committee notes that the Department determines inmate classifications, and makes its decisions independently of private operators. Therefore we do not believe that privatisation will impact upon classification levels.

**Recidivism rates, rehabilitation programmes and mental health support services**

- 5.62** Inquiry participants stressed the importance of rehabilitating, rather than just ‘warehousing’, inmates.<sup>336</sup> As outlined in Chapter 2, the recidivism rate in New South Wales is 43 per cent – the second highest rate in Australia, surpassed only by the Northern Territory (at 44.8 per cent). While this rate has reduced from 43.8 per cent in 2007, it is still significantly higher than the recidivism rates in Victoria (35.6 per cent) and Queensland (33.6 per cent).
- 5.63** Some of the concerns raised in evidence regarding recidivism were outlined in Chapter 3, where the argument was raised that private operators have no incentive (profit or otherwise) to rehabilitate inmates. However, as clarified in that chapter, most of those arguments were based upon a misconception that private operators are paid per prisoner.
- 5.64** Nonetheless, the Prisoners’ Aid Association of New South Wales argued that publicly run centres still have a stronger interest than private operators in rehabilitating inmates: ‘While the present system is operated by the government there is a clear financial interest in ensuring effective rehabilitation as it has the potential of reducing the cost to the public’.<sup>337</sup>
- 5.65** The relationship between cost and effective rehabilitation was acknowledged by the Serco Institute:

Recidivism rates are not just of concern in measuring qualitative outcomes – if contract prisons were delivering a comparable standard of care at a lower cost, but

<sup>333</sup> Submission 258, p 13

<sup>334</sup> Submission 258, p 13

<sup>335</sup> Mr Weir, Evidence, 27 March 2009, p 13

<sup>336</sup> For example, Mr Michael Poynder, Coordinator, Justice Action, Evidence, 23 February 2009, p 45

<sup>337</sup> Submission 245, Prisoners’ Aid Association of New South Wales Inc., p 2

their recidivism rates were markedly higher (for a given population of prisoners), they would not be providing better value for money ...<sup>338</sup>

### **Difficulties in measuring recidivism**

- 5.66** There are a number of difficulties in measuring the effect of an individual (public or private) prison's rehabilitation programmes on recidivism levels. This is mainly because inmates rarely spend the entire length of their sentence at one prison:

... inmates move between centres for employment, program or compassionate reasons. The cumulative impact of these processes is that inmates will in all likelihood spend part of their sentence in a number of correctional centres and may have participated in a range of programs at each of these centres. Consequently, it would not be possible to attribute recidivism outcomes to individual centres.<sup>339</sup>

- 5.67** Another difficulty noted by DCS is that a rehabilitation programme is not the only factor that influences recidivism levels. External experiences also play a key role:

Recidivism may have more to do with what happens to a person before entry to prison and subsequent to their exit from prison than anything else. Measuring "recidivism" can never be an absolute measure by which we can evaluate the quality of correctional services provided.<sup>340</sup>

- 5.68** Other factors that may distort recidivism measures at individual centres include different inmate classifications, and whether a centre deals mainly with inmates at the earlier or later stages of their sentence.<sup>341</sup>

- 5.69** DCS stressed that '[m]easuring "recidivism" can never be an absolute measure by which we can evaluate the quality of correctional services provided'.<sup>342</sup> They informed the Committee that there is a national convention between Justice/Corrections Ministers which states that corrections departments are not to be held accountable for performance regarding recidivism. Further, the Department pointed out:

The Productivity Commission makes clear through the Report on Government Services (ROGS) that recidivism has more to do with policing and sentencing practices than anything else. This is why recidivism is included in the Justice Preface of the ROGS report but is found in the chapter on Corrections.<sup>343</sup>

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<sup>338</sup> Submission 407, p 18

<sup>339</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 7, pp 3-4

<sup>340</sup> Submission 258, p 17. See also Submission 427, p 4

<sup>341</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 7, pp 3-4

<sup>342</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 7, p 4

<sup>343</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 7, p 4

- 5.70** As a result of these difficulties, very little data has been collected and very few studies have been conducted to determine whether placement in public or private prisons reduces or increases recidivism. The exception to this is a series of studies conducted in the US state of Florida from 1999 to 2005.<sup>344</sup>
- 5.71** No similar studies have been conducted in Australia. However, DCS commented that as private providers in New South Wales are required to deliver programmes within the Department's specified programme accreditation scope, they reasonably anticipate that 'from a program perspective the re-offending outcomes would be similar'.<sup>345</sup>

### **Programme consistency**

- 5.72** The assertion raised above by DCS regarding programme consistency between public and private prisons was questioned by witnesses during the Inquiry. Mr Robert Lipscombe, President of the New South Wales Teachers Federation, claimed that there is little evidence of inmates' ability to undergo smooth transitions between Junee and New South Wales public prisons.<sup>346</sup>
- 5.73** DCS acknowledged that the private prison at Junee previously has not conducted the same programmes as public facilities. It noted however that many similar programmes were provided, and that the provider (GEO) has been required to meet strict standards for all programmes that have been offered.
- 5.74** The Department also acknowledged the need for consistency to ensure that programmes commenced at one centre can be completed at another,<sup>347</sup> however it explained why not all programmes are provided at all centres:

We do not provide every service identically in every correctional centre. What we tend to do is provide the services that meet the needs of the inmates at that centre at that time.<sup>348</sup>

- 5.75** DCS informed the Committee that to ensure consistency and quality of programmes at public prisons, a 'Compendium of Programs' has been compiled by the Department's Offender Programs Unit (OPU), which provides a list of programmes approved for use for all inmates within New South Wales. Required standards are also set and monitored by DCS:

The overarching Framework of the OPU outlines standards and guidelines which apply to every institution or Community Offender Services office delivering programs, to ensure an equivalent standard is offered to every offender. Monitoring of the

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<sup>344</sup> Submission 407, p 18

<sup>345</sup> Submission 258, p 17

<sup>346</sup> Mr Lipscombe, Evidence, 20 March 2009, pp 24-25

<sup>347</sup> Submission 258, p 15

<sup>348</sup> Mr Luke Grant, Assistant Commissioner, Offender Services and Programs, DCS, Evidence, 23 February 2009, p 8

programs and supervision with the facilitator is conducted in all these locations to ensure this standard is maintained.<sup>349</sup>

- 5.76 The Committee was advised that Junee is scheduled to commence conducting programmes from the same Compendium as public prisons beginning this year.<sup>350</sup>

### **Employment opportunities**

- 5.77 The Committee was told that the contract standard at Junee for inmate employment is a base level of 65 per cent, and 70 per cent as best practice. In relation to these standards, Mr Bezuidenhout advised that GEO 'has always achieved and exceeded the best practice target of 70%, receiving the maximum associated proportion of the Performance Linked Fee in this performance indicator'.<sup>351</sup>

- 5.78 Mr Dominique Karauria, Executive General Manager Operations at GEO, advised that employment opportunities are available for inmates at Junee in woodworking and engineering industries. Employment is also available in other areas including libraries, cleaning services, farming, catering, and community work such as Meals on Wheels.<sup>352</sup> Mr Karauria stated:

One of the innovations that we have is that we invite local businesses in on an annual basis to identify what the skill deficiencies are in the community at the time and what work the inmates themselves and the centre can do to contribute to those deficiencies and skills base. It also provides the opportunity for us to utilise the TAFE to train these guys in these deficiencies, which increases employment opportunities.<sup>353</sup>

### **Re-entry**

- 5.79 While recidivism in itself may not be a feasible assessment measure, private operators noted that numerous other performance indicators already exist in contracts that measure rehabilitative activities. These output-based measures include the successful completion of rehabilitative programmes, educational outcomes, and pre-release programmes.<sup>354</sup>
- 5.80 Another measurable output is re-entry or resettlement, that is, ensuring that inmates are released into a stable job and accommodation. This was outlined by several inquiry

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<sup>349</sup> Answers to questions on notice taken during evidence 23 February 2009, Commissioner Woodham, Question 136, p 35

<sup>350</sup> Answers to questions on notice taken during evidence 23 February 2009, Commissioner Woodham, Question 136, p 35

<sup>351</sup> Answers to questions on notice taken during evidence 20 March 2009, Mr Pieter Bezuidenhout, Managing Director, The GEO Group, Question 11, p 2

<sup>352</sup> Mr Dominique Karauria, Executive General Manager Operations, GEO, Evidence, 20 March 2009, p 18

<sup>353</sup> Mr Karauria, Evidence, 20 March 2009, p 18

<sup>354</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 3

participants, such as the Serco Institute:

... it should be possible to measure the contribution that a prison operator has made to resettlement and rehabilitation, for example, whether an offender has been released into a full-time job or training programme, or whether upon release, they were moved to settled accommodation ...<sup>355</sup>

**5.81** Serco advised that as yet, none of the existing contracts in Australia or the United Kingdom include re-entry performance measures or conditions, however remarked that some private prison operators consider this to be the next area to achieve significant innovations.<sup>356</sup>

**5.82** While the Committee heard anecdotal evidence that private prisons in Victoria have poor re-entry services,<sup>357</sup> it also heard strong positive evidence regarding the re-entry services at the private Acacia prison in Western Australia. In evidence to the Committee, Mr Brian Lawrence from the WA Department of Corrective Services described the private operator's re-entry model as 'the best we have in our system':<sup>358</sup>

... Acacia was leaps and bounds ahead of anybody else. When they actually introduced it they were running it in the facility, which no other facility in our public system was doing at that time. Whilst people say "Yes, we run re-entry" what they were doing was making sure a guy had his driver's licence before he was being released, and that sort of thing, but they were not doing the connect between education and programs and making sure that when prisoners got out they had a job.<sup>359</sup>

**5.83** Mr Lawrence added that Acacia's re-entry model has been so successful that the WA Government has decided to introduce a similar model into the public system.<sup>360</sup> The cross-fertilisation of innovative methods between private and public systems is considered in more detail at the end of this chapter.

*Committee comment*

**5.84** The Committee appreciates the complexity of measuring recidivism, and accepts that it may not be feasible to accurately determine the effect of individual prisons on recidivism levels. Further to this, we note that there is an Australian Government convention stating that corrections departments are not to be held accountable for performance regarding recidivism.

**5.85** Nonetheless, we stress the importance of reducing recidivism rates, and are particularly concerned about the high level of recidivism in New South Wales. We are firmly of the view that as much as possible needs to be done to reduce this rate.

<sup>355</sup> Submission 407, p 16

<sup>356</sup> Submission 407, p 16

<sup>357</sup> Ms Kat Armstrong, Public Officer and Treasurer, Women in Prison Advocacy Network, Evidence, 20 March 2009, p 82

<sup>358</sup> Mr Lawrence, Evidence, 27 March 2009, p 71

<sup>359</sup> Mr Lawrence, Evidence, 27 March 2009, p 72

<sup>360</sup> Mr Lawrence, Evidence, 27 March 2009, p 72

- 5.86** The Committee acknowledges that performance indicators relating to programme output and completion already exist in private prison contracts, and note the absence of indicators relating to re-entry. We believe that re-entry is a critical area that impacts upon recidivism rates, and recommend that the Government implement performance indicators of this kind for both public and private prisons in New South Wales.

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**Recommendation 4**

That the NSW Government introduce re-entry performance indicators at all correctional centres in New South Wales.

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**Mental health support services**

- 5.87** The Committee received limited evidence regarding the impact of privatisation on mental health support services.
- 5.88** One concern raised was in regard to the effect of lock-downs on inmates with mental health problems. The Hon Justice John Dowd, President, International Commission of Jurists Australia, suggested that private operators may impose longer lock-down periods if it came down to a matter of making more money.<sup>361</sup> However, this was refuted by GEO in their submission, where they claimed that inmates at Junee ‘enjoy significantly greater periods out of their cells in comparison with the State average’.<sup>362</sup> This argument ties in closely to a number of the ideological arguments against privatisation already discussed in Chapter 3.
- 5.89** In relation to the mental health staff employed at Junee prison, DCS advised that it ‘has had occasion to question the skill and qualification levels of psychologists’ employed at the centre. The Department expressed the view that this was likely due to geographical factors rather than privatisation.<sup>363</sup>
- 5.90** Given that the mental health services at Junee are provided by the private operator, concerns have been raised regarding the potential conflict of interest that arises from this arrangement. This is considered separately later in this chapter under ‘Health services’.

**Staffing levels and employee conditions**

- 5.91** Staff salaries and related expenses make up 70 per cent of costs in public prisons.<sup>364</sup> The Committee heard evidence that the primary avenue through which private prison providers can operate at lower costs is reduced staffing levels and wage rates compared to the public system.

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<sup>361</sup> The Hon Justice John Dowd, President, International Commission of Jurists Australia, Evidence, 27 March 2009, p 5

<sup>362</sup> Submission 173, p 12

<sup>363</sup> Submission 258, p 16

<sup>364</sup> Mr Gerry Schipp, Deputy Commissioner, Corporate Services, DCS, Evidence, 23 February 2009, p 9



### Staffing levels

- 5.92** The ratio of custodial officers to inmates is lower at Junee than at other NSW prisons. The reason for the lower ratio is to save costs. Mr Schipp told the Committee that salaries and related expenses in NSW public prisons are around 70 per cent of the Department's costs, whereas for GEO at Junee they are closer to 60 per cent.<sup>365</sup>
- 5.93** The DCS submission provided a comparison of custodial staffing levels at a number of public prisons with the staffing level at Junee, summarised in the following table. The Department notes that 'the only centre that even comes close to Junee is the Mid-North Coast Correctional Centre which is one of three centres operated under an 'island' industrial agreement'.<sup>366</sup>

**Table 5.6 Comparison of custodial staffing ratios at Junee and selected public prisons**

|                    | Inmate No | Custodial staff No | Custodial Ratio |
|--------------------|-----------|--------------------|-----------------|
| Parklea CC         | 805       | 242                | 3.53            |
| Mid-North Coast CC | 620       | 124                | 5               |
| Bathurst CC        | 540       | 147                | 3.68            |
| Junee CC           | 769       | 143                | 5.38            |
| Grafton CC         | 273       | 96                 | 2.91            |
| Cessnock CC        | 479       | 140                | 3.74            |

- 5.94** In relation to the 2008 decision, DCS confirmed that they anticipated staffing levels to also be reduced in the newly privatised prisons in order to save costs.<sup>367</sup> This sparked concerns over the safety and security of inmates and prison officers, as enunciated in the following example from Submission 185:

When there is a fight between inmates our first advantage is that when the inmates see us coming to break it up, our presence alone is usually enough to stop the fight. When an officer is assaulted within seconds there is a sea of blue rushing to help their work mate. You privatise gaols and one of the first things to go will be staff. This is not a safe environment for anyone.<sup>368</sup>

- 5.95** Another concern raised was that lowered staff levels may result in reduced interaction with inmates, which could have a negative impact on their rehabilitation:

One of the issues with Cessnock is that if we just turned it into a push button zoo, that would be getting away from the role of what a minimum security gaol is supposed

<sup>365</sup> Mr Schipp, Evidence, 23 February 2009, p 9

<sup>366</sup> Submission 258, p 17. The ratio is calculated by dividing the number of inmates by the number of custodial staff.

<sup>367</sup> Answers to questions on notice taken during evidence 23 February 2009, Commissioner Woodham, Question 68, p 22

<sup>368</sup> Submission 185, Name suppressed, p 1

to be. We are supposed to be trying to return these people to society. That is where 98.9 percent of them will end up.<sup>369</sup>

**5.96** Similarly, the Community Justice Coalition expressed the opinion that ‘employing fewer prison officers will mean that prisoners are more likely to be locked up than be let out of their cells’.<sup>370</sup>

**5.97** In evidence to the Committee, the Serco Institute acknowledged these concerns, however commented that ‘the fact that the oldest of the contract prisons in the UK has operated with these staffing levels for 17 years without a major incident, suggests that they are sustainable’.<sup>371</sup>

**5.98** The Serco Institute argued that as long as quality is not compromised, reductions in staffing levels lead to positive benefits as they force prisons to develop new innovations and management regimes to facilitate the lower staffing ratios:

Contract prisons have been able to operate successfully with lower staff-prisoner ratios for almost two decades, partly because of technological innovations, such as CCTV cameras and electronic keys, and partly because of regime innovations such as direct supervision and the recruitment of a much higher proportion of female prison officers.<sup>372</sup>

### **Wage rates**

**5.99** Many inquiry participants expressed concern that private providers pay their staff lower wages in comparison to the public sector.

**5.100** The Serco Institute advised that UK studies of private prisons show that around half of their savings come from lower staffing levels (as discussed above), while the other half come from lower unit costs (comprising of staff salaries and benefits).<sup>373</sup>

**5.101** According to Serco, there are a number of ways in which private operators have been able to reduce unit costs:

In a few cases, this is because the contract prisons pay lower salaries; in others, it is because of significantly less generous pensions and fringe benefits ... some unit cost savings clearly do amount to productivity enhancements. The most obvious examples are the management of sick leave and overtime. Studies undertaken by HM Prison Service in the 1990s found that the cost of sick leave (per prisoner) was 53% lower in the contract prisons than in their public sector counterparts.<sup>374</sup>

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<sup>369</sup> Mr Peter Williams, First Class Correctional Officer, Cessnock Correctional Centre, Evidence, 1 April 2009, p 12

<sup>370</sup> Submission 429, p 2

<sup>371</sup> Submission 407, p 17

<sup>372</sup> Submission 407, p 11

<sup>373</sup> Submission 407, p 3

<sup>374</sup> Submission 407, p 9

- 5.102** Mr Bezuidenhout from GEO advised that a similar situation in regard to the sick leave exists in New South Wales, stating that the average sick leave at Junee ‘amounts to something like five days per annum whereas in the public sector I understand it is in the double figures plus’.<sup>375</sup>
- 5.103** While Serco acknowledged that some contract prisons in the United Kingdom do pay lower salaries, it also provided a range of reasons justifying why this may be so. These include regional variations (such as regional vs metropolitan wages) and differences in staffing profiles.<sup>376</sup>
- 5.104** In relation to the situation in Australia, evidence received from Mr Lawrence from the WA Department of Corrective Services is that the pay rates in private and public prisons in Western Australia are on par with each other:
- ... we have pay parity for our private prison. If our officers in the public system get a pay rise, so do the officers in the private prison; otherwise the minute the officers in the public prison get a pay rise staff would want to leave to go and join the public system. So we introduced a system where we pay parity.<sup>377</sup>
- 5.105** The pay rates at Junee are lower than the corresponding pay rates in New South Wales public prisons.<sup>378</sup> The actual differences are outlined in the following comparison of rates provided by Mr Pieter Bezuidenhout, which are taken from an enterprise bargaining agreement concluded in October 2008.<sup>379</sup>
- |   |                       |
|---|-----------------------|
| The direct comparison between classifications (base salary) according to work requirements: |                       |
| Probationary Correctional Officer 1 <sup>st</sup> year vs GEO Correctional Officer 1        | 7.63%                 |
| Correctional Officer – First Class vs GEO Correctional Officer 3                            | 3.61%                 |
| Senior Correctional Officer vs GEO Correctional Supervisor                                  | 5.46%. <sup>380</sup> |
- 5.106** A table comparing award conditions between prison officers at Junee and officers in the public sector is also attached at **Appendix 4**.
- 5.107** As raised earlier in this chapter, staff at Parklea who are successful in securing a position with the new private provider are only guaranteed their wage rates for 12 months. After this period, there is no guarantee as to what their wage rate will be, and there is clearly a chance – given the evidence outlined above – that their rates may drop. This was criticised by Mr Steve

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<sup>375</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

<sup>376</sup> Mr Gary Sturgess, Executive Director, Serco Institute, Evidence, 27 March 2009, p 36

<sup>377</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

<sup>378</sup> Submission 102, Public Service Association, p 15

<sup>379</sup> Salaries have been used from both enterprises effective 1 July 2009.

<sup>380</sup> Answers to questions on notice taken during evidence 20 March 2009, Mr Pieter Bezuidenhout, Managing Director, GEO, Question 5, p 1

Turner, Assistant General Secretary, Public Service Association (PSA), who stated:

All previous privatisations by the state have occurred with legislative protection for the workforce with three-year guarantees for jobs and corresponding protection for wages and conditions – but not here ... It is reckless in that it places the agenda of managers ahead of the public good.<sup>381</sup>

### *Committee comment*

- 5.108** The Committee acknowledges that wage rates at private prisons are generally lower than rates at public prisons, and notes that this is one of the key areas in which private companies achieve cost savings. We also realise the potential impact this may have on prison officers who elect to stay at Parklea prison.
- 5.109** The Committee notes the evidence provided by Mr Turner regarding standard three-year job guarantees in other industries that have been privatised in New South Wales, and suggests that the NSW Government provide a similar guarantee to prison officers affected by the privatisation of Parklea.

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### **Recommendation 5**

That the NSW Government provide a three-year wage guarantee for the existing staff members at Parklea Correctional Centre who secure a position with the incoming private provider.

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### **Training standards and qualifications**

- 5.110** Some inquiry participants raised concerns about the quality and experience of staff at private prisons. For instance, Justice Dowd declared: '[i]n a privatised prison there is no way of ensuring that the officer that you put in charge of other human beings was not selling Toyotas last week'.<sup>382</sup>
- 5.111** Justice Dowd suggested that career public service officers are more 'conscious of their duty to the State' than private prison officers, especially given that any complaints made against public service officers are placed on their permanent record.<sup>383</sup>
- 5.112** The Committee notes the comments of Mr Gary Sturgess, Executive Director, The Serco Institute, regarding the qualification of prison officers in private gaols in the United Kingdom:

The Government has certification requirements so people have got to be trained and certified. The answer is to say it is not the United Kingdom experience. I am not familiar with all of the privately managed prisons in this country but those that I have seen it is not the experience here. I will stick with the United Kingdom where I have done the most work, but a succession of reports by independent academic observers,

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<sup>381</sup> Mr Turner, Evidence, 23 February 2009, p 26

<sup>382</sup> Justice Dowd, Evidence, 27 March 2009, p 3

<sup>383</sup> Justice Dowd, Evidence, 27 March 2009, p 3

a succession of reports by the Inspector of Prisons and indeed by some critics of prisons have acknowledged the huge contribution that the private prison managers made to the so-called decency agenda; to the way in which prisoners were treated, the way in which they were brought into drug rehabilitation programs, resettlement programs were built for them and so on. There is considerable literature on this.

If you read the reports of the Inspector of Prisons for England and Wales these are comparable establishments that are delivering similar quality services. There is no suggestion of a navy. There have been huge innovations in some of the privately managed prisons that have contributed to the development of the profession. I can think of some publicly managed prisons where that professional ethos that you talk about was simply not present.<sup>384</sup>

**5.113** Other inquiry participants expressed concern that private operators would save on costs through reduced staff training and development.<sup>385</sup> The PSA asserted that there is both domestic and international evidence of this practice.<sup>386</sup>

**5.114** It was contended that under-investment in staff training and lower wage rates may result in higher staff turnover. The Police Association of New South Wales suggested that this could potentially lead to 'less experienced staff with little preparedness to respond to riots, fires or escapes'.<sup>387</sup> Along the same lines, the Australian Lawyers Alliance submitted:

... a properly trained and remunerated workforce, which remains accountable, is more likely to effectively manage public safety issues, conflict and violence, and the unique needs of inmates, than a lower paid and expendable workforce that is likely to experience a higher turnover.<sup>388</sup>

**5.115** These concerns were responded to in evidence from Mr Bezuidenhout, who advised that all staff at Junee are trained 'to exactly the same standards and requirements as stipulated in the contract and what is required of DCS staff'.<sup>389</sup>

**5.116** Similarly, in response to questioning from the Committee regarding the qualifications and experience of staff at private prisons, Mr Sturgess stated:

The oldest contract prison in the UK has been operating for 15 years and it has functioned without riots, without huge escapes, without breakdown in law and order within the prison. It has functioned very well for 15 years and that is probably a reasonable time to say that if this model was fundamentally flawed we would have seen evidence of that by now.<sup>390</sup>

<sup>384</sup> Mr Gary Sturgess, Executive Director, The Serco Institute, Evidence, 27 March 2009, p 34

<sup>385</sup> See for example Submission 102, Submission 107, Submission 109, The Police Association of New South Wales and Submission 113, Australian Lawyers Alliance

<sup>386</sup> Submission 102, p 16

<sup>387</sup> Submission 109, p 2

<sup>388</sup> Submission 113, p 7

<sup>389</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

<sup>390</sup> Mr Sturgess, Evidence, 27 March 2009, p 36

***Committee comment***

- 5.117** The Committee notes that government regulation has a primary role to play in ensuring appropriate staff training standards and qualifications exist in both publicly and privately run prisons. On the evidence presented, the Committee is satisfied that concerns raised regarding the level of training and professionalism of prison officers at private institutions in Australia are misconceived.

**Staff feedback**

- 5.118** Mr Bezuidenhout informed the Committee that staff feedback from Junee has generally been positive:

A recent independent staff survey showed that 88 per cent of our people like their jobs, more than 70 per cent of our people are proud of what they do and what their work teams achieve, and a similar percentage find that their jobs are interesting and challenging.<sup>391</sup>

- 5.119** As further proof of staff contentment, Mr Bezuidenhout highlighted that over 60 per cent of staff at Junee have been there for five years or longer; over a quarter of staff have been there for 10 years; and 15 per cent have been there since its inception.<sup>392</sup>

- 5.120** In relation to the private prison in South Australia, Mr Weir from the SA Department of Correctional Services acknowledged that while staffing levels and employment conditions are a matter for the private operator, the Department still has a vested interest in ensuring that quality standards and outcomes are met.<sup>393</sup> Mr Weir advised that as such, the Department conducts its own staff surveys at the prison, and stated:

... in general over a prolonged period I would advise you that the staff surveys have been reasonably positive, albeit local workplaces still have some significant challenges.<sup>394</sup>

***Committee comment***

- 5.121** Adequate staff training is essential for the welfare of both inmates and officers, and we acknowledge the concerns raised by inquiry participants in this regard. The Committee believes that training and qualification requirements must be applied consistently in all prisons, regardless of whether they are run by DCS or a private provider. This is discussed in Chapter 6.

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<sup>391</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 3

<sup>392</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

<sup>393</sup> Mr Weir, Evidence, 27 March 2009, p 13

<sup>394</sup> Mr Weir, Evidence, 27 March 2009, p 13

## Health services

**5.122** The independence of the provision of health services to inmates was a concern of inquiry participants. Since its inception, the health service at Junee has been provided by the private prison operator - GEO.<sup>395</sup> To ensure an appropriate quality of health care standards, the health service at GEO is audited by Justice Health, as well as the Australian Council on Healthcare Standards. It is also independently certified under ISO 9000.<sup>396</sup>

**5.123** A similar situation operates at the Acacia prison in Western Australia, where health services are provided by the private operator Serco. Mr Lawrence from WA Corrective Services informed the Committee that Serco had previously purchased pharmaceuticals from DCS Pharmacy Services, and DCS had provided medical practitioners to the facility, however this is no longer the case:

It was believed that those practices removed the autonomy from the service provider and stifled any form of innovation in terms of health services for prisoners. Serco now employ their own medical practitioners, dentists, auxiliary health professionals and nurses and also purchase their pharmaceutical supplies from a local community business.<sup>397</sup>

**5.124** In its submission, the NSW Council of Social Services (NCOSS) asserted that inmate health services should be independent from the operator of a prison. NCOSS stated:

The separation of operational functions of prisons and health services assists in minimizing the potential for conflicts of interest that may arise between health delivery and security, ensuring privacy and confidentiality of health information, and ensuring prisoners are comfortable in seeking and receiving health treatment.<sup>398</sup>

**5.125** NCOSS Director, Ms Alison Peters, advised the Committee that this separation of functions is both national and international best practice policy, developed by the World Health Organisation,<sup>399</sup> and that the Australian Medical Association reinforces this policy:

Every correctional facility health care service in Australian states and territories should be a part of the general health system and independent of Departments of Corrective Services or their equivalent.<sup>400</sup>

**5.126** In New South Wales public prisons, the health service is provided independently by Justice Health, which is part of NSW Health rather than part of DCS. NCOSS submitted that to

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<sup>395</sup> Note: GEO also provides health care services to nine public prisons in Victoria on behalf of Corrections Victoria. <<http://www.thegeogroupinc.com.au/whatwedo.html>> (accessed 30 April 2009)

<sup>396</sup> Answers to additional questions on notice, 8 May 2009, Mr Bezuidenhout, GEO Question 4, p 1

<sup>397</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Brian Lawrence, Manager Acacia Prison and CS&CS Contracts, Question 12(a), p 8

<sup>398</sup> Submission 112, Council of Social Services of New South Wales, p 3

<sup>399</sup> Ms Alison Peters, Director, Council of Social Services of New South Wales, Evidence, 20 March 2009, p 74

<sup>400</sup> Submission 112, p 4

overcome any potential conflict of interest, GEO should not continue to provide the health service at Junee; and nor should any health service at Parklea or any potential future private prisons be concurrently provided by the prison's operator.<sup>401</sup>

- 5.127** A similar position was advocated by Mr Peter Dodd, Solicitor, Health Policy and Advocacy, Public Interest Advocacy Centre, who suggested that Justice Health should provide the health service at private prisons, for reasons of expertise and accountability:

Clearly they have developed that expertise in the area of health and corrections. They can deliver it, and they do deliver it, well. Obviously they are not perfect, but they have this level of expertise. The concern is that if the Junee model is adopted, there is less accountability and a potential for a decrease in standards.<sup>402</sup>

- 5.128** Further to this, Mr Dodd highlighted that Justice Health is answerable to the Health Care Complaints Commission, who he argued have better capacity for dealing with complaints.<sup>403</sup>

- 5.129** While supportive of the option of Justice Health providing the health service within private prisons, Ms Peters suggested that the alternate provider need not necessarily be Justice Health, as long as it is an organisation other than the prison operator.<sup>404</sup>

- 5.130** On its site visit to Parklea prison on 9 April 2009, Deputy Commissioner Ian Maclean advised the Committee that Justice Health would continue to provide the health service at Parklea (and at the time, Cessnock) after they have been privatised.

***Committee comment***

- 5.131** The Committee acknowledges the argument that the health service provider at any prison (public or private) should be independent from the prison's operator, and note that a number of Australian jurisdictions appear to be moving in this direction.

- 5.132** We note that Justice Health will continue to provide the health service at Parklea, and support this decision. With regard to Junee, we note that Justice Health and the Australian Council on Healthcare Standards independently monitor health services. We also note that we have not seen any evidence, whether through this Inquiry or externally, such as through NSW Ombudsman reports, to suggest that the health service provided at Junee is inferior.

- 5.133** Nonetheless, we recognise the conflict of interest that may arise from the current situation, and recommend that the Government consider the need to have an independent health service provider at all New South Wales prisons.

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<sup>401</sup> Submission 112, p 3

<sup>402</sup> Mr Peter Dodd, Solicitor, Health Policy and Advocacy, Public Interest Advocacy Centre, Evidence, 27 March 2009, p 44

<sup>403</sup> Mr Dodd, Solicitor, Evidence, 27 March 2009, p 44

<sup>404</sup> Ms Peters, Evidence, 20 March 2009, p 74



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## Recommendation 6

That the NSW Government consider the need to have an independent health service provider at all New South Wales prisons.

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## Innovations and the public system

**5.134** As discussed in Chapter 3, several inquiry participants asserted that rather than focusing on whether a prison is operated publicly or privately, governments should instead focus on the efficiencies gained through competition in a mixed economy. These efficiencies are primarily achieved through private sector innovations, which – in the case of the prison sector – are often later adopted by public prisons. This is referred to as cross-fertilisation.<sup>405</sup>

**5.135** The Committee heard a number of examples of private prison innovations during the Inquiry. Some of these were referred to in Chapter 3 in relation to different jurisdictional experiences of privatisation, and include officers wearing softer staff uniforms and name tags, inmates being called by first names rather than numbers, extra time out-of-cells and so forth (see HM Prison Wolds case study at 3.127).

**5.136** Further examples were provided by Mr Lawrence, who outlined some of the innovations introduced by Serco into the private Acacia prison. One such example is a smartcard system, where inmates are issued with a type of bank card which they can use at ATMs placed in every unit of the prison:

... they can use the ATM to determine what their account balance is. They can use it to purchase goods from the canteen; they can use it to apply for a job in the prison; they can use it to research the policy and procedures in the prison – it is just fantastic. It is light years ahead of anything I have seen anywhere in the world.<sup>406</sup>

**5.137** Mr Lawrence advised that Serco is about to introduce a new model of the smartcard system to Acacia, which the WA Government plans to roll out into the public system.<sup>407</sup> Another Acacia innovation that will be introduced to WA public prisons is the menu system, where inmates are given a choice of three dishes to eat at any particular meal. Mr Lawrence admitted that at first this idea ‘was scoffed at by a lot of us in the public system’, telling the Committee, ‘[w]e thought, "Oh my God, if the media gets hold of this we are going to be hammered"’.<sup>408</sup>

**5.138** However, he advised that the effect of the menu system has been to successfully reduce food wastage by 15 per cent, as a direct result of inmates being given their preference of meals:

Whereas previously the prisoners would come back from either recreation or work and they would be feeling like a steak or a sausage – being men they all want meat and potatoes – they would come in and they would see it is pasta. What they used to do, they would get their food dished up but they would chuck it in the bin and bitch and

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<sup>405</sup> Submission 407, p 28

<sup>406</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

<sup>407</sup> Mr Lawrence, Evidence, 27 March 2009, p 70

<sup>408</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

moan. So the introduction of this menu has just been fantastic. You know what you are getting so when you come back at the end of the day you eat your meal. It has been very, very good.<sup>409</sup>

- 5.139** The Committee also heard about successful innovations introduced by GEO at Junee, one of which was a biometric methadone dosing system. This system was outlined by Commissioner Woodham:

The issue of methadone is done on an iris recognition system that pours out the dose to that person, so there cannot be any mistake on the dose that the person gets. That is one of the things they do better than anywhere else in our system.<sup>410</sup>

- 5.140** The same methadone system is also used at Acacia prison, and is scheduled to be rolled out across WA public prisons.<sup>411</sup>

- 5.141** Mr Bezuidenhout informed the Committee about other innovations introduced by GEO to Junee and other private prisons in Australia, including an information kiosk and high-risk assessment team:

... we have introduced the information kiosk, which gives the prisoner the ability instead of talking to the officer and asking the officer about visits or something very mundane, he could go to an information kiosk and it is a touch-screen kiosk where he gets all the information he wants. That is just a simple example. We have introduced in Australia, as I say, the concept of a high-risk assessment team, which evaluates the mental state of individuals, but it is comprised of a multidisciplinary team.<sup>412</sup>

- 5.142** The Committee also observed on its site visit to Junee on 22 April 2009 that prison officers wore corporate uniforms, as opposed to paramilitary-style uniforms worn at public prisons.

- 5.143** G4S, who operate private prisons and prison-related services throughout Australia, also outlined innovations that they have introduced. These include an incentive-based inmate management regime, which rewards inmates 'who do the right thing' (for example, with an extra visit or extra buy-up in the prison shop);<sup>413</sup> and a Prisoner Listener Scheme, which has reduced incidents of self-harm through the use of trained prisoner peers to assist unit staff. This latter scheme is also being extended to prisons in the public system.<sup>414</sup>

- 5.144** Another innovation introduced by G4S is the introduction of privacy locks on cells, with inmates issued their own cell key. The rationale for this was provided in the G4S submission, which stated:

This not only provides prisoners with greater privacy and reduces opportunities for theft, but increases efficiency. It has reduced costs by releasing staff from the need to

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<sup>409</sup> Mr Lawrence, Evidence, 27 March 2009, p 69

<sup>410</sup> Commissioner Woodham, Evidence, 27 March 2009, p 61

<sup>411</sup> Mr Lawrence, Evidence, 27 March 2009, p 70

<sup>412</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 13

<sup>413</sup> Submission 427, p 3

<sup>414</sup> Submission 427, p 4

lock and unlock cells throughout the day, except at general unlock and lock-up times.<sup>415</sup>

**5.145** Other G4S innovations such as increased time out-of-cells and more personal interactions between custodial staff and inmates were outlined in Chapter 3 (paragraph 3.137).

**5.146** With regard to the cross-fertilisation of innovations from private to public prisons, Mr Lawrence acknowledged that there was initially a 'fair bit of resistance' from public prisons,<sup>416</sup> however this was eventually overcome:

... we worked very hard to make sure that they integrated with the public prisons. So the general manager of the prison was invited to the superintendent's monthly meetings, and we have got to the stage now where they even train together for emergency management exercises. Staff from that prison will go and train with staff in other prisons ...<sup>417</sup>

**5.147** Mr Lawrence further advised that cross-fertilisation in WA works both ways: 'If the public system introduces something that is good, we let them know and the director from Acacia will go out and have a look and say, "We will do this, I reckon this is great".'<sup>418</sup>

***Committee comment***

**5.148** As discussed in Chapter 3, the majority of the Committee supports the introduction of competition into the public sector due to the innovations and efficiencies it brings. We note the range of innovations outlined in evidence, and the corresponding effect that they have had on the public system through cross-fertilisation. The Committee is optimistic that the privatisation of Parklea Correctional Centre will enhance the achievement of the primary objectives of the operation of the prison system.

<sup>415</sup> Submission 428, pp 3-4

<sup>416</sup> Mr Lawrence, Evidence, 27 March 2009, p 70

<sup>417</sup> Mr Lawrence, Evidence, 27 March 2009, p 70

<sup>418</sup> Mr Lawrence, Evidence, 27 March 2009, p 74



## Chapter 6 Contract transparency, monitoring and accountability

A general theme raised throughout the Inquiry and illustrated throughout this report is the public's concerns regarding the lack of transparency, and perceived lack of accountability, of private prisons. This chapter considers the importance of transparency in the prison sector, and the need for adequate and independent monitoring mechanisms. It examines factors required for a good contract, which can be vital in ensuring a private prison's success. Finally, it considers the rights of third parties to enforce private prison contract provisions, and the risk and cost to government of contract failure.

### Contract and performance transparency

- 6.1** Inquiry participants criticised a lack of transparency regarding Junee prison. The difficulty in finding available information was enunciated by Mr Steve Turner, Assistant General Secretary, Public Service Association (PSA):

Junee is a very hard place to find out information about. It is very hard to compare budgets because they will not give a budget for commercial and sensitive natures, competing tendering, et cetera. It is very hard to get information of their programs. Junee is almost like a closed shop.<sup>419</sup>

- 6.2** The Community Against Privatisation (CAP) noted that the extent of available information regarding the performance at Junee prison consists of a condensed report, contained as an appendix to the DCS Annual Report.<sup>420</sup> This was also criticised by the PSA, who remarked, '[r]eports are exceedingly brief and provide very little insight into the actual performance of Junee'.<sup>421</sup>

- 6.3** Witnesses to the Inquiry contended that this lack of information has prevented the public from being able to effectively (and independently) assess the performance at Junee. For instance, Mr Peter Dodd, Solicitor, Health Policy and Advocacy, Public Interest Advocacy Centre (PIAC), stated:

... the difficulty we have in New South Wales is that we do not have the full detail about the contract, say, for Junee. So, how do we know that they are meeting standards? How do we know that, unless it is completely open?<sup>422</sup>

- 6.4** Flowing from these concerns is an expectation that the soon-to-be private prison at Parklea will also suffer from a similar lack of transparency.

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<sup>419</sup> Mr Steve Turner, Assistant General Secretary, Public Service Association, Evidence, 23 February 2009, p 29

<sup>420</sup> Submission 107, Community Against Privatisation, p 15

<sup>421</sup> Submission 102, Public Service Association of NSW, p 20

<sup>422</sup> Mr Peter Dodd, Solicitor, Health Policy and Advocacy, Public Interest Advocacy Centre, Evidence, 27 March 2009, p 41

**6.5** While the Government does provide some limited performance information regarding Junee, inquiry participants have not been satisfied to accept this information at face value. Dr Jane Andrew, Senior Lecturer and Director Social Accounting, University of Wollongong, argued that if performance improvements are to properly form part of the government's broader public policy objectives, the relevant information should be made available for the public to independently assess the success of these objectives.<sup>423</sup>

**6.6** Another concern raised during evidence is that the lack of transparency renders the public unable to identify where or how cost savings are made. Dr Andrew submitted:

... it is essential that the public understands the means through which they [cost savings] will be obtained, and not just in broad terms but in detail. For example, we need to know how much will be saved in salaries and how much will be saved because of technological innovation and so on.<sup>424</sup>

**6.7** A similar point was raised Ms Alison Peters, Director, Council of Social Services of New South Wales (NCOSS), specifically in relation to health services. Ms Peters observed the reduced cost of providing health services at Junee, and expressed concern that due to the lack of transparency there is no way of knowing how these cost savings have been achieved, or what standard of health care service has been provided.<sup>425</sup>

**6.8** The reason for the lack of transparency is that the Junee contract, like many private prison contracts in Australia, is considered 'commercial-in-confidence'. This was criticised by the majority of inquiry participants, who questioned the necessity of this status. For example, Professor Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales, commented:

I would have thought that in this area where punishment is pre-eminently a public function there is very little genuine claim for most of this information remaining in confidence. Most of it is not commercially confidential. There are some aspects that genuinely are, I think, but most of it is not.<sup>426</sup>

**6.9** The author of Submission 146 argued that the widespread use of commercial-in-confidence provisions in private prison contracts has led to an industry 'plagued by a lack of disclosure'. Following on from this, they insisted: 'If there is no disclosure, there is no accountability'.<sup>427</sup>

### **Transparency in other jurisdictions**

**6.10** The Committee received evidence that private prison contracts in other jurisdictions within Australia have greater levels of transparency than in New South Wales. The level of

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<sup>423</sup> Submission 172, Ms Jane Andrew and Dr Damian Cahill, University of Wollongong, p 5

<sup>424</sup> Dr Jane Andrew, Senior Lecturer and Director Social Accounting, University of Wollongong, Evidence, 20 March 2009, p 55

<sup>425</sup> Ms Alison Peters, Director, Council of Social Services of New South Wales, Evidence, 20 March 2009, pp 72-73

<sup>426</sup> Mr Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales, Evidence, 23 February 2009, p 54

<sup>427</sup> Submission 146, Name suppressed, p 3

transparency varies between jurisdictions. For example, in South Australia, legislation requires certain contract details (other than price or other genuinely commercial provisions) and key performance indicators to be made public.<sup>428</sup>

- 6.11** The Committee was also told that Victoria, Queensland and Western Australia make their contracts available to the public.<sup>429</sup> In relation to Western Australia, Mr Brian Lawrence, Manager, Acacia Prison Contract, WA Department of Corrective Services, said:

The other thing we do in the west that is very different to other jurisdictions around the world is that we are open and transparent. This issue of commercial-in-confidence to us is a load of rubbish. We publish all our reports on the website, our annual reports, any reviews that we do.<sup>430</sup>

- 6.12** Mr Lawrence advised that the full contract, including cost details, is available on the Department's website for anyone to view:

There are no secrets. This is important for all concerned. This issue of people saying, "It is cheap to run" or "It is not cheap to run", it is all out there in the public domain for people to see.<sup>431</sup>

- 6.13** In response to questioning from the Committee as to whether the WA Government's approach to open and transparent contracting resulted in fewer tender applications, Mr Lawrence replied, '[d]efinitely not'.<sup>432</sup> He told the Committee:

All the respondents were aware of how we operate and that transparency. If they are uncomfortable with that or do not wish that to be made public, then we tell them, "Don't apply for the contract". It is simple.<sup>433</sup>

- 6.14** With regard to New South Wales, Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd (GEO), acknowledged the current lack of available information regarding the performance of Junee prison, however asserted that this was not due to GEO:

I know there have been statements made that the information from Junee is scarce and not readily available. That is not my choice. If there is a tender that calls for the contract to be publicly announced and publicly displayed, that performance indicators are publicly displayed, so be it.<sup>434</sup>

- 6.15** Mr Bezuidenhout informed the Committee that GEO provides performance data to DCS, and it is then up to the Department as to what it chooses to do with that information. In

<sup>428</sup> Mr Aronson, Evidence, 23 February 2009, p 53

<sup>429</sup> Submission 437, Mr Stuart Turnbull, p 15

<sup>430</sup> Mr Brian Lawrence, Manager, Acacia Prison Contract, Court Security and Custodial Services, WA Department of Corrective Services, Evidence, 27 March 2009, p 66

<sup>431</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>432</sup> Mr Lawrence, Evidence, 27 March 2009, p 74

<sup>433</sup> Mr Lawrence, Evidence, 27 March 2009, p 67

<sup>434</sup> Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd, Evidence, 20 March 2009, p 18

response to whether GEO would be deterred from submitting a tender for a private prison if it were completely transparent, he replied:

No, it will not, but there would certainly be issues that companies would be sensitive about. In every tender, or certainly in tenders here, we have to divulge a portion of corporate overheads as well as our profit margin. I would imagine that companies would be a little bit sensitive about publishing their profit margins simply because in the competitive tender process for the future people would know what that would be. That is the only reason why we, as a company, would be sensitive.<sup>435</sup>

**6.16** As noted in Chapter 4, GEO provided the Committee with a submission and answers to questions on notice regarding its operations at Junee prison, however it requested that this information remain commercial-in-confidence. The information was very useful to the Committee, and would also be beneficial to the public. Due to the current tender negotiations, the Committee agreed to keep the majority of GEO's information confidential, in line with current government policy that prison contracts be commercial-in-confidence. However it has publicised certain information in this report that is unavailable through other sources.

*Committee comment*

**6.17** The Committee notes the lack of information available about the private prison at Junee, and agrees that this has been a barrier to independently assessing the performance of the prison. While we acknowledge the concerns that private contractors may have regarding commercial-in-confidence provisions, we are of the view that it is unnecessary for the majority of contract provisions to be commercial-in-confidence, and should be in the public domain.

**6.18** Further, we note that other jurisdictions have made their private prison contracts available to the public. In particular, we note the private prison in Western Australia operates successfully with the contract publicly available on the Department's website. The Committee also notes the evidence provided by Mr Lawrence that there was no reduction in tender applications, even with the WA Government's transparency policy.

**6.19** Therefore, to promote transparency and instil public confidence, we recommend that private prison contracts in New South Wales be made public, and placed on DCS's website.

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**Recommendation 7**

That all private correctional centre contracts in New South Wales be made publicly available on the Department of Corrective Service's website.

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**6.20** The Committee also notes that the extent of available information regarding Junee prison is provided in a condensed report, as an appendix to the Department of Corrective Service's (DCS) Annual Report. We question why this is so, given that all the other New South Wales prisons are reported on extensively throughout the Annual Report, and given the Department's assertion that private prisons operate 'under the strict control of the Commissioner'.<sup>436</sup>

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<sup>435</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 18

<sup>436</sup> Submission 258, NSW Department of Corrective Services, p 3



- 6.21** As noted elsewhere in the Report, such overall measures as recidivism are measures that are impacted by an inmates stay at various institutions where the number of hours out of cells, the access to alcohol and drug rehabilitation programs, educational programs and trade skilling may well impact upon the inmate's success in reintegrating into the community.
- 6.22** The Committee considers that there is a need for the publication of performance against common performance indicators for all prisons in New South Wales irrespective of whether they are publicly or privately operated.

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### **Recommendation 8**

That the Department of Corrective Services report the results of all New South Wales correctional centres against common Key Performance Indicators in the Department's Annual Report. Key Performance Indicator data should also be published on the Department's website.

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### **Freedom of Information**

- 6.23** DCS advised the Committee that certain aspects of a private prison contract, such as the successful tenderer's details and the total value of the contract, are made public. DCS further stated that other aspects of the contract that are not commercial-in-confidence can be obtained through Freedom of Information (FOI) procedures.<sup>437</sup>
- 6.24** However, the Committee heard that prisons are one of the worst respondents to FOI requests.<sup>438</sup> Additionally, as many private prison contract provisions are classified as commercial-in-confidence, they are exempt from FOI procedures.
- 6.25** In evidence, Professor Aronson suggested that the application of FOI procedures to private prison contracts should be amended:

FOI is enormously important in this area I think and it will need amendment to take in these so-called private sector operators because they are private sector but they are operating a public service and to that extent their records should obviously be made available.<sup>439</sup>

- 6.26** Professor Aronson suggested that there are two ways to get around the current FOI procedures. The first option is to modify the FOI legislation. The second would be for the Government to insist that certain contract information remains open to FOI:

The second option is probably easier to achieve, but open to abuse by governments seeking to minimise transparency. It is to insist on the insertion into all relevant contracts of a clause that ensures that certain information and clauses (such as price,

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<sup>437</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Ron Woodham, Department of Corrective Services, Question 6(a), p 3

<sup>438</sup> Mr Aronson, Evidence, 23 February 2009, p 56

<sup>439</sup> Mr Aronson, Evidence, 23 February 2009, p 52

and key performance indicators) are to remain open to FOI access despite that Act's prima facie protection of confidential documents.<sup>440</sup>

### *Committee comment*

- 6.27** The Committee notes the concerns raised regarding the difficulties in applying FOI procedures to private prison contracts. We agree that access to information is important for public accountability. While our previous recommendation will go some way towards ensuring transparency and public accountability, we also recommend that the NSW Government extend FOI procedures to ensure that private prison contracts in New South Wales are fully accessible under FOI legislation.

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### **Recommendation 9**

That the NSW Government ensure that private correctional centre contracts in New South Wales are made fully accessible under the *Freedom of Information Act 1989* (NSW).

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## **Monitoring and accountability**

- 6.28** As first discussed in Chapter 3 (paragraphs 3.75 – 3.79), one of the arguments against privatisation raised during the Inquiry was that private prisons are less accountable than public prisons. This argument was disputed by participants in favour of privatisation, who contended that private prisons are in fact subject to greater monitoring and accountability than their public counterparts.
- 6.29** DCS advised the Committee that Junee prison is required to abide by the Department's operational policy and procedures. It is also monitored by the same independent bodies, mechanisms and legislation that monitor the performance of New South Wales public prisons. These include the *Crimes (Administration of Sentences) Amendment Act 2008* (NSW), the Crimes (Administration of Sentences) Regulation 2008, the NSW Ombudsman, the Independent Commission Against Corruption (ICAC), the Official Visitors Scheme and the NSW Anti-Discrimination Board.<sup>441</sup>
- 6.30** The Committee was informed that the Serious Offenders Review Council and Correctional Industries Consultative Council, among other advisory bodies, also visit Junee to provide advice to the Commissioner regarding individual inmates and activities in the prison. Further, inmates also have the right to petition or seek relief from the United Nations, the Legal Aid Human Rights Committee, and the NSW Supreme Court.<sup>442</sup>
- 6.31** Additionally, Junee prison is required to comply with a suite of minimum standards, and must report monthly on over 165 performance indicators.<sup>443</sup> These indicators are randomly audited

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<sup>440</sup> Submission 4, Mr Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales, p 3

<sup>441</sup> Submission 258, p 23

<sup>442</sup> Commissioner Woodham, Evidence, 27 March 2009, p 62

<sup>443</sup> Mr Bezuidenhout, Evidence, 20 March 2009, p 4

each month to examine performance in specific areas such as programme, health and food service delivery.<sup>444</sup> The audits are conducted by a full-time departmental monitor, who submits monthly reports to DCS and annual reports to Parliament. The Committee was advised that an additional monitor will be put in place to monitor the private Parklea prison.<sup>445</sup> Commissioner Woodham told the Committee: ‘I have often said that I would love to have a monitor in every prison’.<sup>446</sup>

**6.32** Further, a committee of senior DCS officers, senior management of GEO, and a senior representative of Justice Health also meet bi-monthly to review Junee’s performance.<sup>447</sup>

**6.33** The 165 performance indicators and reviews by the committee of senior officials are not required in public prisons, as pointed out by Commissioner Woodham, who stated: ‘the expectations of the public sector prisons are less clear and less robustly monitored’.<sup>448</sup> In its submission, DCS noted:

... the Department has refined its approach to managing contracted out services and has strengthened accountability mechanisms to the extent that no other correctional centre in NSW is subject to such rigorous scrutiny.<sup>449</sup>

### **Independent oversight**

**6.34** The Committee was informed that other jurisdictions, including England, Scotland, Wales and Western Australia, have established independent Prisons Inspectorates. In the United Kingdom, the Prisons Inspector has equal access to public and private prisons, and conducts both announced and unannounced inspections.<sup>450</sup> Mr Gary Sturgess, Executive Director, Serco Institute, commented:

... in my observation the existence of an independent inspectorate contributed to public confidence in the private management of prisons in the United Kingdom. The fact that there was an independent inspector who could go in and report on and expose, if necessary, what was going on in there was enormously important to public confidence.<sup>451</sup>

**6.35** The UK Prisons Inspectorate provides qualitative rather than quantitative assessments of prisons, which the Serco Institute suggested ‘permits the Chief Inspector to scrutinise aspects of prison management that are not (and could never be meaningfully) covered by quantitative targets’.<sup>452</sup> While unable to hand out financial penalties, the Inspector’s reports are released

<sup>444</sup> Commissioner Woodham, Evidence, 27 March 2009, p 62

<sup>445</sup> Commissioner Woodham, Evidence, 23 February 2009, p 2

<sup>446</sup> Commissioner Woodham, Evidence, 27 March 2009, p 61

<sup>447</sup> Commissioner Woodham, Evidence, 27 March 2009, p 62

<sup>448</sup> Commissioner Woodham, Evidence, 23 February 2009, p 2

<sup>449</sup> Submission 258, p 3

<sup>450</sup> Mr Gary Sturgess, Executive Director, The Serco Institute, Evidence, 27 March 2009, p 33

<sup>451</sup> Mr Sturgess, Evidence, 27 March 2009, p 35

<sup>452</sup> Submission 407, The Serco Institute, p 32

publicly, and can therefore have a significant impact on a private provider's reputation.<sup>453</sup> The Institute noted:

... if there are significantly adverse comments they will be reported in the media. A great deal of attention is paid to those reports. Because they have been reported in the media chief executives tend to notice them very quickly because they count.<sup>454</sup>

**6.36** The equivalent function in Western Australia is carried out through the Office of the Inspector of Custodial Services. Mr Lawrence advised the Committee that the office was established to provide independent, external scrutiny to the states' prisons<sup>455</sup> and that the Prison Inspector reports directly to Parliament.<sup>456</sup>

**6.37** In New South Wales there is a Corrections Inspectorate that undertakes an oversight role of prisons. The Committee was advised that responsibility for monitoring the operation of Junee lies with the Director of the Inspectorate, to whom the departmental monitor (discussed above) reports to. However, the Corrections Inspectorate in New South Wales is still part of DCS,<sup>457</sup> and therefore lacks independence from the Department.

**6.38** There was previously also an independent Inspector General of Corrective Services in New South Wales, however that role has been abolished. This was criticised by the Hon Justice John Dowd, President, International Commission of Jurists Australia, who noted that '[w]e do not have appropriate prison visitors who are outside the control of Corrective Services'.<sup>458</sup>

**6.39** In response to questioning regarding the loss of the NSW Inspector General, Mr Craig Baird, Manager, Prisoners Aid Association of New South Wales, commented:

... we would have preferred if he had stayed and that position had remained ... It seemed to give inmates a good mechanism for having their complaints dealt with, but also, I suppose, from our organisation's perspective, a contact point for us where we saw wider issues as well to speak to the inspector general about concerns that we had. I think other community organisations were pretty much of the same opinion.<sup>459</sup>

**6.40** As mentioned earlier, another monitoring mechanism is the use of 'Official Visitors' to New South Wales prisons. Official Visitors are appointed by the Minister for Corrective Services to visit prisons to interview inmates and staff 'for the purpose of examining the complex or

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<sup>453</sup> Submission 407, p 32

<sup>454</sup> Mr Sturgess, Evidence, 27 March 2009, p 33

<sup>455</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Brian Lawrence, Manager Acacia Prison and CS&CS Contracts, Question 2, p 2

<sup>456</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>457</sup> NSW Department of Corrective Services, *Annual Report 2007/08*, p 56

<sup>458</sup> Hon Justice John Dowd, President, International Commission of Jurists Australia, Evidence, 27 March 2009, p 3

<sup>459</sup> Mr Craig Baird, Manager, Prisoners Aid Association of New South Wales, Evidence, 20 March 2009, p 69

centre'.<sup>460</sup> However, the independence of Official Visitors was questioned by the Australian Lawyers Alliance, who also suggested that their role has been 'watered down':

... recent comments by three former 'official visitors' to the state's prisons ... say that their roles are being watered down by the NSW government. Ray Jackson, an official visitor of the Metropolitan Remand and Reception Centre at Silverwater for 10 years, said: 'By the end, we couldn't be autonomous from the department in trying to solve issues.'<sup>461</sup>

- 6.41** An alternative option for independent oversight of public and private New South Wales prisons, suggested during the Inquiry, is to have a parliamentary oversight committee, similar to the Committees on the ICAC and the Police Integrity Commission. Professor Aronson discussed the option of having such a committee in evidence, expressing the following view:

I think it is essential. It need not have star chamber powers that perhaps the ICAC has but there has to be a decent standing committee that is well serviced in terms of secretariat and research staff and so on and that is accessible from a wide range within the community, yes.<sup>462</sup>

***Committee comment***

- 6.42** The Committee notes that the position of NSW Inspector General of Prisons was abolished, and believes that this is an important position that should be reinstated to report on both public and private prisons.

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**Recommendation 10**

That the position of NSW Inspector General of Prisons be reinstated to report on both public and private prisons

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- 6.43** The Committee also notes concern that the Corrections Inspectorate is part of DCS and therefore appears to lack a capacity for independent oversight. We consider that the Inspectorate may more appropriately sit within another Department, such as the Attorney General's Department, so as to ensure a degree of independent review and reporting, and recommends that this occur.

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**Recommendation 11**

That the NSW Corrections Inspectorate be removed from the control of the Department of Corrective Services and placed under the authority of another government department such as the Attorney General's Department or the Department of Premier and Cabinet.

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<sup>460</sup> *Crimes (Administration of Sentences) Act 1999 (NSW)*, s 228

<sup>461</sup> Submission 113, Australian Lawyers Alliance, p 11

<sup>462</sup> Mr Aronson, Evidence, 23 February 2009, p 58

- 6.44** We also believe that to accurately measure a private contractor's performance and quality of service, there should be a mechanism for inmates at all prisons to provide regular feedback directly to DCS. We recall the evidence from South Australia in Chapters 3 (paragraph 3.148) and 5 (paragraph 5.120), where the SA Department of Corrective Services discussed its use of confidential inmate and staff surveys at the Mount Gambier prison, in order to gauge satisfaction and collect internal feedback. The Committee commends this approach, and believes that DCS should replicate it in New South Wales prisons.

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**Recommendation 12**

That the Department of Corrective Services annually conduct confidential inmate and officer surveys at all New South Wales correctional centres to assess satisfaction and identify issues with service quality.

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- 6.45** The Committee has heard evidence from a number of Inquiry participants urging the need for greater transparency both with respect to privately run institutions but also with respect to the operation of Corrective Services generally.
- 6.46** The Committee considers that greater independent oversight of both public and private prisons in New South Wales would be achieved through the establishment of a Parliamentary oversight Committee that would allow for the regular taking of evidence, and of inspections of prisons whether they be publicly or privately operated.
- 6.47** The establishment of a prisons oversight Committee will assist in improving community confidence in both the operation of prisons in New South Wales and also in the transparency of Government decision making with respect to any future moves towards the privatisation of other prisons in New South Wales.

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**Recommendation 13**

That the NSW Government establish a Prisons Parliamentary Oversight Committee, with powers and authority similar to the Committee of the Independent Commission Against Corruption.

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**On-site monitors**

- 6.48** Another monitoring practice used in other jurisdictions is the placement of departmental staff on-site at private prisons. For instance, in the United Kingdom, government monitors work at private prisons to supervise operations and oversee the administering of penalties.<sup>463</sup> Mr Sturgess noted that in this situation, '[g]overnment is scrutinising very closely'.<sup>464</sup>
- 6.49** The Committee was also informed that the SA Department of Correctional Services maintains two supervisory staff at the private Mount Gambier prison. Additionally, the South Australian

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<sup>463</sup> Mr Sturgess, Evidence, 27 March 2009, p 33

<sup>464</sup> Mr Sturgess, Evidence, 27 March 2009, p 33

department nominates its own General Manager to oversee the prison, however the private operator's Director runs the day-to-day management of the centre.<sup>465</sup> The impact of this was commented on by Mr Greg Weir, Deputy of Strategic Services and Deputy of SA Department of Correctional Services:

It actually led to probably better integration of their overall system, a better understanding among the different parties, improved accountability, or as good an accountability as you would expect.<sup>466</sup>

- 6.50** Similarly, Western Australia also employs departmental monitors at the private Acacia prison, who are on-site 24 hours a day, seven days a week. Mr Lawrence advised that when the prison was initially privatised, the government employed seven monitors to work at the prison for the first five years of the contract. Over time the government developed trust and confidence in the provider, and has since reduced the number of monitors to four.<sup>467</sup>
- 6.51** The Committee was also informed that the WA Government has a team of four staff dedicated to contract management, to ensure compliance and accountability of the private prison contract. As stated by Mr Lawrence: 'If you issue a contract and then do not make sure that the contract is delivering, what is the point?'<sup>468</sup>
- 6.52** As discussed in Chapter 3, the experience of prison privatisation in Western Australia has generally been a positive one. Mr Lawrence expressed the view that the good results have been made possible through 'what I term in-your-face contract management and monitoring'.<sup>469</sup>
- 6.53** The Serco Institute also supported the use of on-site monitors at private prisons, highlighting that it contributes to greater transparency compared to the public system.<sup>470</sup> Likewise, in response to questioning from the Committee regarding the benefit of such monitors, Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, replied:

Certainly I think the more the Government remains engaged with the delivery of the service, the more the public can call the system to account. As citizens, as members of the public, we do have a greater right to call the Government to account than we do private enterprise. So it certainly would be a better outcome.<sup>471</sup>

### *Committee comment*

- 6.54** The Committee agrees that the use of departmental monitors employed on-site at private prisons is a good idea that results in increased accountability. Not only is increased accountability beneficial for the Government, we believe departmental monitors would also

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<sup>465</sup> Mr Greg Weir, Deputy of Strategic Services and Deputy of SA Department of Correctional Services, Evidence, 27 March 2009, p 11

<sup>466</sup> Mr Weir, Evidence, 27 March 2009, p 15

<sup>467</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>468</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>469</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>470</sup> Submission 407, p 32

<sup>471</sup> Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 27 March 2009, p 41

help alleviate some of the public concerns raised in evidence regarding transparency and accountability.

- 6.55** We therefore recommend that DCS employ on-site monitors at all private prisons in New South Wales. The funding of these positions will need to be considered by the Department, who may wish to incorporate part or all of the costs into the private providers' contract.

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#### **Recommendation 14**

That the Department of Corrective Services employ departmental monitors on-site at all private correctional centres in New South Wales.

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### **Performance Linked Fees**

- 6.56** Many jurisdictions, including New South Wales, attach Performance Linked Fees (PLFs) to private prison contracts, which are financial bonuses or penalties designed as incentives for private operators to achieve certain standards. PLFs are linked to fixed outcomes and Key Performance Indicators (KPIs) against which a private operator is assessed. Failure to meet agreed standards in any of those areas results in a financial penalty or reduction of a bonus.<sup>472</sup>

- 6.57** Mr Sturgess provided the following example to the Committee, which illustrates how the PLF system operates in the United Kingdom:

In terms of hours out of cell or hours of purposeful activity, they are specified in the contract as a performance measure, with either a monetary penalty attached to it or a point penalty which will then later be translated into a monetary penalty. Failure to meet those conditions results in an accumulation of financial deductions.<sup>473</sup>

- 6.58** This is also how the PLF system operates at Junee. In relation to the fee, Commissioner Woodham advised that the PLF at Junee equates to 2.5 per cent of GEO's annual management fee. This is withheld by the Department until the annual performance assessment of the private provider has been completed. If the provider does not meet the agreed standard for a KPI, a proportion of the fee is retained by DCS.<sup>474</sup>

- 6.59** In addition to this, the Committee was informed that the PLF at Junee can be reduced for a range of specific incidents:

For example, if the Coroner makes a finding of contributory negligence against the private operator in relation to the unnatural death in custody of an inmate, the fee can be reduced by \$100,000. It may similarly be reduced if the Commissioner has to intervene to resolve an inmate disturbance which has escalated due to the private operator failing to take timely and appropriate action, which may include asking the department for assistance.<sup>475</sup>

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<sup>472</sup> Commissioner Woodham, Evidence, 27 March 2009, pp 61-62

<sup>473</sup> Mr Sturgess, Evidence, 27 March 2009, p 33

<sup>474</sup> Commissioner Woodham, Evidence, 27 March 2009, p 61

<sup>475</sup> Commissioner Woodham, Evidence, 27 March 2009, p 61



**6.60** Similar abatements apply in Western Australia. These were outlined in evidence by Mr Lawrence:

... we have a number of fairly significant abatements – that should a prisoner die in prison, they get fined \$100,000. If somebody escapes, they get fined \$100,000. If they lose control, \$100,000.<sup>476</sup>

**6.61** During the Inquiry, the Committee wrote to the Corrective Services Minister, the Hon John Robertson MLC, to ask what KPIs would likely be included in the private operating contract at Parklea (and at the time, Cessnock). In response, the Minister advised that the following KPIs would result in a fixed fee reduction to the PLF if they were to occur:

- All incidents of suicide, death, escape, riot, hostage situation and serious misconduct of corruption by staff or staff charge or conviction of a serious offence
- Deaths in custody for which an adverse finding is made against the operator by the Coroner
- Intervention by the Commissioner to resolve an inmate disturbance which has escalated due to the operator failing to take timely and appropriate action (which may include asking the Department for assistance) in accordance with the approved Operating Manual.<sup>477</sup>

**6.62** In addition to these, the Minister provided the following list of examples of variable KPIs, which would have a corresponding proportion of their PLF reduced if the required percentages are not met:

- Proportion of inmate case plans and classifications prepared within 72 hours of each new reception
- Proportion of inmates employed in Corrective Services Industries programmes, community work or performing cleaning, maintenance and gardening services in the correctional centre
- Proportion of inmates released from custody without community supervision who have accommodation offered by their programmes and services officer
- Proportion of eligible inmates participating in pre-release leave programmes, including work release, day leave, education leave and weekend leave
- All custodians of inmates working at the Correctional Centre having completed Certificate III in Correctional Practice within 12 months of appointment as permanent full time officers or pro rata for part-time and casuals
- Staff deployment plan fully maintained as approved by the Commissioner
- Maintenance and replacement of major assets with a cost greater than \$5,000 completed in accordance with the Major Asset Plan.<sup>478</sup>

<sup>476</sup> Mr Lawrence, Evidence, 27 March 2009, p 74

<sup>477</sup> Correspondence from the Hon John Robertson MLC, Minister for Corrective Services, to the Chair, 23 April 2009, p 2

<sup>478</sup> Correspondence from the Hon John Robertson MLC, Minister for Corrective Services, to the Chair, 23 April 2009, p 2

**6.63** In evidence, Commissioner Woodham pointed out that public prisons are not subject to such penalties, financial or otherwise, for poor performance.<sup>479</sup>

**6.64** Performance indicators and corresponding PLFs can also be reviewed and updated to reflect new standards or developments in prison management practice.<sup>480</sup> Mr Gerry Schipp, Deputy Commissioner, Corporate Services, DCS, told the Committee:

... the system was established so that the individual key performance indicators can vary from year to year to give us a particular focus, depending on what issues might have arose throughout the course of the operations and throughout the course of the contract. So there is a fixed component which provides for penalties if certain events occur and then there is a variable component that allows us to negotiate on a year-to-year basis with the supplier, with the contractor, to provide a particular area of focus.<sup>481</sup>

**6.65** The benefit of this was enunciated by Mr Lawrence, who noted that it has allowed the WA Government to increase required standards where the private operator has easily met the ones already in place:

We have found obviously with some of those measures as the contractor gets better we need to increase the measures. Things like self-harm rates are so low that the current measures mean nothing so the contractor is just getting that money for nothing. We are reviewing the measures at the moment.<sup>482</sup>

**6.66** In evidence, the PSA criticised the Department's application of PLFs, arguing that penalty provisions have not been applied consistently:

... for example in the 2005/2006 contract year the Monitor found that GEO's performance against two KPIs was below base level performance but despite this the Commissioner determined that GEO should receive the full Performance Linked Fee because he was "mindful that it was never my intention that the provisions of PLF be used in a punitive fashion".<sup>483</sup>

### **Failure to report**

**6.67** Another criticism of the PLF system is the potential for it to result in a disincentive to report incidents, in order to avoid financial penalties. The PSA quoted one example by Dr Andrew, in relation to one private prison in Scotland:

In his training course, Allen was told that a positive drug test would cost the prisons £3000, and a physical assault of a prisoner or staff member would lead to a fine of £16000. Although the compliance trainer was clear that all incidents should be reported, the reality was quite different. Accordingly to Allen's report, when guards

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<sup>479</sup> Commissioner Woodham, Evidence, 27 March 2009, p 61

<sup>480</sup> Commissioner Woodham, Evidence, 27 March 2009, pp 61-62

<sup>481</sup> Mr Gerry Schipp, Deputy Commissioner, Corporate Services, DCS, Evidence, 27 March 2009, p 55

<sup>482</sup> Mr Lawrence, Evidence, 27 March 2009, p 72

<sup>483</sup> Submission 102, Public Service Association of NSW, p 20

found 'hooch' – home-brew produced by the prisoners – they threw it away rather than report it ... By not reporting offences and helping to minimise fines, staff hoped that this would lead to a pay rise.<sup>484</sup>

- 6.68** A similar example was provided in Submission 136, in relation to Woomera Detention Centre. As noted in Chapter 2, some of the corporations that operate private prisons also operate some of Australia's detention centres. The submission author quoted a report which accused the private provider, ACM, of failing to report incidents which would impact on profit levels:

In 2000 media attention brought to light the fact that ACM failed to report the alleged rape of a 12yr old boy, it was reported that ACM was reluctant to disclose information because it would lead to a financial penalty of \$20 000.<sup>485</sup>

- 6.69** However, on the opposite hand, Serco argued: 'The consequences for failure to report (in terms of financial penalties) are so severe, that companies have a powerful incentive to report even minor incidents'.<sup>486</sup>

- 6.70** The Committee received a submission from a Junee prison officer which supported this view, expressing the opinion that the environment at Junee was one that lent itself to openness and honesty:

The operation of the Junee Correctional Centre has been very closely monitored by all involved for 15 years now as it continues to be to this day. This allows me as an employee to operate transparently and to ensure that any and all matters, incidents or occurrences that occur in my Area, whether good, bad or indifferent are reported formally for all those relevant for review ... my colleagues and I report everything that happens at Junee C.C without fear of repercussions. This method of transparent operation is driven by my superiors in the organisation and I pass this onto my staff in turn.<sup>487</sup>

### **Performance rectification**

- 6.71** The Committee also received evidence that some jurisdictions allow private operators the chance to rectify their performance before imposing any financial sanctions.

- 6.72** This was outlined by the Serco Institute, who explained that if a government has identified failings in a key performance area, it can intervene early and issue a rectification notice to the private provider. The Institute stated that '[s]uch an action is treated most seriously by prison contractors who are required to develop and implement a rectification plan within a defined time period'.<sup>488</sup> Failure to rectify the issue can then lead to a financial penalty, or in serious cases can even result in contract termination.

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<sup>484</sup> Submission 102, p 21

<sup>485</sup> Submission 136, Name suppressed, p 8

<sup>486</sup> Submission 407, p 31

<sup>487</sup> Submission 10, Name suppressed, p 1

<sup>488</sup> Submission 407, p 35

- 6.73** Mr Lawrence advised that Western Australia currently uses this system, and that it has been successful in producing improvements:

We have what we call our PIR, a performance improvement request notice, which, if we find they are not delivering a service at the standard we would really like it, we can write to them and say they need to address this issue. Depending what it is and how important it is, we will give them either five or 10 days to remedy it. They need to write back and tell us how they remedied it. If they do not remedy it, we fine them \$30,000, and we continue to fine them until they have remedied it ... We issue PIRs regularly, but we have never fined them \$30,000, because they always fix up the issues we are whingeing about.<sup>489</sup>

#### *Committee comment*

- 6.74** Performance Linked Fees are a feature of all private prison contracts. The Committee considers them to be a useful tool to encourage strong performance, as long as the government is serious in applying penalties where deserved. We believe that our earlier recommendation (Recommendation 8) to report against Key Performance Indicators in the Department's Annual Report will assist in providing further incentive for good performance. Performance rectification is also a useful mechanism to improve performance and ensure quality.
- 6.75** With regard to the concerns raised about private contractors choosing not to report incidents, we believe this would be addressed through the utilisation of on-site monitors, and refer to our earlier Recommendation 14.

### **The contract and provider**

- 6.76** As discussed in Chapter 3, both public and private prisons can have poor results, however they can also both be very successful. In the case of private prisons, it has been argued that the success of their performance comes down to the quality of the contract, rather than whether the operator is a private corporation or the government.<sup>490</sup>
- 6.77** In evidence, Mr Brendan Lyon, Executive Director, Infrastructure Partnerships Australia, suggested that where there is a 'rigorous and strong contractual service agreement', the degree of control and accountability over the quality of services in a private prison is far greater than that which exists in the public system.<sup>491</sup>

#### **Clearly specified requirements**

- 6.78** Inquiry participants submitted that it is essential for governments to clearly determine their requirements, in stating what they expect a private prison to deliver. This then needs to be

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<sup>489</sup> Mr Lawrence, Evidence, 27 March 2009, p 74

<sup>490</sup> Mr Aronson, Evidence, 23 February 2009, p 52

<sup>491</sup> Mr Brendan Lyon, Executive Director, Infrastructure Partnerships Australia, Evidence, 27 March 2009, p 79

reflected clearly in the contract.<sup>492</sup> As noted by Mr Lyon: 'Because you are creating a market you can set the levers, benchmarks, metrics and behaviours that the market will operate within'.

**6.79** Infrastructure Partnerships Australia commented on the importance of good communication between the parties involved in the contract, adding that 'a failure to specify core outcomes and responsibilities will greatly increase the chances of a poor outcome'.<sup>493</sup>

**6.80** Mr Lawrence informed the Committee that there were initially poor results when the private Acacia prison first opened in Western Australia, as the first contract failed to be specific enough, and allowed too much room for interpretation by the then provider, Australian Integration Management Services (AIMS) Corporation:

This is why I said it is so important about getting this thing right from the beginning. Things like staffing levels where we said, "You require adequate staff to run the prison", they were not actually specified. When we tried to pull AIMS up and said, "Look, we think you are running a bit lean and it is a bit dangerous", they said, "Tough luck. Show us in the contract where it says we have to have X amount of prison officers".<sup>494</sup>

**6.81** As a result, the WA Department of Corrective Services has since completely rewritten the contract. The new contract clearly defines the Government's required service provision standards, and as such the prison now operates successfully.<sup>495</sup>

**6.82** The importance of having a good quality contract from the outset was also highlighted by Professor Aronson, who noted:

Governments seeking to alter unwise but binding contractual obligations face significant additional costs to pay for variations, or even worse, might have to pick up the pieces after the failure of the principal private sector contractor.<sup>496</sup>

**6.83** The potential failure of private contractors is discussed below.

***Committee comment***

**6.84** The Committee agrees that a well written, prescriptive contract that clearly defines the government's expectations and requirements of a private prison and private contractor are essential for a private prison to operate successfully.

**6.85** We note the range of private prison contract successes and failures that have occurred in other jurisdictions, and believe that the NSW Government can learn from these in determining what to do, and what not to do, in developing private prison contracts. This includes learning from the strengths and weaknesses of the Junee private prison contract.

<sup>492</sup> For example, Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>493</sup> Submission 428, Infrastructure Partnerships Australia, p 11

<sup>494</sup> Mr Lawrence, Evidence, 27 March 2009, p 71

<sup>495</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Lawrence, Question 3, p 2

<sup>496</sup> Submission 4, p 1

### Choosing the provider

- 6.86** The potential for contract failure was noted by Mr Lawrence, who emphasised the importance of choosing the right provider. Mr Lawrence stressed the importance of doing sufficient background research to assess the financial viability of a company before making a selection: 'If you do the preparation and get the contract right and you select the right contractor, it works'.<sup>497</sup>
- 6.87** This view was also espoused by Infrastructure Partnerships Australia, who quoted Mr Sturgess in saying, 'one of the inescapable truths of competitive tendering and contracting is that you get what you ask for'.<sup>498</sup>
- 6.88** Mr Lawrence informed the Committee that the decision to award Acacia's prison contract to the current operator, Serco, was not based on cost. In fact, Serco did not even provide the cheapest bid.<sup>499</sup> Instead, the WA Department opted to award the contract to Serco as it believed that the company would provide the best quality services in line with the Department's objectives:

Serco were selected because they provided the best response to the RFP [Request for Proposal], as well as having similar philosophical views to those of the Department. For example they employ a "responsible prisoner" model, where prisoners are expected to behave and be responsible for their behaviour and work towards skilling themselves for release from prison. Serco also offered a lot more in terms of prison innovation and a huge commitment to providing prisoner education and program.<sup>500</sup>

### Risk of failure

- 6.89** In extreme cases of underperformance, governments have the power to step in and take over a private prison contract. For example, in relation to Western Australia, Mr Lawrence said to the Committee:
- The abatements, the performance link fees, if they do not deliver, there are some very serious abatements. Of course, at the end of the day, if the department or the Government is not satisfied with the service that is being delivered, then we can take the contract back in-house. That is actually part of the contract.<sup>501</sup>
- 6.90** The Serco Institute noted that this remedy of contract termination has been employed in the United States, and in Australia at the Victorian Metropolitan Women's prison.<sup>502</sup> In the case of

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<sup>497</sup> Mr Lawrence, Evidence, 27 March 2009, p 73

<sup>498</sup> Submission 428, p 7

<sup>499</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Lawrence, Question 3, p 2

<sup>500</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Lawrence, Question 3, p 2

<sup>501</sup> Mr Lawrence, Evidence, 27 March 2009, p 66

<sup>502</sup> Submission 407, p 36

the Metropolitan Women's prison, the Victorian Minister reported:

... the operator was given repeated opportunities to fix the problems and meet its contractual obligations, but failed to adequately respond to verbal and written warnings and three default notices.<sup>503</sup>

- 6.91** The cost to the Victorian government before stepping in and taking over the prison was reported to be \$21 million.<sup>504</sup> In evidence, Dr Andrew told the Committee that this figure was so high because the Government did not own the facility and had to 'buy it back', and that the administrative costs associated with resuming management of the prison was \$2 million:

They did not own the prison to start with, so they had to buy back the prison, which is perhaps not an issue in the case of Cessnock and Parklea. The only additional thing I know is that purely the administration of that change cost \$2 million. That was just dealing with the changeover. There was, of course, the additional unexpected cost of having to buy it back and then the challenge of ensuring it was staffed appropriately and seamlessly through that changeover.<sup>505</sup>

- 6.92** In another example, Assistant Commissioner Luke Grant, Offender Services, DCS referred the Committee to a report by the Inspector of Custodial Services in Western Australia, which estimated that 'it would cost the Government between \$12.5 million and \$20 million if they were to take that [Acacia] prison back.'<sup>506</sup>

- 6.93** In addition to contract termination as a result of underperformance, concern was also raised during the Inquiry regarding the potential risk of the private contractor going bankrupt.<sup>507</sup> The need to factor in a risk of failure was also raised by Dr Andrew and Dr Damien Cahill, University of Sydney, who stated in their submission that there has been 'little, if any, discussion of the risks associated with prison privatisation and the corresponding costs associated with such risk'.<sup>508</sup>

- 6.94** The potential cost to government of private sector failure was also discussed by Professor Aronson, who stated that 'everybody knows that the Government will step in at the end, even if they are not contractually obliged to'.<sup>509</sup> This point was reiterated by Dr Andrew, on the basis that the government 'bears ultimate responsibility for a functioning prison':

... we also believe it is essential that privatisation decisions factor in the associated risks and liabilities to the public. Appropriate costings must factor in the risk associated with breaches of contract into the costs of running private prisons. The risk associated with prison management cannot be transferred in its entirety to the private sector as the Government bears ultimate responsibility for a functioning prison.

<sup>503</sup> L Roth, *Privatisation of Prisons*, Background Paper No 3/2004, NSW Parliament, p 84

<sup>504</sup> Dr Andrew, Evidence, 20 March 2009, p 70

<sup>505</sup> Dr Andrew, Evidence, 20 March 2009, p 59

<sup>506</sup> Assistant Commissioner Luke Grant, Offender Services, DCS, Evidence, 23 February 2009, p 18

<sup>507</sup> Submission 109, Police Association of NSW, p 2

<sup>508</sup> Submission 172, p 4

<sup>509</sup> Mr Aronson, Evidence, 23 February 2009, p 60

The costs associated with this might be quite considerable and, unfortunately, they are rarely considered in privatisation decisions.<sup>510</sup>

**6.95** On this basis, Drs Andrew and Cahill called on the government to:

... explain how it has considered these risks and what provisions it has made to insulate the public against risks that arise if the private prison companies decided to end their contracts with the State or if these companies faced financial difficulties and had to close or if the Government is forced to step in as a result of a breach of contract.<sup>511</sup>

**6.96** Mr Lawrence advised that in Western Australia, this consideration has been factored in to the initial agreement with the provider:

We take a bond from them, a fairly large sum of money, which we put into our bank account. Should the business fold tomorrow, we will be able to run the prison for the next couple of years. All those things are put in place.<sup>512</sup>

**6.97** Mr Lawrence further advised that they have a transition plan, which covers a multitude of issues or things that could happen: 'For example, if tomorrow we were to take the service back in-house we have a plan that we can roll out to make sure that, once again, services are not interrupted'.<sup>513</sup>

**6.98** Professor Aronson agreed that private prison contracts should provide appropriate provisions entailing financial consequences should the government have to step in to pick up the pieces of a failed contract.<sup>514</sup>

**6.99** In response to questions from the Committee about such risks, Minister Robertson advised that 'the successful private operator will have undergone a detailed assessment of corporate stability and financial capability as part of the assessment of tenders'.<sup>515</sup> Further, in relation to the chance that the government would have to step in to take over the contract, the Minister advised:

Under the draft operating contracts for these correctional centres, the successful contractor is required to lodge with the Commissioner a performance security (essentially, a bank guarantee) on the commencement date of the contract. This can be called upon in the case of certain performance failures by the contractor ...<sup>516</sup>

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<sup>510</sup> Dr Andrew, Evidence, 20 March 2009, p 54

<sup>511</sup> Dr Andrew, Evidence, 20 March 2009, p 54

<sup>512</sup> Mr Lawrence, Evidence, 27 March 2009, p 73

<sup>513</sup> Mr Lawrence, Evidence, 27 March 2009, p 70

<sup>514</sup> Mr Aronson, Evidence, 23 February 2009, p 54

<sup>515</sup> Correspondence from the Hon John Robertson MLC, Minister for Corrective Services, to the Chair, 23 April 2009, p 1

<sup>516</sup> Correspondence from the Hon John Robertson MLC, Minister for Corrective Services, to the Chair, 23 April 2009, p 3



*Committee comment*

- 6.100** The risk of contract failure is a possibility, and we note that this has already occurred in Victoria at the Metropolitan Women’s prison. The Committee acknowledges the significant cost to government of stepping in to take over a private prison after contract failure, and agree with the evidence that this must be factored in to any private prison contract. We acknowledge that Minister Robertson has advised that a guarantee is in place should the performance of a private contractor in New South Wales fail.

**Rights of third parties to enforce contract provisions**

- 6.101** Another issue raised by some inquiry participants concerns the right of third parties to enforce contract provisions. This is closely related to the concern raised in Chapter 3 regarding the human rights of inmates in private prisons, and was outlined by Ms Banks:

Certainly one of the issues about privatised arrangements in any area is what rights do non-parties to the contractual arrangement have to assert things that are part of the contract? If the contract, for instance, requires private prisons to conduct prisons in ways that are human rights compliant, that does not give prisoners through the normal course of events any rights against that correctional centre and against the private entity conducting it.<sup>517</sup>

- 6.102** Ms Banks argued that the government should ensure that inmates, and potentially even the broader community, have a means of enforcing rights set out in private prison contracts if they are believed to have been breached.<sup>518</sup>
- 6.103** This was further supported by Mr Dodd, who noted that in Victoria, the rights of inmates are protected in the *Corrections Act 1986* (Vic), as well as in the Victorian Charter of Rights. Mr Dodd stated: ‘[s]omething we should be thinking about in New South Wales at least is having the same sort of protections’.<sup>519</sup>

*Committee comment*

- 6.104** The Committee agrees that the human rights of inmates are paramount, and in order to address the concerns of some Inquiry participants that these rights may be diminished through the contracting out of prison management, we urge the Government to examine how private prison inmates’ human rights are protected in developing future contracts.

<sup>517</sup> Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 27 March 2009, p 43

<sup>518</sup> Ms Banks, Evidence, 27 March 2009, p 43

<sup>519</sup> Mr Dodd, Evidence, 27 March 2009, p 43



## Chapter 7 Workplace practices and The Way Forward

This chapter examines the causes of high levels of overtime experienced in public prisons, including consideration of staffing levels and budget allocation; and discusses The Way Forward package of workplace reforms, which were introduced to improve the efficiency and effectiveness of public corrective services. The chapter also looks at the difficulties faced by the Department of Corrective Services in introducing workplace reforms, in the context of why it chose to proceed down the path of privatisation.

### Overtime

7.1 As noted in Chapter 3, prison officers have been accused of ‘manipulating’ rosters in order to earn high amounts of overtime (see paragraphs 3.20 – 3.31). It was also noted that prison officers blame management for the Department’s overtime problems. The main arguments raised during the Inquiry surrounding overtime relate to:

- staffing levels
- sick leave
- budget allocation and staffing formula
- positions and duties manned on overtime.

### Staffing levels

7.2 One of the most frequently heard arguments throughout the Inquiry regarding overtime is that high levels of overtime are due to staff shortages. According to the Public Service Association (PSA), from 1999 to 2008, inmate numbers grew by 41 per cent, however DCS staff only grew by 32 per cent, with custodial staff growing by 29 per cent.<sup>520</sup> Mr Steve Turner, Assistant General Secretary, PSA, said:

The figures have gone from about 6,800 to more than 10,000 in terms of inmate numbers ... Yet, the front-line prison officer numbers have not grown by nearly that number ... certainly, there has not been a corresponding growth in Corrective Services officers to inmate numbers.<sup>521</sup>

7.3 This was disputed by Commissioner Ron Woodham, DCS, who acknowledged that there has been a 41 per cent increase in the inmate population, yet insisted that there has been a corresponding 40 per cent increase in staff.<sup>522</sup>

<sup>520</sup> Submission 102, Public Service Association of NSW, p 11

<sup>521</sup> Mr Steve Turner, Assistant General Secretary, Public Service Association, Evidence, 23 February 2009, p 31

<sup>522</sup> Commissioner Ron Woodham, NSW Department of Corrective Services, Evidence, 23 February 2009, p 6

- 7.4 However, this reported increase in staff has been questioned by inquiry participants, such as the author of Submission 216:

Woodham states to the inquiry that there has been a 41% increase in staff in the last 10 year period. What he failed to state is that almost none of the increases [are] related to front-line correctional officers at centres other than the three new centres under the island agreements.<sup>523</sup>

- 7.5 This assertion was also refuted by DCS, who provided a breakdown of inmate numbers, custodial staff numbers and overtime in their submission, stating:

The data demonstrated conclusively that over the past ten years the ratio of inmates to custodial staff has stayed relatively constant between 2.31 and 2.38 inmates per officer. During this same period there has been an escalation in expenditure on custodial overtime from \$20 million to \$38 million.<sup>524</sup>

- 7.6 Further to this, Commissioner Woodham said that even when the Department has increased the number of staff in prisons, overtime levels have not decreased. He expressed that this was another reason why he is confident that staff shortages are not the main driver of overtime, rather, that it is a result of high levels of sick leave:

For instance, 120 correctional officers completed their training in April 2007 and were placed in correctional centres. The overtime used in thee centres where those officers had been placed did not go down but the level of sick leave went up. Unscheduled absences are the main contributor to overtime. Where overtime is higher in particular centres sick leave is high; conversely, where overtime is low so is sick leave.<sup>525</sup>

### **Sick leave**

- 7.7 Deputy Commissioner Ian McLean, Offender Management and Operations, DCS, told the Committee that for the 2007-08 financial year, 44 per cent of all overtime expenditure was 'directly incurred as a result of sick leave taken by correction officers'.<sup>526</sup> Deputy Commissioner McLean advised that this came at a cost to the Department of \$16,856,661.<sup>527</sup>
- 7.8 DCS advised that the current average annual amount of sick leave taken per custodial officer in New South Wales public prisons is 13 days per annum, compared to the state's public sector average of 8 days per annum.<sup>528</sup> The Committee was also informed that the average sick leave rate at Junee is significantly lower than New South Wales public prisons, particularly

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<sup>523</sup> Submission 216, Name suppressed, p 1

<sup>524</sup> Submission 258, NSW Department of Corrective Services, p 35

<sup>525</sup> Commissioner Woodham, Evidence, 23 February 2009, p 16

<sup>526</sup> Deputy Commissioner Ian McLean, Offender Management and Operations, DCS, Evidence, 27 March 2009, p 59

<sup>527</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 59

<sup>528</sup> Submission 258, p 33

Cessnock and Parklea. This is illustrated by the following rates for 2008:

- Junee 5.6 days<sup>529</sup>
- DCS (all staff) 10.2 days
- Correctional centres (all staff) 11.59 days
- Correctional centres (custodial staff) 12.33 days<sup>530</sup>
- Cessnock correctional centre 13.81 days
- Parklea correctional centre 11.88 days.<sup>531</sup>

**7.9** Commissioner Woodham claimed that the reason for high rates of sick leave was prison officers purposely choosing to take sick leave then work overtime at times that would increase their financial gain:

What occurs is that officers work overtime on their days off and then go sick on their normal rostered days. There is a pattern ... where sick leave goes up Monday to Friday and it goes down of a weekend because the officers come in for the penalty rates ... sick leave and overtime goes down at Christmas when all the jails are open because they want their leave. When they come back, up it goes.<sup>532</sup>

**7.10** This notion was strongly protested against by Mr David Walker, who asserted that high levels of sick leave are more likely a result of the stressful and often dangerous nature of a prison officer's job, rather than by any supposed manipulation of overtime.<sup>533</sup>

**7.11** Nonetheless, in order to address their concerns and curtail high levels of absenteeism, the Department introduced a new sick leave policy on 1 January 2009. Commissioner Woodham told the Committee that the new policy would 'in my opinion, give more support to the way we structure officers who are genuinely sick and alleviate unnecessary sick leave to a degree'.<sup>534</sup>

### **Budget allocation**

**7.12** The PSA argued another reason for high overtime expenditure is that the Department's budget allocation is inadequate, and that its budgeting formula is flawed.

<sup>529</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, DCS, Question 173, p 45

<sup>530</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Questions 41, 42 and 43, p 16. Figure is for 2008.

<sup>531</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 173, p 45

<sup>532</sup> Commissioner Woodham, Evidence, 23 February 2009, p 16

<sup>533</sup> Submission 343, Mr David Walker, p 4

<sup>534</sup> Commissioner Woodham, Evidence, 23 February 2009, p 16

- 7.13** As noted in Chapter 3, the Department exceeded its overtime budget by more than \$20 million in 2007/08, and \$23 million in 2006/07.<sup>535</sup> Deputy Commissioner Gerry Schipp, Corporate Services, DCS, told the Committee that the overtime budget for both years was set at around \$20 million, which was based on a '209 staffing formula':

The staffing formula for positions within correctional centres starts with 365 days available in the year and then we deduct a number of days for public holidays, sick leave, et cetera, to come down to what is referred to as the 209 staffing formula, which means we get 209 shifts per person to fill a post. That allows for a certain amount of sick leave, recreation leave, and so on.

The amount of overtime we then provide is what we reasonably expect people to take above that, and the \$20 million figure across the board is that figure.<sup>536</sup>

- 7.14** However, the PSA argued that the 209 staffing formula is out of date, and no longer reflects current workplace practices. Mr Turner asserted that public prison rosters should be based on a '191 formula' instead:

One of the difficulties with that [the 209 formula] is that in recent years, with changes in social attitudes by employers, governments and industrial commissions, the rosters should probably be on a 191 arrangement now. The rostering for 209 working days a year does not take into account FACS leave, increased maternity leave and other forms of leave.<sup>537</sup>

- 7.15** The Prison Officers Vocational Branch (POVB) Cessnock, PSA, explained that the 191 formula reflects the need for more staff, as 'the average number of days per year staff spend at work is about 190, which would necessitate closer to two bodies per 7 day post'.<sup>538</sup>

- 7.16** The PSA further argued that the Department has planned and allocated its finances incorrectly by budgeting overtime based on the lowest pay rate of officers, instead of on a more senior rate which the majority of officers are on. Mr Turner said:

If you take Cessnock as an example and the budget for overtime at Cessnock on the entry level prison officer wage, most of the prison officers at Cessnock are year four, first class and are therefore paid overtime rates two classes above what has been budgeted for. We say they budget incorrectly. There is not an overtime blow-out in the Department of Corrective Services.<sup>539</sup>

- 7.17** Mr Turner added, '[w]hy budget for the lowest paid in the system where you have only officers at two ranks higher?'<sup>540</sup>

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<sup>535</sup> Answers to questions on notice taken during evidence 23 February 2009 (part 1), Commissioner Woodham, Question 31, p 11

<sup>536</sup> Deputy Commissioner Gerry Schipp, Corporate Services, DCS, Evidence, 23 February 2009, p 19

<sup>537</sup> Mr Turner, Evidence, 23 February 2009, p 26

<sup>538</sup> Submission 59, Prison Officers Vocational Branch Cessnock, Public Service Association, p 6

<sup>539</sup> Mr Turner, Evidence, 23 February 2009, p 26

<sup>540</sup> Mr Turner, Evidence, 23 February 2009, p 31

- 7.18** The Department acknowledged the argument regarding the staffing formula, however disagreed that it should be changed. They stated that their position is to address contingencies such as maternity leave or family and community leave as they occur, 'rather than to recruit permanently on the basis of the 191 formula'.<sup>541</sup>
- 7.19** DCS maintained that the overtime expenditure was due to high rates of sick leave, rather than an out-of-date staffing formula, and stated: '[i]t would be irresponsible of the Department to increase the overtime budget to cover excessive staff absenteeism'.<sup>542</sup>
- 7.20** Further to this, the Department expressed the view that implementing The Way Forward (discussed later in this chapter) would assist in reducing overtime expenditure through the new sick leave policy and the introduction of casuals, therefore changes to the staffing formula would not be necessary.<sup>543</sup>

### **Positions and duties manned on overtime**

- 7.21** As raised above, DCS stated that they would rather address leave contingencies as they occur, rather than recruit permanently to fill these gaps. This was criticised by inquiry participants, who objected to being blamed for undertaking high levels of overtime as it has been the Department's decision not to create additional positions. Mr Matthew Sweeny declared:

The Department has for years operated on the principle that it is cheaper to fill posts overtime rather than create positions. Now it is trying to blame front-line officers for the overtime expenditure.<sup>544</sup>

- 7.22** Similarly, Mr Matthew Bindley, POVB State Chairperson, PSA, told the Committee: 'I have heard a number of times people from within the department say that overtime is cheaper to do than create a full-time position'.<sup>545</sup> An example of this, provided by Mr Tony Howen, POVB Delegate, Cessnock Correctional Centre, was that the PSA requested the Bail Video Link role at Cessnock to be made a full-time position, however, according to Mr Howen, the Department 'insisted on it being funded on overtime'.<sup>546</sup>
- 7.23** In answers to questions on notice, DCS advised the Committee that 23.5 full time positions have been created to deliver the Bail Video Link in New South Wales prisons, and that six overtime positions are also utilised to deliver the service.<sup>547</sup> The Bail Video Link is considered further in Chapter 8.

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<sup>541</sup> Submission 258, p 34

<sup>542</sup> Submission 258, p 35

<sup>543</sup> Submission 258, p 34

<sup>544</sup> Submission 253, Mr Matthew Sweeny, p 1

<sup>545</sup> Mr Bindley, Evidence, 23 February 2009, p 28

<sup>546</sup> Mr Tony Howen, First Class Correctional Officer, Cessnock Correctional Centre, Evidence, 1 April 2009, p 9

<sup>547</sup> Answers to questions on notice taken during evidence 23 February 2009, Commissioner Woodham, Question 200, p 49

**7.24** Another reason raised by inquiry participants as to why overtime levels have been high is a result of extended hospital escorts. The overtime that results from hospital escorts is outside the control of prison officers. For example, if an inmate has a heart attack, they will need to be escorted by prison officers to a hospital. The overtime costs involved in these incidents were illustrated in Submission 453:

An inmate may require several days in hospital due to illness or injury. An A or B classification inmate requires 3 officers to be on guard. This equates to 9 officers in a 24 hour period. I have seen 3 inmates admitted to hospital concurrently for an extended period. That required 27 officers over a 24 hour period. Admittedly that was an extreme occurrence but serves to demonstrate how large amounts of unscheduled overtime can be accrued.<sup>548</sup>

**7.25** Similarly, the POVB Cessnock, PSA, told the Committee:

The unpredictability and expensive nature of long term hospital escorts is evidenced by recent history at Cessnock where in the last two years we have had up to 3 long term hospitalisations of inmates at one time, requiring round the clock guarding by two officers apiece.<sup>549</sup>

### *Committee comment*

**7.26** The Committee notes that DCS's own figures show that actual overtime expenditure exceeded \$20 million in every year since 1999-2000, and exceeded \$40 million in each of the previous two years. To continue to set the overtime budget at a figure that had been significantly exceeded in every year for nearly a decade appears to be unrealistic and suggests an ongoing failure of management to address the issue.

**7.27** The Committee has received conflicting evidence from the Department and the PSA regarding causes of high levels of overtime and the impact of staffing levels. In our opinion, the exact percentage of the staffing increase over the past decade is somewhat irrelevant, so long as there are adequate staff numbers in place today. To this end we note that the Department is currently introducing a number of reforms through The Way Forward to address these concerns.

## **The Way Forward**

**7.28** As outlined in Chapter 2, 'The Way Forward' is a workplace reform package developed by DCS to improve the efficiency, safety, and cost effectiveness of public prisons in New South Wales.

**7.29** First introduced in 2003, the reforms modernised the industrial consent award, providing a new simplified custodial rank structure, a leaner staff to inmate ratio, and a flat overtime rate.<sup>550</sup> The current version of The Way Forward includes:

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<sup>548</sup> Submission 453, Name suppressed, p 1

<sup>549</sup> Submission 59, p 9

<sup>550</sup> Submission 102, p 18



- “rolling let-go and lock in” procedures for releasing and returning inmates to cells
- centralised rostering
- the engagement of casual staff
- a new absenteeism policy
- privatisation of Parklea prison, and
- the closure and refurbishment of a number of public prisons.<sup>551</sup>

**7.30** The evolution of the reform package is discussed later in this chapter, along with consideration of specific aspects of The Way Forward.

**7.31** In evidence to the Committee, Commissioner Woodham explained the aim of the reforms:

A large part of the Way Forward is to allow the managers to manage, however the main aim is to reduce waste and increase efficiency wherever possible without compromising security and the safety of the community, staff and the inmates.<sup>552</sup>

**7.32** Further to this, DCS stated that The Way Forward ‘has the advantage of maintaining the Department as an efficient and effective provider of correctional services when compared with private providers’.<sup>553</sup>

**7.33** The 2005 Public Accounts Committee inquiry into value for money from NSW Correctional Centres found that in its first year of operation at the Mid North Coast and Dillwynia prisons, The Way Forward produced significant cost savings compared to public centres run under the traditional prison management model, and the results were comparable to the private prison at Junee:

In their first year of operation, both centres have significantly lower levels of overtime and sick leave in comparison to publicly managed centres that are operating under the existing award. The lower levels of overtime and sick leave have resulted in a direct cost per inmate per day that is more in line with the performance of the privately managed facility at Junee.<sup>554</sup>

**7.34** In evidence to the Committee, Deputy Commissioner Ian McLean, Offender Management and Operations, DCS, advised that the efficiencies and savings initially produced by The Way Forward have been maintained over time. For example, Deputy Commissioner McLean compared the overtime expenditure at Mid North Coast and Wellington prisons to that of

Parklea and Cessnock in 2007-08:

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<sup>551</sup> Submission 111, Unions NSW, p 14

<sup>552</sup> Commissioner Woodham, Evidence, 23 February 2009, p 3

<sup>553</sup> Answers to questions on notice taken during evidence 23 February 2009, Commissioner Woodham, Question 3(b), p 2

<sup>554</sup> NSW Public Accounts Committee, *Value for Money from NSW Correctional Centres*, Report No 13/53 (No 156), September 2005, p vi

Cessnock and Parklea correctional centres have a total inmate population of 1,274 inmates, the two centres. Part of the comparison that you are asking for I will give in relation to the Mid North Coast and Wellington correctional centres. They have a total inmate population, very similar, of 1,280, six inmates more than Cessnock or Parklea. Overtime expenditure for the 2007-08 financial year for Cessnock and for Parklea totalled \$4,554,200. Overtime expenditure for the same period for the mid North Coast and for Wellington correctional centres was \$809,300. That is a difference of approximately \$3.8 million for a similar inmate population ... The significantly reduced operation costs at Mid North Coast and Wellington correctional centres are directly attributed to the Way Forward model of operation that provides a significant financial saving and benefits to all New South Wales taxpayers.<sup>555</sup>

### **Roll-out of The Way Forward**

- 7.35** The Way Forward has been implemented at Kempsey, Dillwynia and Wellington prisons. These have been referred to by the Department as ‘island agreements’<sup>556</sup> or ‘island awards’.
- 7.36** A new prison is also scheduled to open soon at Nowra. Commissioner Woodham told the Committee that there had been political and local business community pressure for that centre to be privatised, however the Department reached an agreement with the PSA to keep it in the public sector and operate it under The Way Forward.<sup>557</sup>
- 7.37** On 18 August 2008, following Cabinet approval, the Department began a state wide roll-out of The Way Forward.<sup>558</sup> This roll-out now includes Cessnock prison as a result of the Government’s 1 May 2009 announcement to not privatise Cessnock.

### **Evolution of The Way Forward**

- 7.38** The PSA informed the Committee that The Way Forward has been a flexible policy that has evolved over time. This was outlined by Mr Turner:

... when we were first approached in 2003 effectively, The Way Forward was what was talked about for the new jails, Kempsey, Dillwynia and Wellington. We reached agreement on those. They were changes to rostering procedures, changing to rankings, changing to overtime procedures and we reached consent agreements on The Way Forward in those areas ... They then came back to us late 2004 for Governors for The Way Forward and we negotiated a new award for what are now called superintendents and that was Way Forward as we knew it then, and we participated in it and reached consent. Then they came to us late 2005, early 2006 and talked to us about Way Forward for the COVB and we reached a consent award and agreement for that. So the Way Forward has been a flexible policy, if you like ...<sup>559</sup>

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<sup>555</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 59

<sup>556</sup> Mr Schipp, Evidence, 23 February 2009, p 19

<sup>557</sup> Commissioner Woodham, Evidence, 23 February 2009, p 4

<sup>558</sup> DCS *Annual Report 2007-08*, p 9

<sup>559</sup> Mr Turner, Evidence, 23 February 2009, p 27

**7.39** While acknowledging that the reform package has changed over time, Mr Bindley submitted that there have recently been a number of additions to 'The Way Forward' which have never previously been discussed with the union:

We were very unaware that 'The Way Forward' was going to be these seven points of reform that were delivered to us on 18 August. Previous to that we were led to believe that the way forward would contain different work practises that streamlined it to the betterment of the department and Treasury, more or less. There was no mention of privatisation or centralised rostering, or any of those points.<sup>560</sup>

**7.40** In its submission, the State Executive of the Commissioned Officer Vocational Branch of the PSA expressed general support for 'The Way Forward', conceding that the Department 'had no other alternative than to introduce "The Way Forward" principles and package into the current system to eradicate wastage and antiquated practices and to ensure a more efficient, effective and streamlined system'.<sup>561</sup>

**7.41** However, they argued that privatisation should not be part of those strategies, maintaining that efficiencies could equally be achieved while keeping prisons in the public sector.<sup>562</sup> This view was also enunciated by Mr Turner, who said to the Committee:

The mini budget states that if they proceed with these two privatisations, all of the privatisations, the two gaols and transport, et cetera, they will save \$1 million this year, \$9 million next year and \$16.1 million the year after continuing. We say, and we have said it to the Minister and we have said it to the Government, that we believe we can help introduce reforms that will save the Government more than that. The Prison Officers Vocational Branch has a document, which they prepared for "The Way Forward" before the department served their document on us, which says that if those reforms are implemented in the gaols they will have significantly more savings than that, and we can do that, keep these gaols public and keep them running well and providing a good service.<sup>563</sup>

**7.42** Negotiations and the relationship between the Department and the PSA are considered at the end of this chapter.

### Casuals

**7.43** One of the key strategies put in place by DCS to reduce overtime expenditure is the introduction of casual prison officers. Commissioner Woodham noted that casuals have always been used at Junee prison, and are one of the primary reasons why their costs have been so low:

[Junee] have not got the overtime budget. They use casuals. They have always used casuals to call on as a first port of call, which we are about now. We are doing that

<sup>560</sup> Mr Bindley, Evidence, 23 February 2009, p 27

<sup>561</sup> Submission 104, State Executive – Commissioned Officer Vocational Branch, Public Service Association, p 3

<sup>562</sup> Submission 104, p 3

<sup>563</sup> Mr Turner, Evidence, 1 April 2009, p 7

now. That will expand with us. Our public sector costs should come down as a result of that ...<sup>564</sup>

- 7.44** The Committee was informed that 60 casual prison officers commenced duty at public prisons on 8 December 2008, and that an additional 57 casual prison officers were due to graduate in April 2009.<sup>565</sup> The Department commented that prior to December, filling gaps on overtime was a manager's only option, other than locking down understaffed areas:

The only options available to managers in responding to unscheduled leave arising at short notice, was to use permanent officers on overtime or to lock down areas of the correctional centre that were understaffed. More recently, DCS like the private sector, has commenced deploying casual correctional officers where appropriate as a more cost effective staffing solution.<sup>566</sup>

- 7.45** Deputy Commissioner McLean advised that the new casual officers had completed identical training to permanent prison officers,<sup>567</sup> and that the feedback so far has been positive:

Senior correctional centre managers working with these staff have been very satisfied with the work, and the quality of the work performed. These officers are multi-skilled and capable of working across the variety of correctional centres ...<sup>568</sup>

- 7.46** Based on the savings generated during the three months after the first 60 casuals were introduced to DCS, Commissioner Woodham estimated an annual saving of approximately \$1.6 million.<sup>569</sup> Another advantage identified by the Commissioner is the Department's increased ability to fill unscheduled vacancies 'quickly and efficiently':

Of particular note is the improved operational capacity of the Department of Corrective Services to respond to unscheduled vacancies quickly and efficiently to ensure that resources are appropriately targeted centrally by the Operation Scheduling Unit.<sup>570</sup>

- 7.47** Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd, was also a strong advocate for the use of casuals. In addition to the obvious benefits in terms of cost and ease, Mr Bezuidenhout claimed that casual labour was in fact a 'lifestyle choice' for people:

We have introduced a concept of casual labour. Casual labour is often criticised but it is a lifestyle choice. It gives people in the area a lifestyle choice. A farmer may decide that he wants to take a month off or where there is a quiet period on his farm in a month or a three-week period he would come and work for us.<sup>571</sup>

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<sup>564</sup> Commissioner Woodham, Evidence, 23 February 2009, p 9

<sup>565</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 60

<sup>566</sup> Submission 258, p 34

<sup>567</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 60

<sup>568</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 60

<sup>569</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 60

<sup>570</sup> Deputy Commissioner McLean, Evidence, 27 March 2009, p 60

<sup>571</sup> Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd, Evidence, 20 March 2009, p 4

*Concerns about casuals*

- 7.48** However, not all inquiry participants supported the use of casuals. For example, the PSA raised concerns based on safety, contending that a casual officer's unfamiliarity with a prison or with inmates 'could pose a risk to their own safety or the safety of others'.<sup>572</sup> Mr Bindley told the Committee:

I think it has got the potential to be very dangerous. When you have people who work periodically in different locations they do not get a full understanding of what is happening in each particular area for an extended period of time. When you consider that our major job is to deal with inmates we do get to know what they are like, their personalities, what makes them tick, when someone is having a good or bad day et cetera. You get to know the continuity of the jail, what is happening around the jail, the staff. It is one of those things that you can only really pick up when you are there day in day out to get the feel of the place, build up trust with the people that you work with and just know the basic functions of very centre.<sup>573</sup>

- 7.49** Mr Michael Poynder, Coordinator, Justice Action, also expressed concern about the use of casuals, from the viewpoint of inmates and their interrelationships with prison officers:

As a prisoner you get to know your prison officers, and whether they are good or bad ... You have an expectation. You have a consistency of treatment. If you have got a prison officer you do not like then you stay clear of him. Prisoners do not want to cause problems in their own jail. They steer clear of all of that. If they get used to the prison officer then they will know whether he is someone they can get along with. At least they can deal with him. It is the devil they know.<sup>574</sup>

*Committee comment*

- 7.50** The Committee acknowledges the efficacy of the use of casual prison officers where they have been provided with training equivalent or similar to that of permanent officers. The use of such officers may assist in reducing the Department's overtime expenditure but more importantly may minimise such detrimental outcomes as prisoner lock-downs caused by the unavailability of staff from time to time.
- 7.51** The introduction of casual prison officers will assist in achieving the primary objectives of the operation of the prison system.
- 7.52** The Committee notes that despite the engagement of casual staff being a central component of The Way Forward, evidence given to the Committee by the POVB indicated that there was still not acceptance of the necessity for this reform to be introduced across all prisons in New South Wales.
- 7.53** The Committee is concerned, based on the evidence as a whole, that the reluctance of the POVB to embrace workplace reform has unreasonably frustrated the achievement of the primary objectives of the operation of the prison system.

<sup>572</sup> Submission 102, p 10

<sup>573</sup> Mr Bindley, Evidence, 23 February 2009, p 28

<sup>574</sup> Mr Michael Poynder, Coordinator, Justice Action, Evidence, 23 February 2009, p 46

### Centralised rostering

**7.54** Centralised rostering is also being introduced as part of 'The Way Forward' to combat overtime issues. As mentioned earlier in this chapter and in Chapter 3, Commissioner Woodham suggested that some prison officers have been 'manipulating' rosters in order to earn more overtime.<sup>575</sup> The Commissioner told the Committee:

If you have small work areas in charge of their own roster, it is obvious that they will look after their own – not necessarily in a corrupt sense. They will keep the outsiders out and they will work there overtime themselves ...<sup>576</sup>

**7.55** Deputy Commissioner McLean advised that traditional rostering has been undertaken by a custodial roster clerk at each prison. He asserted that this has led to roster manipulation and favouritism, because 'the overtime is calculated or worked basically by the staff in those centres'.<sup>577</sup> Mr McLean explained how the centralising of rosters works:

Centralising of rosters puts it to one unit based at Silverwater. In that unit the budgets are allocated on a daily basis across every correctional centre to let the general manager of that centre know exactly what they have for the day of expenditure. In the centres we have started to leave a roster support clerk. That person will do the administrative functions at the centre and record directly back to the central roster procedure. So the actual rostering will not be done in any way at the centre.<sup>578</sup>

**7.56** As in relation to the introduction of casuals, the PSA has also been unsupportive of centralised rostering. For example, Mr Bindley suggested that it detracts from the personalised nature of rostering:

We go from a family friendly situation where people know each other and their needs on the ground to a situation where employees are treated like numbers or robots and just given a roster and expected to do it. The uniqueness about having a roster clerk within inside a jail is they get to know people on a personal basis and also their needs as a family member or social needs, sporting needs, et cetera and they are able to address those needs face to face.<sup>579</sup>

**7.57** Mr Turner acknowledged that some officers do prefer to work overtime, whereas others do not. Rather than being negative, as portrayed by Commissioner Woodham, Mr Turner suggested that localised rostering is preferable as it takes peoples' personal preferences and considerations into account:

Some people do not have children, sporting ties or have to participate in local clubs so they do not want to spend more time at work. There are others who have more free time, maybe single, maybe wanting to save for an overseas trip or a yacht and they

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<sup>575</sup> Commissioner Woodham, Evidence, 23 February 2009, p 21

<sup>576</sup> Commissioner Woodham, Evidence, 23 February 2009, p 22

<sup>577</sup> Deputy Commissioner McLean, Evidence, 23 February 2009, p 13

<sup>578</sup> Deputy Commissioner McLean, Evidence, 23 February 2009, p 13

<sup>579</sup> Mr Bindley, Evidence, 23 February 2009, p 27

want to put themselves forward. That is the reason why it is good to have it localised.<sup>580</sup>

### *Committee comment*

- 7.58** The Committee notes the concerns raised by the PSA regarding centralised rostering, however a majority of the Committee believe that centralising the system is a sensible approach to addressing overtime issues. We therefore support the use of centralised rostering.
- 7.59** The majority of the Committee is concerned, based on the evidence as a whole, that the reluctance of the POVB to accept centralised rostering has unreasonably frustrated the achievement of the primary objectives of the operation of the prison system.

## **The impetus for change**

- 7.60** The Committee was informed that the Kempsey and Dillwynia prisons, both of which opened within the last five years, would have been privatised had it not been for a last minute agreement with the PSA to keep it in the public sector, under The Way Forward. Commissioner Woodham said:

The privatisation issue nearly occurred at Dillwynia and Kempsey. It was a case of "For God's sake sign up or you will lose it." It went right to the last night before the POVB agreed with me to sign up those two jails, otherwise they would have been privatised at that point. They were going the next day.<sup>581</sup>

- 7.61** Such an offer was not made to the PSA regarding Parklea or Cessnock prisons. As noted in Chapter 3, the announcement to privatise those centres came as a shock to the union (see paragraphs 3.37 – 3.40).
- 7.62** It was clear during the Inquiry that the relationship between the Department and the PSA has been tenuous, with the PSA accusing the Government's decision to privatise prisons as an attack on the union,<sup>582</sup> and Commissioner Woodham referring to the POVB as "militant and inflexible",<sup>583</sup> stating that: "[m]eetings with this group have developed into the POVB being argumentative and demanding on nearly every point on any documents presented in relation to reform".<sup>584</sup>
- 7.63** It was suggested that resistance by the PSA has been the primary reason as to why the Department has been unable to introduce many prison reforms,<sup>585</sup> however this claim was rejected by the union who pointed out that they had already agreed to a number of new awards under The Way Forward.<sup>586</sup> The PSA did however acknowledge that implementing

<sup>580</sup> Mr Turner, Evidence, 23 March 2009, p 28

<sup>581</sup> Commissioner Woodham, Evidence, 27 March 2009, p 64

<sup>582</sup> Mr Turner, Evidence, 23 February 2009, p 26

<sup>583</sup> Commissioner Woodham, Evidence, 23 February 2009, p 14

<sup>584</sup> Commissioner Woodham, Evidence, 23 February 2009, p 3

<sup>585</sup> Commissioner Woodham, Evidence, 23 February 2009, p 14-15

<sup>586</sup> Mr Turner, Evidence, 23 March 2009, p 27

significant reforms into New South Wales prisons, such as The Way Forward, has not been an easy task:

Reform of this magnitude was not easy. The negotiations were understandably lengthy and outcomes were achieved in a climate of significant disquiet amongst our members.<sup>587</sup>

- 7.64** Such difficulties are not isolated to New South Wales. As noted in the case study in Chapter 3, the Wolds prison in the United Kingdom was contracted out in order to introduce reforms that had previously been resisted to by a union. The complexity in introducing reforms to long-standing organisations was discussed by Mr Gary Sturgess of the Serco Institute, who noted that ‘refreshing’ an organisation can often be difficult. The Institute noted the last minute agreement reached between the PSA and the Department to implement The Way Forward at Kempsey and Dillwynia, and suggested that this was only made possible as a result of the ‘threat of competitive tendering’<sup>588</sup> (also discussed in Chapter 3 at 3.106).
- 7.65** Even when privatisation is implemented, it can have a positive effect on the public system. This was recognised by Mr Mike Newell, a former president of the UK Prison Governors Association, who was quoted in the Serco Institute submission as stating: ‘despite my moral objections to placing prisons in private hands, I have to admit that the shock to the [UK public] Service of privatisation did start it on a path to recovery’.<sup>589</sup>
- 7.66** The Serco Institute advised that where competitive tenders for prisons are to public providers as well, this can form the impetus for a public provider to facilitate change:

... where public providers are allowed to submit a bid in a competitive tender, they are sometimes able to deliver a more cost-effective solution than any of the private providers. The possibility of losing the bid motivates them to search for efficiencies and innovation that they would not otherwise have explored ... In the UK ... two of the original contract prisons were won by the Prison Service upon rebid, by offering better value than the private sector.<sup>590</sup>

### *Committee comment*

- 7.67** The Committee supports The Way Forward, and the expeditious roll-out of the reforms across the State. Having weighed up all the evidence throughout this report, we believe that apart from Junee and Parklea, all existing and future New South Wales prisons (including Grafton prison) should remain in the public sector under The Way Forward.
- 7.68** Further to this, the Committee recommends that the NSW Government monitor the private sector management of Parklea and Junee Correctional Centres, and should they fail to meet their fundamental contractual obligations, the centres should revert back to public management.

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<sup>587</sup> Submission 102, p 18

<sup>588</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Gary Sturgess, Executive Director, Serco Institute, Question 5, p 13

<sup>589</sup> Submission 407, The Serco Institute, p 29

<sup>590</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Sturgess, Question 5, p 12



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**Recommendation 15**

That other than Junee and Parklea Correctional Centres, the NSW Government should not privatise any existing or future correctional centres in New South Wales if they operate under The Way Forward.

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**Recommendation 16**

That the NSW Government monitor the private sector management of Parklea and Junee Correctional Centres, and should they fail to meet their fundamental contractual obligations, the centres revert back to public management.

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- 7.69** The Committee is also of the view that details of the implementation of The Way Forward and progress of the cost savings achieved under these reforms should be made public, and recommends that such details be published biannually.
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**Recommendation 17**

That the Department of Corrective Services publish details of the implementation of The Way Forward and the cost savings achieved through the implementation of The Way Forward for each correctional centre in New South Wales. Details of the implementation of The Way Forward are to be published on the Department's website biannually with the first report of progress to occur by 1 November 2009.

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## Chapter 8 Privatisation of other prison services

This chapter considers the potential privatisation of the Court Escort Security Unit. During the Inquiry, many of the arguments raised for and against the privatisation of the Unit were the same ideological arguments raised regarding the privatisation of prisons, discussed in Chapter 3. This chapter examines the specific arguments related to the privatisation of the Unit.

The Department currently uses private contractors for the provision of perimeter security patrols and boom gate security. This chapter discusses the use and effectiveness of these guards, as required by the Committee's term of reference (5).

### Court Escort Security Unit

- 8.1 The Court Escort Security Unit (CESU) transports inmates between courts, jails and police lock-ups. The unit employs 500 officers, two-thirds of whom are in metropolitan Sydney.<sup>591</sup>
- 8.2 As part of the Government's 2008 decision, it announced that it would be contracting out the management and operation of the CESU. This was due to ongoing budget over-expenditure within the Unit, with the Department of Corrective Services (DCS) stating:

Ultimately the costings associated with the existing [CESU] operations cannot be sustained within budget with an anticipated blow out this year of \$4.5 Million.<sup>592</sup>

- 8.3 However, in its 2009 decision, the Government put a temporary hold on these plans, offering the Department a chance to make improvements and keep the CESU in the public sector. Minister for Corrective Services, the Hon John Robertson MLC, stated:

The Department of Corrective Services will consult prisoner escort and court security officers and their union in the coming months to achieve \$5 million in savings per annum. This function will be outsourced in six months time unless savings of \$5 million are achieved through the implementation of industrial reforms.<sup>593</sup>

### Arguments for privatising the Unit

- 8.4 The high cost associated with running the CESU was the primary reason why it was considered for privatisation. In its submission, DCS explained why these costs were so high:

The over riding factor, particularly with the court security and court escorts is the deployment of staff. These areas work in peaks and troughs, it is impossible with the scope of correctional officers' duties to carry out these functions within an 8 hour

<sup>591</sup> Commissioner Ron Woodham, Department of Corrective Services, Evidence, 27 March 2009, p 53; 'Crime pays as 500 prison guards cut in privatisation purge', *Sydney Morning Herald*, <<http://www.smh.com.au/news/national/crime-pays-as-500-prison-guards-cut-in-privatisation-purge/2008/12/08/1228584743269.html>> (accessed 7 May 2009)

<sup>592</sup> Submission 258, NSW Department of Corrective Services, p 25

<sup>593</sup> NSWPD (*Proof, Legislative Council*), 5 May 2009, p 14567

shift. Therefore casuals and split shifts would provide a service that deals with the unpredictability of the courts and rein in the prohibitive costs. We cannot continue to roster staff without the certainty of full deployment for a rostered shift or conversely have officers working excessive overtime in periods when the courts are operating to capacity.<sup>594</sup>

- 8.5** The NSW Police were highly supportive of privatising the CESU, as they believed it would alleviate pressures on police resources, which are currently being diverted to assist prisoner transportation. Assistant Commissioner Frank Mennilli, Commander, South-West Metropolitan Region, NSW Police Force, told the Committee:

These issues are more prevalent in regional and rural New South Wales where police transport prisoners, thus removing police from their local community to undertake that function. This impacts on local response times and the availability of police. However, the problem is statewide, as police are often called away from policing duties to transport, guard and care for prisoners, impacting on police core service delivery.<sup>595</sup>

- 8.6** Assistant Commissioner Mennilli advised that in some regional and rural areas, transporting inmates from court to prison ‘can be a round trip of anything up to eight or nine hours’.<sup>596</sup> In its submission, the NSW Police Force stated that transporting and guarding inmates by police ‘has been a long standing issue with unclear responsibilities between NSWPF and DCS’.<sup>597</sup>
- 8.7** It was noted in evidence that other jurisdictions with private prisoner transport have succeeded in freeing up police resources. For instance, Mr Brian Lawrence, Manager Acacia Prison and Court Security and Custodial Services, WA Department of Corrective Services, informed the Committee that the privatisation of the prisoner transport service in Western Australia released around 200 police officers to core policing duties.<sup>598</sup>
- 8.8** However, in response to questions from the Committee asking whether privatisation of the CESU would alleviate the existing burden on police resources, Commissioner Woodham replied: ‘No. The private contractor will only take over what we [DCS] are doing now’.<sup>599</sup>
- 8.9** The Commissioner advised that it was not cost effective for DCS to take over the entire role of court escorts, and that the Department has been ordered to not increase its role in the area:

We cannot do every escort to court because they are trying to get more police on the streets ... I recall going up and having a meeting with the local member and the police at Inverell not so long ago where it was not cost effective to take the escorting function that they have on the court, security function, off the police. It would have

<sup>594</sup> Submission 258, p 24

<sup>595</sup> Mr Frank Mennilli, Assistant Commissioner of Police, Commander for the South-West Metropolitan Region, NSW Police Force, Evidence, 27 March 2009, p 21

<sup>596</sup> Assistant Commissioner Mennilli, Evidence, 27 March 2009, p 24

<sup>597</sup> Submission 442, NSW Police, p 2

<sup>598</sup> Answers to questions on notice taken during evidence 27 March 2009, Mr Brian Lawrence, Manager Acacia Prison and Court Security and Custodial Services, WA Department of Corrective Services, Question 5, pp 3-4

<sup>599</sup> Commissioner Woodham, Evidence, 27 March 2009, p 55

saved three police but we would have had to put nine prison officers on there ... We work very closely with the police but, as I said earlier, we cannot cover all the State without massive increases to staff and infrastructure ... We have been told politically that we are not to increase our role in this area.<sup>600</sup>

**8.10** With regard to whether or not NSW Police were aware of this advice, Commissioner Woodham told the Committee that he had met with Police Commissioner Andrew Scipione 'on a whole Way Forward issue. I have signed a Memorandum of Understanding with him on certain issues. He is aware of what we are doing'.<sup>601</sup>

**8.11** Departmental responsibility for the CESU was also raised by Mr Christopher Bone, Magistrate, Batemans Bay Local Court, in a different context. Mr Bone asserted that members of the CESU provided a superior service than the NSW Police, suggesting that this was 'not because police officers are less efficient than corrective service officers. It is because of the different nature of their responsibilities'.<sup>602</sup> This was elaborated in his submission:

Members of the unit are concerned purely and simply with people who are in custody. As a result those officers are able to allow lawyers who wish to see clients in custody to do so promptly, are able to bring prisoners to court promptly and have a keen sense of any security issues which might arise with individual prisoners. Police officers who are on duty in a police station on a "court day" invariably have a range of duties and responsibilities, prisoner security and movement being only one of their interests.<sup>603</sup>

**8.12** Another issue raised by Mr Bone is that there can be tension between inmates and police officers, which rarely occurs with inmates and CESU staff:

On some occasions the escorting police officer will be the officer who arrested the prisoner in the first place and there may well be a degree of animosity on the part of the prisoner towards the officer because of that officer's dual role. There is very rarely any tension in the relationship between a prisoner and a member of the Court Escort Security Unit.<sup>604</sup>

### **Arguments against privatising the Unit**

**8.13** As noted at the beginning of this chapter, many of the concerns raised during the Inquiry regarding the privatisation of the CESU were the same concerns raised regarding the privatisation of prisons, as illustrated by the PSA:

The PSA's concerns in relation to the proposed privatisation of the Court Escort Service are identical to those identified for the privatisation of prisons - in particular the impact on the wages and conditions of the current public sector workforce.<sup>605</sup>

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<sup>600</sup> Commissioner Woodham, Evidence, 27 March 2009, p 53

<sup>601</sup> Commissioner Woodham, Evidence, 27 March 2009, p 56

<sup>602</sup> Submission 11, Mr Christopher Bone, Magistrate, Batemans Bay Local Court, p 1

<sup>603</sup> Submission 11, p 1

<sup>604</sup> Submission 11, p 2

<sup>605</sup> Submission 102, Public Service Association of NSW, p 23

- 8.14** There were also a number of specific arguments against the privatisation of the CESU raised in evidence. One argument, raised by the State Executive, Commissioned Officer Vocational Branch (COVB), PSA, is that the CESU already runs as efficiently as possible, and that as such, privatising the Unit would not be able to achieve any significant cost improvements. In their submission they noted that the majority of costs involved with the CESU at courts are staff related, and told the Committee:

Staff numbers at the courts are the minimal, given the age of buildings and multifaceted nature of staff duties and overtime/penalties worked is modest yet essential, and in any event is out of our control. The staffing profile is arguably flatter than anywhere else in the Department. Not only is it difficult to see how real savings can be made by way of privatisation, the Court Escort Security Unit, particularly at the CBD, is one of the most high profile sectors of the department with an outstanding history of performance which could be very easily jeopardised if privatisation goes ahead. One cannot see where responsible cost savings can be made therefore, by merely having the courts privatised.<sup>606</sup>

- 8.15** Similarly, Mr Michael Karauria asked, '[f]luctuating numbers within the court system means everything runs on a day to day basis and forecasting running costs can be hard to measure, so how can the private industry do it any cheaper?'<sup>607</sup>

- 8.16** A number of inquiry participants shared the view that the overtime incurred by the CESU is minimal and of absolute necessity. For instance, Mr Graham Sundin, Senior Assistant Superintendent, CESU, Far Northern Region, remarked:

Overtime expenditure within this area is minimal in comparison to duties required in our vast areas of responsibility. All overtime expenditure is justifiable and is normally incurred by un-scheduled escorts, additional court sittings, late court sittings, and staff absenteeism.<sup>608</sup>

- 8.17** Similarly, Mr Patrick Armstrong, Chairman of the COVB, PSA, commented, '[i]t is inevitable that some overtime is incurred and obviously custodial court staff have no control over what causes this overtime'. Further to this, he asserted that '[t]he private sector is in no better position to control these costs'.<sup>609</sup>

- 8.18** Another common argument against the privatisation of the CESU regards the current working relationship between CESU staff and the NSW Police. Mr Matt Bindley, POVB State Chairperson, PSA, informed the Committee that both parties currently assist each other, particularly in remote locations, and expressed the view that a private contractor would not be able to fulfil the same role:

... what actually happens is that the police officer in the station assists our people if there is any type of problem, and in a similar respect, if they have police out on the streets, our people will actually help the police officers in the station. So I suppose it is

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<sup>606</sup> Submission 104, State Executive – Commissioned Officer Vocational Branch, Public Service Association, p 10

<sup>607</sup> Submission 122, Mr Michael Karauria, p 3

<sup>608</sup> Submission 104, p 12

<sup>609</sup> Submission 104, p 10

a bit of a marriage that suits both parties at the time. I know that there are great concerns that the job will not be done as well if it does go to the private sector.<sup>610</sup>

- 8.19** The Committee was advised that many CESU staff share workplaces with NSW Police, as there are currently ‘a number of cells within police premises that are manned and operated by DCS staff’.<sup>611</sup> The NSW Police Force also informed the Committee that these CESU staff share the same building facilities, and stated that if the Unit were to be privatised the contractors would need to pass strict security clearance requirements.<sup>612</sup>
- 8.20** This point was reiterated by the Police Association of NSW, who commented: ‘[o]ften police and Corrective Services officers share workplaces and there is a high degree of shared trust and commitment in situations that require the handling of sensitive information’.<sup>613</sup> However, the Police Association of NSW held a fundamentally different position to that of the NSW Police, with the Police Association opposed to the privatisation of the CESU.
- 8.21** Concerns about the impact of privatisation on the corporate relationships built up by CESU officers were also raised by the State Executive COVB, who suggested that valuable corporate memory would be lost:

Clearly this is a highly specialised workforce that has built up close associations and relationships over many years with relevant bodies such as Police, Attorney General's Department staff not to mention the correctional centres and the transport units. A private agency would have difficulty in establishing and understanding such relationships, would not make for a neat cultural fit and in one foul swoop would lose the mass of corporate memory built up over this period.<sup>614</sup>

*Committee comment*

- 8.22** The Committee acknowledges the NSW Police Force’s argument for privatising the CESU, however we note the evidence that a private contractor would only take over the duties currently undertaken by the CESU part of the Department, and that therefore privatising the Unit would not alleviate the burden on police resources. Further to this, we note the evidence from Commissioner Woodham that there is a Memorandum of Understanding between DCS and the NSW Police Force on this matter.
- 8.23** We note the arguments submitted by inquiry participants that the CESU already runs as efficiently as possible, and that the overtime costs incurred by the Unit are largely unavoidable. Therefore, with regard to the Government’s ‘second chance’ offer to DCS to identify \$5 million in savings within five months, the Committee is of the opinion that this is an unrealistic target within the given timeframe. As such, we recommend that the Government extend the timeframe to one year, and request that DCS provide a review after six months to advise of its actions and progress in attempting to achieve the target.

<sup>610</sup> Mr Matthew Bindley, POVB State Chairperson, Public Service Association, Evidence, 1 April 2009, p 7

<sup>611</sup> Submission 442, p 4

<sup>612</sup> Submission 442, p 4

<sup>613</sup> Submission 109, Police Association of NSW, p 3

<sup>614</sup> Submission 104, p 10

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**Recommendation 18**

That the NSW Government give the Department of Corrective Services one year to identify \$5 million in savings per annum in the Court Escort Security Unit, before it considers privatising the Unit. The Department should provide the Government with an update after six months to advise of the actions and progress it has made toward achieving this target.

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**Experience in other jurisdictions**

- 8.24** The Committee was advised that inmate transport services have been contracted out in a number of international and Australian jurisdictions, such as England, Wales, New Zealand, South Australia, Victoria and Western Australia.<sup>615</sup> The individual experiences of some of those jurisdictions, raised during the Inquiry, are discussed below.

***Western Australia***

- 8.25** Private prisoner transportation in Western Australia has had a marred past, however the Committee heard that this has since improved. In January 2008 an inmate died while being transported in extreme heat from Laverton to Kalgoorlie. According to the PSA, the inmate collapsed in the back of the van on the second leg of the 915km journey, and ‘the contractors only noticed that he had collapsed as they neared their destination’.<sup>616</sup>
- 8.26** Prior to the incident, the Inspector of Custodial Services, Mr Richard Harding, had reported a number of chronic deficiencies in the fleet to the WA Department of Corrective Services.<sup>617</sup> The Coroner’s inquiry into the death is still underway; however Mr Turner told the Committee that it has been revealed that the private contractor broke regulations on the transportation of inmates.<sup>618</sup>
- 8.27** In response to questions regarding the transport contract, Mr Lawrence acknowledged that there have been difficulties due to the ‘tyranny of distance and the sheer vast areas’ within Western Australia.<sup>619</sup> Mr Lawrence explained:

We have 20 regional locations that we have to cover, and some of those trips are in excess of 1,000 kilometres. They travel 1.4 million kilometres a year, and we have a fleet of 39 vehicles.<sup>620</sup>

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<sup>615</sup> Submission 442, p 10

<sup>616</sup> Submission 102, p 23

<sup>617</sup> Mr Richard Harding, Inspector of Custodial Services, ‘Prisoner transport’, *Media Release*, 1 February 2008

<sup>618</sup> Mr Steve Turner, Assistant General Secretary, PSA, Evidence, 1 April 2009, p 7

<sup>619</sup> Mr Brian Lawrence, Manager, Acacia Prison Contract, Court Security and Custodial Services, WA Department of Corrective Services, Evidence, 27 March 2009, p 68

<sup>620</sup> Mr Lawrence, Evidence, 27 March 2009, p 68



**8.28** According to Mr Lawrence, the reason why the contract failed was because of inadequate data collection, which failed to accurately identify the demand, and therefore ‘when the contractor started the demand was far in excess of what the department had said it would be’.<sup>621</sup>

**8.29** The current private transport contract ends in 2011. Mr Lawrence suggested that the next contract could be improved significantly by retaining certain aspects of the service ‘in house’:

The high-volume, low-risk services I will recommend be contracted out. The high-risk variable I will suggest remain in house. And particularly the regional areas, it is just too difficult. It is difficult to get staff and housing in the regions. For the contractor to get staff out in the regions is very difficult, whereas we have prisons in the regions and I think it will make sense if we brought that back in house and let the prisons look after that<sup>622</sup>.

**8.30** With regard to the vehicles used by the private contractor in Western Australia, Assistant Commissioner Mennilli expressed the view that the vehicles used to transport inmates were superior to those used by the public system in New South Wales. Assistant Commissioner Mennilli told the Committee:

Last year I attended a conference in Western Australia at which there was a presentation made by a company that currently is involved in the privatisation of transport of prisoners. I found from the presentation that the structure that they had in place and the vehicle that they had was far superior to anything we have in place at the moment.<sup>623</sup>

### *Scotland*

**8.31** The experience of private prisoner transportation in Scotland has been a positive one. A December 2006 Scottish Prison Service review found that outsourcing the transport service freed up around 100 police officers from escorting duties, who were then redeployed to undertake core police duties.<sup>624</sup> NSW Police told the Committee that ‘[t]he review also found that around 200 prison officers were released from escort duties, many of which were given up as efficiency savings or to allow reinvestment for improvements to services’.<sup>625</sup>

**8.32** NSW Police further commented that the review found significant efficiencies had been achieved regarding costs, accountability and structure:

Both Police and the Scottish Prison Service reported reduced costs associated with maintaining the vehicle infrastructure necessary to deliver high volume prisoner escorts ... The review found that the delivery of prisoner escort services by a single contractor improved accountability and removed duplication of effort between agencies. It resulted in savings, clarified reporting lines and promoted an improvement culture.<sup>626</sup>

<sup>621</sup> Mr Lawrence, Evidence, 27 March 2009, p 68

<sup>622</sup> Mr Lawrence, Evidence, 27 March 2009, p 68

<sup>623</sup> Assistant Commissioner Mennilli, Evidence, 27 March 2009, p 29

<sup>624</sup> Submission 442, p 11

<sup>625</sup> Submission 442, p 11

<sup>626</sup> Submission 442, p 11

- 8.33** The Serco Institute also discussed the Scottish review, noting that it found that the accuracy, consistency and quantity of management information with the transport service had improved, and that:

There were 33 performance measures in the contract, with a minimum standard for each. The initial contractor matched or exceeded these standards in all but a few months.<sup>627</sup>

### ***New Zealand***

- 8.34** In New Zealand, a seventeen year old accused inmate died in 2006, after being assaulted by a 25 year old inmate while being transported from court to a remand prison by a private security company.<sup>628</sup> According to one submission author:

The reason he was in with dangerous inmates was the private company was not prepared to send a Van to the court for one inmate when a van with available seats was going to his destination.<sup>629</sup>

- 8.35** An investigation into the circumstances surrounding the death found that it could have been avoided by a more rigorous application of the regulations, which state that ‘prisoners under the age of 18 years must, when outside a prison, be kept separate from prisoners who are 18 years or over, where practicable’.<sup>630</sup> The investigation found that the private security company, which was responsible for determining the configuration of passenger travel, regularly failed to follow this protocol, instead often grouping youth and adult offenders together. The report found that ‘this practice was deficient in that it placed insufficient emphasis on the separation of youth from adult prisoners’.<sup>631</sup>

- 8.36** Following the incident, the New Zealand government implemented waist restraints nationwide, in an attempt to reduce assaults and escapes during prisoner transportation by securing prisoner’s arms to a belt around their waist.<sup>632</sup>

### **Other factors for consideration**

- 8.37** Several other factors for consideration were raised during the Inquiry in the context of privatising the CESU.

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<sup>627</sup> Submission 407, The Serco Institute, p 40

<sup>628</sup> MacDonald L, *The Investigation of the circumstances surrounding the death at Auckland Public Hospital of Prisoner Liam John Ashley of Auckland Central Remand Prison on 25 August 2006*, Inspectorate Department of Corrections, 7 December 2006, p 2

<sup>629</sup> Submission 1, Name suppressed, p 1

<sup>630</sup> MacDonald L, *Investigation of the circumstances surrounding the death at Auckland Public Hospital of Prisoner Liam John Ashley of Auckland Central Remand Prison on 25 August 2006*, 7 December 2006, p 63

<sup>631</sup> MacDonald L, *Investigation of the circumstances surrounding the death at Auckland Public Hospital of Prisoner Liam John Ashley*, 7 December 2006, p 77

<sup>632</sup> ‘Waist restraints for prisoners introduced’, NZPA, 28 April 2008 <<http://www.stuff.co.nz/national/390412>> (accessed 14 April 2009)

- 8.38** One such factor is audio visual link (AVL) technology, which facilitates bail hearings by video to reduce security risks and the cost of transporting people in custody to court. This was also referred to during the Inquiry as the Bail Video Link. Video hearings are a new technology introduced by the Attorney General's Department, and allow live video feeds to be broadcasted to courts. They also allow legal representatives to talk to their clients privately during the hearing through a handset.<sup>633</sup>
- 8.39** NSW Police supported the use of AVL technology, which is primarily used in rural and regional courts, stating that '[s]uch options reduce the need for prisoners to be transported and are a valuable innovation'.<sup>634</sup> The Committee saw the AVL technology in operation during its site visits to Parklea, Cessnock and Junee prisons.
- 8.40** Another factor for consideration, raised by DCS, is that if privatisation of the Unit were to occur, the Department would still retain a number of services. In their submission they advised, '[t]his State will retain the Extreme High Risk escorts and also escorts for the Special Purpose Centre along with sensitive escorts such as high profile public figures'.<sup>635</sup>
- 8.41** In evidence, Commissioner Woodham acknowledged the problems that had occurred with private prisoner transport in other jurisdictions, and stated that New South Wales would not fall into the same trap:

We are not going to fall into the trap of Western Australia or some other places that have privatised escort. We are going to keep control of all escort coordination. We are going to keep a senior officer, one of our officers, at every 24-hour cell complex. What will happen is that the private people will come to work and report to that person. That person calls the shots. That person makes the decisions just like they do now. We are also going to keep control—you would not let the alleged terrorist go to court under a contractor—of all the high-risk and extreme high-risk prisoners. We believe that we are going to keep between 70 and 90, even 100 of our officers in that network and they will be running it.<sup>636</sup>

- 8.42** Further to this, Commissioner Woodham advised that strict criminal checks would be done on all private contractors, commenting: '[t]hey have to go through the same process. They have to abide by our policy'.<sup>637</sup>

***Committee comment***

- 8.43** The Committee notes the evidence from Commissioner Woodham, that should the CESU be privatised, certain aspects of the service would remain in the public system so as not to repeat mistakes that have been made in other jurisdictions.

<sup>633</sup> NSW Attorney General, *Annual Report 2007/08*, p 21

<sup>634</sup> Submission 442, p 11

<sup>635</sup> Submission 258, p 24

<sup>636</sup> Commissioner Woodham, Evidence, 27 March 2009, p 56

<sup>637</sup> Commissioner Woodham, Evidence, 27 March 2009, p 56

- 8.44** We support the use of AVL technology and believe that it will significantly assist the Department to reduce the costs associated with prisoner transportation in rural and remote areas.

### **Private security guards in perimeter security**

- 8.45** DCS currently has arrangements in place for private operators to provide perimeter security at a number of prisons within New South Wales. These services include boom gate control at Silverwater, Long Bay and Windsor prisons, and armed external patrols at Silverwater, Parklea, Windsor and Lithgow prisons.<sup>638</sup> The contract to provide private perimeter security at these sites is currently with ATMAAC International.<sup>639</sup>
- 8.46** Since ATMAAC took control of the boom gates in November 2008, DCS advised that it has been able to redeploy its qualified correctional officers from static security duties to more face-to-face dynamic security management. It stated that ‘ostensibly these officers are now performing the duties that they are specifically trained to perform’.<sup>640</sup>
- 8.47** In further support of the use of private perimeter security, the Department drew a comparison with the Australian Defence Force (ADF) who has had its boom gates managed by private security companies for over 12 years.<sup>641</sup> As with DCS resources, ADF reported that trained soldiers are being utilised more appropriately under the current system of boom gate management.<sup>642</sup>
- 8.48** The Department informed the Committee that not only did the transition to using private contractors for perimeter security functions occur ‘very smoothly’<sup>643</sup> but it saw no reason why, in time, private guards could not undertake more dynamic security tasks:
- There is no reason why private contractors cannot perform the more specialised correctional centres security roles subject to appropriate training, strict protocols and good supervision.<sup>644</sup>
- 8.49** However, the PSA criticised the move to privately contract perimeter security, expressing their concern over the effect this may have on community and employee safety. They suggested that under the current arrangements private contractors are engaging employees with ‘substantially less training’ than correctional officers, resulting in ‘demonstrably reduced [standards]’.<sup>645</sup>

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<sup>638</sup> Submission 258, p 26; Commissioner Woodham, Evidence, 23 February 2009, p 4

<sup>639</sup> Submission 258, p 26

<sup>640</sup> Submission 258, p 26

<sup>641</sup> Submission 258, p 26

<sup>642</sup> Submission 258, p 26

<sup>643</sup> Submission 258, p 26

<sup>644</sup> Submission 258, p 25

<sup>645</sup> Submission 102, p 24

- 8.50** The PSA cited the escape of minimum security inmate Alex Mihail in November 2008 as an example of the risk posed by lax standards in perimeter security. As explained by Ms Tanya Roe, Member of the Community Against Privatisation (CAP), prison officers claim that Mr Mihail escaped by walking through the boom gate at Long Bay prison.<sup>646</sup> According to CAP, the circumstances of the incident have been disputed by the Justice Minister, the Hon John Hatzistergos MLC, who said that Mr Mihail escaped by climbing over the prison fence.<sup>647</sup>
- 8.51** The PSA also argued that poor perimeter security would allow contraband to more easily enter into prisons. It suggested that since perimeter security has been contracted out, certain perimeter areas are not staffed at night, which thereby gives inmates the opportunity to secrete contraband into the prison.<sup>648</sup>
- 8.52** The question of whether it was appropriate for private security guards to use deadly force in emergency situations, such as an attempted escape, was also raised by the PSA.<sup>649</sup> The Department recognised that armed posts requiring immediate response capabilities necessitated staff with very specific training. As suggested earlier, however, DCS appeared nonetheless open to the possibility of private contractors performing these more specialised roles.<sup>650</sup>

*Committee comment*

- 8.53** The Committee acknowledges the concerns raised during the Inquiry regarding the use of private guards in perimeter security of prisons, however we do not believe there is enough evidence to warrant a recommendation to cease this practice. We understand that private guards have been used in perimeter security for some time now, and believe that their employment is beneficial as it frees up prison officers to undertake core duties.

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<sup>646</sup> Submission 107, Community Against Privatisation, p 18

<sup>647</sup> Submission 107, p 18

<sup>648</sup> Submission 102, p 24

<sup>649</sup> Submission 102, p 24

<sup>650</sup> Submission 258, p 25

## Appendix 1 Submissions

| No  | Author   |
|-----|--|
| 1   | Name suppressed  |
| 2   | Ms Belinda Kedeya  |
| 3   | Name suppressed  |
| 4   | Mr Mark Aronson (The Faculty Of Law, University Of New South Wales)        |
| 5   | Name suppressed  |
| 5a  | Name suppressed  |
| 6   | Name suppressed  |
| 7   | Name suppressed  |
| 8   | Name suppressed  |
| 9   | Ms Sonja Saastamoinen  |
| 10  | Name suppressed  |
| 11  | Mr Christopher Bone (Batemans Bay Local Court )                            |
| 12  | Name suppressed  |
| 13  | Confidential   |
| 14  | Name suppressed  |
| 15  | Name suppressed  |
| 16  | Mr Derek Kreckler  |
| 17  | Name suppressed  |
| 17a | Name suppressed  |
| 18  | Name suppressed  |
| 19  | Name suppressed  |
| 20  | Mr Paul Falzon   |
| 21  | Name suppressed  |
| 22  | Mr Matthew Moore   |
| 23  | Name suppressed  |
| 24  | Name suppressed  |
| 25  | Name suppressed  |
| 26  | Name suppressed  |
| 27  | Ms Denise Holland  |
| 28  | Ms Susan Macleod (Official visitor)  |
| 29  | Ms Margaret Hinchey (Conference Of Leaders Of Religious Institutes in NSW) |
| 30  | Name suppressed  |

| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 31        | Name suppressed   |
| 31a       | Name suppressed   |
| 32        | Ms Carol Lillith Andrews  |
| 33        | Ms Linda Beattie  |
| 34        | Mr Guy Eagleton   |
| 35        | Mr Jeffery Malcolm Robertson                                    |
| 36        | Mr Kevin Mills  |
| 37        | Ms Beessan Semaan   |
| 38        | Mr Preston de Guise   |
| 39        | Dr Arthur Jordan  |
| 40        | Mrs Heather Graham  |
| 41        | Name suppressed   |
| 42        | Name suppressed   |
| 43        | Name suppressed   |
| 44        | Name suppressed   |
| 45        | Name suppressed   |
| 46        | Mr John Condon  |
| 47        | Ms Penelope Walker  |
| 48        | Ms Jenny Pearmin  |
| 49        | Mrs Melinda Caldwell  |
| 50        | Mr Clayton Barr (Cessnock Branch Of The ALP)                    |
| 51        | Mr Bryce Wilson (Wagga Wagga Branch of Country Labor)           |
| 52        | Name suppressed   |
| 53        | Name suppressed   |
| 54        | Name suppressed   |
| 55        | Name suppressed   |
| 56        | Name suppressed   |
| 57        | Name suppressed   |
| 58        | Miss Melissa Seymour  |
| 59        | Mr Tony Howen (Prison Officers Vocational Branch Cessnock, PSA) |
| 60        | Mrs Susan Marriott  |
| 61        | Mr Ron Petersen   |
| 62        | Name suppressed   |
| 63        | Name suppressed   |
| 64        | Name suppressed   |

| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 65        | Mr Carl Harris  |
| 66        | Mr Lee McCarthy   |
| 67        | Name suppressed   |
| 68        | Mr Peter Joseph Wickham                                     |
| 69        | Name suppressed   |
| 70        | Name suppressed   |
| 71        | Name suppressed   |
| 72        | Name suppressed   |
| 73        | Confidential  |
| 74        | Mrs Jodie Walker  |
| 75        | Miss Amy Winter   |
| 76        | Name suppressed   |
| 77        | Name suppressed   |
| 78        | Name suppressed   |
| 79        | Name suppressed   |
| 80        | Name suppressed   |
| 81        | Name suppressed   |
| 82        | Mr Ray Harrold  |
| 83        | Mr Campbell Dixon   |
| 84        | Mr Ian Colley   |
| 85        | Mrs Lisa Driscoll   |
| 86        | Mr Michael Coomber  |
| 87        | Mr Keith Gray   |
| 88        | Ms Maree Dickson  |
| 89        | Mr Stephen Price  |
| 90        | Ms Rae Davis  |
| 91        | Mrs Lyn Singleton   |
| 92        | Mr William White  |
| 93        | The Officers of the Parklea Visits Search Room              |
| 94        | Mr Gary Prior   |
| 95        | Mr Brett Holmes (New South Wales Nurses' Association)       |
| 96        | Mr Michael Francetich                                       |
| 97        | Mr Stepan Kerkyasharian AM (Community Relations Commission) |
| 98        | Mr Peter McGlynn  |
| 99        | Ms Sue Cripps (Homelessness NSW)                            |



| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 100       | Name suppressed   |
| 101       | Name suppressed   |
| 102       | Mr John Cahill (Public Service Association of NSW)                  |
| 103       | Name suppressed   |
| 104       | State Executive - Commissioned Officer Vocational Branch (PSA, NSW) |
| 105       | Mr Garry Braithwaite  |
| 106       | Ms Robyn Banks (Public Interest Advocacy Centre Ltd)                |
| 107       | Ms Tanya Roe (Community Against Privatisation)                      |
| 107a      | Ms Tanya Roe (Community Against Privatisation)                      |
| 108       | Mr Robert Young (Country Labor, Dubbo Office)                       |
| 109       | Mr Greg Chilvers (Police Association Of New South Wales)            |
| 110       | Mr Wayne Oates  |
| 111       | Mr Mark Lennon (Unions NSW)   |
| 112       | Ms Kristie Brown (Council of Social Service of NSW (NCOSS))         |
| 113       | Ms Tilda Hum (Australian Lawyers Alliance)                          |
| 114       | Mr Mark Duncan  |
| 115       | Mr Keith Perkins (Australian Labor Party, Dubbo Branch)             |
| 116       | Mr James Leslie Goodman   |
| 117       | Mrs Lynise O'Donnell  |
| 118       | Mr Denis Gates  |
| 119       | Mr Paul Jones   |
| 120       | Name suppressed   |
| 121       | Ms Margaret O'Riordan   |
| 122       | Mr Michael Karauria   |
| 123       | Name suppressed   |
| 124       | Mr John Sutton  |
| 125       | Ms Jan Davis (Hunter Environment Lobby Inc.)                        |
| 126       | Name suppressed   |
| 127       | Mr Roman Suwald   |
| 128       | Mrs Dixie Campton   |
| 129       | Dr Clare Cappa  |
| 130       | Name suppressed   |
| 131       | Name suppressed   |
| 132       | Name suppressed   |
| 133       | Name suppressed   |

| <b>No</b> | <b>Author</b>                       |
|-----------|-------------------------------------|
| 134       | Confidential                        |
| 135       | Name suppressed                     |
| 136       | Name suppressed                     |
| 137       | Mr Kevin Blunt                      |
| 138       | Name suppressed                     |
| 139       | Name suppressed                     |
| 140       | Name suppressed                     |
| 141       | Name suppressed                     |
| 142       | Name suppressed                     |
| 143       | Name suppressed                     |
| 144       | Name suppressed                     |
| 145       | Ms Jenny Haines (Stop The Sell Off) |
| 146       | Mr Steven Meadows                   |
| 147       | Ms Kim Loveday                      |
| 148       | Ms Melanie and Ms Margaret Williams |
| 149       | Name suppressed                     |
| 150       | Name suppressed                     |
| 151       | Name suppressed                     |
| 152       | Name suppressed                     |
| 153       | Name suppressed                     |
| 154       | Name suppressed                     |
| 155       | Name suppressed                     |
| 155a      | Name suppressed                     |
| 156       | Name suppressed                     |
| 157       | Name suppressed                     |
| 158       | Name suppressed                     |
| 159       | Ms Susan Page                       |
| 160       | Mr Derek Page                       |
| 161       | Name suppressed                     |
| 162       | Mrs Kelly Evans                     |
| 163       | Mrs Ruth Corrigan                   |
| 164       | Name suppressed                     |
| 165       | Name suppressed                     |
| 166       | Mr Brett Russell                    |
| 167       | Mr Ron Palmer                       |

| <b>No</b> | <b>Author</b>  |
|-----------|--|
| 168       | Dr Peggy Goldsmith   |
| 169       | Mr Jeremy Sacco  |
| 170       | Mr Michael Poynder (Justice Action)  |
| 171       | Ms Kat Armstrong (Women In Prison Advocacy Network)                                  |
| 172       | Dr Damien Cahill (University of Sydney)<br>Dr Jane Andrew (University of Wollongong) |
| 173       | Confidential   |
| 174       | Mr Timothy Price   |
| 175       | Mr Andrew House  |
| 176       | Mr Vincent Gafa  |
| 177       | Mr Steve Morrison  |
| 178       | Ms Kerrie Lay  |
| 179       | Mr Glenn Boardman  |
| 180       | Name suppressed  |
| 181       | Name suppressed  |
| 181a      | Name suppressed  |
| 182       | Name suppressed  |
| 183       | Name suppressed  |
| 184       | Name suppressed  |
| 185       | Name suppressed  |
| 186       | Mr Luke Hockey   |
| 187       | Name suppressed  |
| 187a      | Name suppressed  |
| 188       | Name suppressed  |
| 189       | Name suppressed  |
| 190       | Mr Gerard van Acker  |
| 191       | Mr Terence Smith   |
| 192       | Name suppressed  |
| 193       | Mr Ian Steep   |
| 194       | Name suppressed  |
| 195       | Name suppressed  |
| 196       | Mr Grant Lee (Macleay River Teachers Association)                                    |
| 197       | Ms Beverly Towers  |
| 198       | Name suppressed  |
| 199       | Mr Darryn Clifton  |

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| 200       | Name suppressed  |
| 201       | Mrs Dianne Oliver  |
| 202       | Ms Mia Fisher  |
| 203       | Mrs Maya Spannari  |
| 204       | Mr Claudio D'amcio                                       |
| 205       | Mrs Rhonda D'amcio                                       |
| 206       | Mrs Fiona Schirmer                                       |
| 207       | Mr Andrew Spannenberg                                    |
| 208       | Dr Arlie Loughnan (Faculty of Law, University of Sydney) |
| 209       | Ms Eleanor Cardwell                                      |
| 210       | Ms Marie Louise Howell                                   |
| 211       | Mr Peter Rawson  |
| 212       | Name suppressed  |
| 213       | Name suppressed  |
| 214       | Name suppressed  |
| 215       | Mr Craig Bennett (Cessnock City Council)                 |
| 216       | Name suppressed  |
| 217       | Name suppressed  |
| 218       | Mrs Cheryl Daniel  |
| 219       | Name suppressed  |
| 220       | Name suppressed  |
| 221       | Mr Ronald Peter Bloemers                                 |
| 222       | Mr Michael Sciffer                                       |
| 223       | Name suppressed  |
| 224       | Name suppressed  |
| 225       | Name suppressed  |
| 226       | Name suppressed  |
| 227       | Name suppressed  |
| 228       | Name suppressed  |
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| 230       | Name suppressed  |
| 231       | Name suppressed  |
| 232       | Name suppressed  |
| 233       | Name suppressed  |
| 234       | Name suppressed  |

| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 235       | Mrs Kate Fitzpatrick-Kassar   |
| 236       | Ms Kim Cook   |
| 237       | Mr James Eastlake   |
| 238       | Mr Peter Dixon  |
| 239       | Ms Vivienne Martin  |
| 240       | Ms Mary O'Connell   |
| 241       | Mr Peter Hood   |
| 242       | Mr Andrew Sefton  |
| 243       | Mr Ricky Gay  |
| 244       | Reverend Dr Andrew Thompson   |
| 245       | Mr Craig Baird (Prisoners' Aid Association of New South Wales Inc.) |
| 246       | Mr David Penny  |
| 247       | Name suppressed   |
| 248       | Name suppressed   |
| 249       | Name suppressed   |
| 250       | Name suppressed   |
| 251       | Name suppressed   |
| 252       | Ms Anita Malesevic  |
| 253       | Mr Matthew Sweeny   |
| 254       | Mr Michael Boyd Hay   |
| 255       | Mr Trevor Denham  |
| 256       | Name suppressed   |
| 257       | Mr Lyndsay Kruse  |
| 258       | Commissioner Ron Woodham (NSW Department of Corrective Services)    |
| 259       | Name suppressed   |
| 260       | Name suppressed   |
| 261       | Mr Douglas Williamson   |
| 262       | Name suppressed   |
| 263       | Mr Paul Pearce MP (Member for Coogee)                               |
| 264       | Name suppressed   |
| 265       | Name suppressed   |
| 266       | Mr Gregory Sullivan   |
| 267       | Mr Christopher Branson  |
| 268       | Miss Linden Bird  |
| 269       | Mr David Falkner  |

| <b>No</b> | <b>Author</b>                                |
|-----------|--|
| 270       | Mrs Karen Stacey                             |
| 271       | Mr Roger Lemoine                             |
| 272       | Bishop Kevin Manning (Diocese of Parramatta) |
| 273       | Mr Paul Byrnes (State Parole Authority)      |
| 274       | Mr Frank Darcy                               |
| 275       | Name suppressed                              |
| 276       | Name suppressed                              |
| 277       | Mr Corey O'Donnell                           |
| 278       | Name suppressed                              |
| 279       | Mr Andrew Prowse                             |
| 280       | Ms Manosure Tohidi-Esfahani                  |
| 281       | Name suppressed                              |
| 282       | Name suppressed                              |
| 283       | Mrs Lesia Hrubyj                             |
| 284       | Mr Mark Wilson                               |
| 285       | Mr Edward Cahill                             |
| 286       | Name suppressed                              |
| 287       | Name suppressed                              |
| 288       | Name suppressed                              |
| 289       | Name suppressed                              |
| 290       | Ms Jo Holder                                 |
| 291       | Name suppressed                              |
| 292       | Name suppressed                              |
| 293       | Confidential                                 |
| 294       | Name suppressed                              |
| 295       | Name suppressed                              |
| 296       | Name suppressed                              |
| 297       | Name suppressed                              |
| 298       | Name suppressed                              |
| 299       | Ms Annie Nielsen                             |
| 300       | Name suppressed                              |
| 301       | Name suppressed                              |
| 302       | Ms Charmian Eckersley                        |
| 303       | Name suppressed                              |
| 304       | Name suppressed                              |

| <b>No</b> | <b>Author</b>  |
|-----------|--|
| 305       | Name suppressed  |
| 306       | Ms Bev Smiles  |
| 307       | Name suppressed  |
| 308       | Name suppressed  |
| 309       | Ms Elizabeth Clune (Prison Officers Vocational Branch, PSA, Goulburn Branch) |
| 310       | Name suppressed  |
| 311       | Name suppressed  |
| 312       | Dr Steven Roodenrys  |
| 313       | Mr David Hunt  |
| 314       | Name suppressed  |
| 315       | Mr Ervin Attila Rotik  |
| 316       | Name suppressed  |
| 317       | Ms Noeleen Osborne   |
| 318       | Mr Simon Kelly   |
| 319       | Name suppressed  |
| 319a      | Name suppressed  |
| 320       | Name suppressed  |
| 321       | Name suppressed  |
| 322       | Name suppressed  |
| 323       | Name suppressed  |
| 324       | Name suppressed  |
| 325       | Name suppressed  |
| 326       | Name suppressed  |
| 327       | Name suppressed  |
| 328       | Name suppressed  |
| 329       | Name suppressed  |
| 330       | Name suppressed  |
| 331       | Mr Colin Rooney  |
| 332       | Mr Daniel Marshall   |
| 333       | Ms Mora Main   |
| 334       | Dr Michael Cotter (Southern Highlands Teachers Association)                  |
| 335       | Name suppressed  |
| 336       | Ms Christine McMillan  |
| 337       | Ms Emma Darby  |

| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 338       | Mr Alan Hind  |
| 339       | Mrs Michelle McKenzie   |
| 340       | Ms Jenny Veliscek   |
| 341       | Mr Francis Breen  |
| 342       | Mrs Raylene Hearne  |
| 343       | Mr David Walker   |
| 344       | Mrs Janelle Everingham  |
| 345       | Mr Michael Beattie  |
| 346       | Name Suppressed   |
| 347       | Mr Ross Smith   |
| 348       | Name suppressed   |
| 349       | Ms Susan Harris   |
| 350       | Name suppressed   |
| 351       | Name suppressed   |
| 352       | Social Issues Executive of the Anglican Church, Diocese Of Sydney |
| 353       | Mrs Debbie Little   |
| 354       | Name suppressed   |
| 354a      | Name suppressed   |
| 355       | Ms Julie Vojneski   |
| 356       | Mr Peter Firminger  |
| 357       | Mr Chris Parker   |
| 358       | Name suppressed   |
| 359       | Mr Terry Kachel   |
| 360       | Name suppressed   |
| 361       | Name suppressed   |
| 362       | Name suppressed   |
| 363       | Name suppressed   |
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| 365       | Name suppressed   |
| 366       | Name suppressed   |
| 367       | Name suppressed   |
| 368       | Name suppressed   |
| 369       | Name suppressed   |
| 370       | Name suppressed   |
| 371       | Name suppressed   |



| <b>No</b> | <b>Author</b>  |
|-----------|--|
| 372       | Mrs Alison MacDuff   |
| 373       | Mr Jonathan Moylan   |
| 374       | Ms Lynn Bond   |
| 375       | Name suppressed  |
| 376       | Name suppressed  |
| 377       | Mrs Barbara and Wayne Foster                               |
| 378       | Name suppressed  |
| 379       | Ms Josephine Hogg  |
| 380       | Ms Helen Black   |
| 381       | Mr Carl Walker   |
| 382       | Mr Norm Jones  |
| 383       | Name suppressed  |
| 384       | Name suppressed  |
| 385       | Name suppressed  |
| 386       | Ms Jenny Herring   |
| 387       | Name suppressed  |
| 388       | Mr Mark Williams   |
| 389       | Mrs Juanita Procter  |
| 390       | Mr Sean Powell   |
| 391       | Mr Lee Wright  |
| 392       | Ms Maria Houben  |
| 393       | Mr Gregg Andrews   |
| 394       | Mrs Dianne Loadsman  |
| 395       | Mrs Helen Crowley  |
| 396       | Miss Wendy Middlebrook                                     |
| 397       | Mr Jason Hogan (NSW Police Association, Wollongong Branch) |
| 398       | Mr Ian Braithwaite (Public Service Association)            |
| 399       | Mrs Patricia Kelly   |
| 400       | Name suppressed  |
| 401       | Name suppressed  |
| 402       | Mr Terry Holdom  |
| 403       | Name suppressed  |
| 404       | Name suppressed  |
| 405       | Mrs Jeannette Looney                                       |
| 406       | Name suppressed  |

| <b>No</b> | <b>Author</b>   |
|-----------|---|
| 407       | Mr Gary Sturgess (The Serco Institute)                                    |
| 408       | Name suppressed   |
| 409       | Name suppressed   |
| 409a      | Name suppressed   |
| 410       | Mr Stephen Clegg  |
| 411       | Mr Lindsay Weatherburn  |
| 412       | Mrs Samantha Field  |
| 413       | Ms Kerrie-Ann Gilder  |
| 414       | Dr Ian Fisher   |
| 415       | Ms Wendy White  |
| 416       | Mr Shaun Danby  |
| 417       | Mrs Kim Taylor  |
| 418       | Ms Susan Walmsley   |
| 419       | Name suppressed   |
| 420       | Name suppressed   |
| 421       | Mr Mark Griffiths   |
| 422       | Ms Jo Durand  |
| 423       | Name suppressed   |
| 424       | Mr Steve Mark (International Commission of Jurists, Australian Section)   |
| 425       | Mr Peter Duggan   |
| 426       | Mr John Irving (NSW Teachers Federation)                                  |
| 427       | Mr Tim Hall (G4S Australia Pty Ltd)                                       |
| 428       | Mr Larry McGrath (Infrastructure Partnerships Australia)                  |
| 429       | Hon Justice John Dowd AO QC (Community Justice Coalition)                 |
| 430       | Mr David Grills   |
| 431       | Mr Andrew Sim   |
| 432       | Name suppressed   |
| 433       | Confidential  |
| 434       | Name suppressed   |
| 435       | Ms Nicole Calnan  |
| 436       | Dr Naveed Shaukat   |
| 437       | Mr Stuart Turnbull  |
| 438       | Name suppressed   |
| 439       | Name suppressed   |
| 440       | Mr Geoff Kelty (Prison Officers Vocational Branch, PSA , Cessnock Branch) |

| <b>No</b> | <b>Author</b>                                   |
|-----------|---|
| 441       | Mr Charlie Lowles (Blacktown City Council)      |
| 442       | Commissioner Andrew Scipione (NSW Police Force) |
| 443       | Confidential                                    |
| 444       | Mr Adrian Plaizier                              |
| 445       | Name suppressed                                 |
| 446       | Name suppressed                                 |
| 447       | Name suppressed                                 |
| 448       | Name suppressed                                 |
| 449       | Name suppressed                                 |
| 450       | Name suppressed                                 |
| 451       | Mr Nigel Waters                                 |
| 452       | Name suppressed                                 |
| 453       | Name suppressed                                 |

## Appendix 2 Witnesses

| <b>Date</b>  | <b>Name</b>                     | <b>Position and Organisation</b>                                     |
|--|---------------------------------|--|
| <b>23 February 2009</b><br><b>Jubilee Room, Parliament House</b> | <b>Commissioner Ron Woodham</b> | Commissioner, Department of Corrective Services                      |
|  | <b>Mr Ian McLean</b>            | Deputy Commissioner, Department of Corrective Services               |
|  | <b>Mr Gerry Schipp</b>          | Deputy Commissioner, Department of Corrective Services               |
|  | <b>Mr Luke Grant</b>            | Assistant Commissioner, Department of Corrective Services            |
|  | <b>Mr Steve Turner</b>          | Assistant General Secretary, Public Service Association              |
|  | <b>Mr Matt Bindley</b>          | Chair, Prison Officers Vocational Branch, Public Service Association |
|  | <b>Mr Stewart Little</b>        | Senior Industrial Officer, Public Service Association                |
|  | <b>Mr Brett Collins</b>         | Coordinator, Justice Action  |
|  | <b>Mr Michael Poynder</b>       | Coordinator, Justice Action  |
|  | <b>Mr Mark Aronson</b>          | Emeritus Professor, Faculty of Law, University of New South Wales    |
| <b>20 March 2009</b><br><b>Jubilee Room, Parliament House</b>    | <b>Mr Pieter Bezuidenhout</b>   | Managing Director, The GEO Group Australia Pty Ltd                   |
|  | <b>Mr Bob Lipscombe</b>         | President, NSW Teachers Federation                                   |
|  | <b>Mr Peter de Graaff</b>       | Organiser, NSW Teachers Federation                                   |
|  | <b>Ms Tanya Roe</b>             | Spokesperson, Community Against Privatisation                        |
|  | <b>Mr James Ryan</b>            | Spokesperson, Community Against Privatisation                        |
|  | <b>Ms Marie Louise Howell</b>   | Spokesperson, Community Against Privatisation                        |
|  | <b>Mr Graham Smith</b>          | Councillor, Cessnock City Council                                    |
|  | <b>Dr Jane Andrew</b>           | Lecturer, University of Wollongong                                   |
|  | <b>Dr Damien Cahill</b>         | Lecturer, University of Sydney                                       |
|  | <b>Mr Craig Baird</b>           | Manager, Prisoners' Aid Association of New South Wales Inc.          |
|  | <b>Ms Alison Peters</b>         | Director, Council of Social Service of NSW (NCOSS)                   |
|  | <b>Ms Samantha Edmonds</b>      | Deputy Director, Council of Social Service of NSW (NCOSS)            |
|  | <b>Ms Kat Armstrong</b>         | Public Officer, Women in Prison Advocacy Network (WIPAN)             |

| <b>Date</b>   | <b>Name</b>                                   | <b>Position and Organisation</b>   |
|---|---|--|
| <b>27 March 2009</b><br><b>Jubilee Room, Parliament House</b> | <b>Ms Suzette Broderick</b>                   | Vice President, Women in Prison Advocacy Network (WIPAN)                                       |
|   | <b>The Honourable Justice John Dowd AO QC</b> | President, International Commission of Jurists   |
|   | <b>Mr Greg Weir</b>                           | Director, Strategic Services, Department of Corrective Services South Australia                |
|   | <b>Ms Ann De Piaz</b>                         | Deputy Director, Strategic Services, Department of Corrective Services South Australia         |
|   | <b>Mr Frank Mennilli</b>                      | Assistant Commissioner, Custody and Corrections, NSW Police Force                              |
|   | <b>Mr Gary Sturgess</b>                       | Executive Director, The Serco Institute  |
|   | <b>Ms Robyn Banks</b>                         | Chief Executive Officer, Public Interest Advocacy Centre Ltd                                   |
|   | <b>Mr Peter Dodd</b>                          | Solicitor, Health Policy & Advocacy, Public Interest Advocacy Centre Ltd                       |
|   | <b>Reverend Rod Moore</b>                     | Chaplaincy Coordinator - Corrective Services NSW, Civil Chaplaincies Advisory Committee NSW    |
|   | <b>Commissioner Ron Woodham</b>               | Commissioner, Department of Corrective Services  |
|   | <b>Mr Ian McLean</b>                          | Deputy Commissioner, Department of Corrective Services   |
|   | <b>Mr Gerry Schipp</b>                        | Deputy Commissioner, Department of Corrective Services   |
|   | <b>Mr Luke Grant</b>                          | Assistant Commissioner, Department of Corrective Services                                      |
|   | <b>Mr Brian Lawrence</b>                      | Manager, Acacia Prison Contract Services, Department of Corrective Services, Western Australia |
| <b>1 April 2009</b><br><b>Room 814/815, Parliament House</b>  | <b>Mr Brendan Lyon</b>                        | Executive Director, Infrastructure Partnerships Australia                                      |
|   | <b>Mr Larry McGrath</b>                       | Manager Policy, Infrastructure Partnerships Australia  |
|   | <b>Mr Steve Turner</b>                        | Assistant General Secretary, Public Service Association  |
|   | <b>Mr Matt Bindley</b>                        | Chair, Prison Officers Vocational Branch, Public Service Association                           |
|   | <b>Mr Stewart Little</b>                      | Senior Industrial Officer, Public Service Association  |
|   | <b>Mr Tony Howen</b>                          | Delegate, Prison Officers Vocational Branch, Cessnock, Public Service Association              |

## Appendix 3 Tabled documents

### Monday 23 February 2009

#### Public Hearing, Jubilee Room, Parliament House

1. Commissioner Ron Woodham's opening statement

### Friday 20 March 2009

#### Public Hearing, Jubilee Room, Parliament House

1. TRIM File – a student learning profile, tendered by Mr de Graaff

### Friday 27 March 2009

1. Police Association of New South Wales, *Circular No. 8*, 4 March 2009, Privatisation of NSW Prisons, tendered by Ms Hale
2. Commissioner Ron Woodham tendered the following documents, with names suppressed of individual officers and inmates:
  - Staff Health Services support to Cessnock and Parklea Correctional Centres
  - Human Resource Services support to Cessnock and Parklea Correctional Centres
  - Summary of abuse – General Manager Cessnock Correctional Centre
  - Parklea Correctional Centre escape (over wall) report
  - Parklea Correctional Centre escape (truck through front gates) report
  - Parklea Correctional Centre IT review – inappropriate use – report
  - Cessnock Correctional Centre report from Roster Clerk
  - Manipulation of overtime
  - Overtime graphs
  - A DVD – kept confidential by resolution of the Committee

### Wednesday 1 April 2009

1. Supporting documents from Cessnock Prison Officers Vocational Branch Union Archives

## Appendix 4 Comparison of award conditions

Taken from DCS Submission 258, Appendix 1, pp 40-46, 49

| <i>Condition</i>                | <b>NSW DCS</b>  | <b>Junee</b>   |
|---------------------------------|---|--|
| <i>Hours of work</i>            | Day workers and shift workers: 38 hours averaged over a 28-day roster period. Maximum 12 hours on a day.<br>Meal break not included unless taken as a crib break. | 8 or 12 hours (incl paid meal breaks) per day but not more than an average of 38 hours per week.<br>Variation of full time hours by mutual agreement. Maximum 240 hours over 6 week period.                        |
| <i>Overtime (shift workers)</i> | Mon-Sat: time & 1 half first 2 hours, double time thereafter.<br>Sunday: double time<br>Public holidays: double time & a half                                     | All time worked in excess of ordinary hours of duty – time & 1 half.   |
| <i>Overtime meal allowance</i>  | Breakfast, lunch or dinner: \$23.60<br>Supper: \$9.00   | Overtime per meal: \$8.69<br>If working away from Centre per meal: \$17.34<br>Charge to officer for company provided meals: \$2.89   |
| <i>Higher duties allowance</i>  | Correctional Officers: rate of the higher position.<br>If acting in SAS or AS role, allowance paid of 95% of the '5 day' salary for the position.                 | Officers may be required to work up to 56 hours in a higher capacity without additional payment for developmental purposes.<br>Subject to this, employees are paid at the rate of the position they are acting in. |
| <i>Meal breaks</i>              | Paid crib break of 20 mins to be taken between 3rd and 5th hours after commencement of shift.   | Shifts of more than 4 hours – 30 minute paid break.<br>Shift of 12 hours or more – 2 x 30 minute paid break.   |
| <i>Shift allowances</i>         | Early morning shift: 10%<br>Afternoon shift: 15%<br>Night shift: 17.5%<br>(Excluding weekends or public holidays)   |  |
| <i>Annual leave</i>             | Shift workers, continuous shifts: 6 weeks per annum plus 20% annual leave loading.<br>Day workers: 4 weeks per annum plus 17.5% annual leave loading.             | 4 weeks per annum.<br>Officers in second and subsequent years: additional 1 week during each year of employment, pro-rata for any  |

|   |   |   |
|---|---|---|
|   | Staff stationed indefinitely in remote area: additional 5 days per year.  | period less than a complete year.   |
| <b><i>Weekend &amp; public holiday compensation</i></b> | <p>Shift workers, continuous shifts:</p> <p>Saturday – time &amp; 1 half</p> <p>Sunday – 3/4 time extra</p> <p>Public holiday – time &amp; 1 half</p> <p>Number of ordinary shifts on Sundays &amp;/or public holidays during 12 month qualifying period:</p> <p>4 to 10 = 1/5 of 1 week's ordinary salary</p> <p>11 to 17 = 2/5 of 1 week's ordinary salary</p> <p>18 to 24 = 3/5 of 1 week's ordinary salary</p> <p>25 to 31 = 4/5 of 1 week's ordinary salary</p> <p>32 or more = 1 week's ordinary salary</p> | <p>Public holidays – double time &amp; 1 half</p> <p>If employee is rostered <b>off</b>, either payment of additional 8 hours pay or an extra 8 hours added to annual leave entitlement.</p> <p>Where employee is rostered <b>on</b> a public holiday, by mutual agreement they may elect to be paid at the ordinary rate of pay for the work performed on that holiday and have one and a half extra days added to his or her annual leave. The option of adding an extra day and one half to their annual leave may only be exercised on five separate occasions in any one year of employment.</p> |
| <b><i>Extended/long service leave</i></b>               | <p>After 7 years but less than 10 years = pro rata rate of 2 months on full pay.</p> <p>After 10 years, additional pro rata rate of 5 months on full pay for each 10 years of service.</p>  | <p>10 years service = 2 months</p> <p>Each 5 years service thereafter = 1 month.</p>  |
| <b><i>Sick leave</i></b>                                | <p>On commencement - 5 days sick leave granted.</p> <p>After first 4 months of service - accrued at the rate of 10 days per annum for the balance of first year of service.</p> <p>After first year of service - accrued at the rate of 15 days per annum.</p> <p>Sick leave is cumulative.</p>   | <p>8 days in the first year of service and 10 days per annum thereafter.</p> <p>Sick leave is cumulative, however the employer is not bound to pay for more than 18 weeks absence through illness in any one year.</p>  |
| <b><i>Parental leave</i></b>                            | <p>14 weeks paid leave for maternity or adoption.</p> <p>1 week paid leave for other parent.</p> <p>Unpaid maternity leave for a period up to 9 weeks prior to expected date of the birth, and for a further period of up to 12 months after actual date of birth.</p>  | <p>52 weeks unpaid parental leave in connection with the birth or adoption of a child.</p>  |



## Appendix 5 Minutes

### Minutes No. 21

Wednesday 17 December 2008

General Purpose Standing Committee No. 3

Room 1102, Parliament House, Sydney, at 11.05am

#### 1. Members present

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Henry Tsang (Donnelly)

Mr Trevor Khan

Ms Lee Rhiannon

Ms Helen Westwood

#### 2. Substitutions

The Chair advised that she had received written advice from the Deputy Government Whip that Mr Tsang would be substituting for Mr Donnelly for the purposes of the meeting.

#### 3. Previous minutes

Resolved, on the motion of Ms Westwood: That Draft Minutes No. 20 be confirmed.

#### 4. Correspondence

The Committee noted the following items of correspondence received:

- 12 December 2008 – From Mr Ajaka, Mr Smith, Mr Khan and Ms Rhiannon requesting a meeting of GPSC3 to consider a proposed self-reference into the operation and management of private prisons in NSW (*previously circulated*).

#### 5. Consideration of proposed self-reference – The operation and management of private prisons in NSW

The Chair tabled a letter to the Clerk of the Committee signed by Mr Ajaka, Mr Khan, Ms Rhiannon and Mr Smith requesting a meeting of the Committee to consider proposed terms of reference for an inquiry into the privatisation of prisons and prison-related services in NSW.

Resolved, on the motion of Mr Ajaka: That the Committee adopt the following terms of reference, as amended:

That General Purpose Standing Committee No. 3 inquire into and report on the privatisation of prisons and prison-related services in NSW, including:

1. The impact of privatisation on:
  - a) public safety and rates of escape
  - b) the incidence of assault on inmates and staff
  - c) disciplinary breaches
  - d) overcrowding
  - e) prisoner classification levels
  - f) rehabilitation programmes, mental health support services and recidivism rates
  - g) staffing levels and employee conditions
2. The comparative economic costs of operating public and private facilities and the impact of privatisation on publicly managed prisons
3. Accountability mechanisms available in private prisons
4. Future plans to privatise prisons or prison services in NSW, including the Court Escort Security Unit
5. The use and effectiveness of private security guards in perimeter security of prisons
6. The experience of privatisation of prisons and prison services in other Australian and overseas jurisdictions
7. Any other relevant matter.

Resolved, on the motion of Mr Khan: That the Committee advertise the Inquiry in the metropolitan newspapers on Wednesday 14 January 2009 and that the close of submissions be Friday 27 February.

The Committee discussed possible site visits to Parklea, Junee and the Metropolitan Women's Prison in Victoria.

Resolved, on the motion of Ms Rhiannon: That the Inquiry reporting date be 29 May 2008, but that this date not be included in the Inquiry Terms of Reference in case there is a need to extend the Committee's reporting timeframe.

The Secretariat undertook to circulate dates to the Committee regarding a meeting in late February and a hearing in March.

## 6. Adjournment

The Committee adjourned at 11.30 am *sine die*.

Beverly Duffy

**Clerk to the Committee**

### Minutes No. 22

Thursday 12 February 2009

General Purpose Standing Committee No. 3

Room 1102, Parliament House, Sydney, at 10.05am

## 1. Members present

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Greg Donnelly

Ms Sylvia Hale

Mr Trevor Khan

Mr Roy Smith

Ms Helen Westwood

## 2. Substitutions

The Chair advised that she had received written advice from Ms Rhiannon that Ms Hale would be substituting for her for the duration of the inquiry.

## 3. Previous minutes

Resolved, on the motion of Mr Khan: That Draft Minutes No. 21 be confirmed.

## 4. Correspondence

The Committee noted the following items of correspondence received:

- 29 January 2009 – From Ms Lee Rhiannon to the Chair advising that Ms Sylvia Hale will be substituting for the duration of the prisons inquiry.
- 29 January 2009 – From Ms Cheryl Gwilliam, Director General, Western Australian Department of the Attorney General, to Principal Council Officer advising that the Department will not be making a submission to the prisons inquiry.

## 5. Submissions

### *Submissions by inmates*

Resolved, on the motion of Mr Donnelly: That the Committee suppress the names of any inmates who make a submission to the inquiry.

### *Public submissions*

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 2, 4, 9 and 11.

***Partially confidential submissions – name suppressed***

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submissions No. 1, 3, 5, 6, 7, 8, 10, 14 and 15 with names suppressed at the request of the author.

***Partially confidential submission – name and other identifying information suppressed***

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submission No. 12 with name and other identifying information suppressed at the request of the author.

***Fully confidential submission***

Resolved, on the motion of Mr Ajaka: That the Committee keep Submission No. 13 confidential at the request of the submission maker.

**6. Public Hearings**

Resolved, on the motion of Mr Donnelly: That the Committee hold public hearings on:

- Monday 23 February 2009
- Friday 20 March 2009
- Friday 27 March 2009

***Selection of witnesses – 23 February 2009***

Resolved, on the motion of Ms Westwood: That representatives from the following organisations be invited to appear as witnesses on Monday 23 February:

- Department of Corrective Services
- Public Service Association
- Liquor, Hospitality and Miscellaneous Union
- Community Restorative Centre (CRC) NSW
- Justice Action

Mr Khan moved: That the Minister be invited to give evidence at the public hearing on 23 February.

Ms Hale moved: That the motion of Mr Khan be amended by inserting the words ‘as the first witness’ after the words ‘give evidence’.

Amendment put and passed.

Original question, as amended, put and passed.

***Selection of witnesses – 20 and 27 March 2009***

Resolved, on the motion of Ms Westwood: That representatives of the following organisations be invited to appear as witnesses on Friday 20 or Friday 27 March 2009:

- GEO Group
- Mr Mark Aronson
- Magistrate Christopher Bone
- Organisations who have submitted an expression of interest to manage private prisons in New South Wales
- Departments of Justice in other Australian jurisdictions that operate private prisons
- Unions representing staff at private prisons in other Australian jurisdictions
- Prison Escort Services in other Australian jurisdictions
- Operators of immigration detention centres

Resolved, on the motion of Mr Khan: That authors of submission Nos 1, 4, 5, 10 and 11 be considered as potential witnesses for future public hearings.

**7. Site visits**

Resolved, on the motion of Ms Hale: That the Committee conduct site visits on:

- Thursday 9 April 2009 – Parklea

- Wednesday 15 April 2009 – Cessnock
- Wednesday 22 April 2009 – Junee

Resolved, on the motion of Mr Donnelly: That a representative of the Prison Officers Vocational Branch of the Public Service Association be invited to accompany the Committee on its site visits at New South Wales public prisons, subject to approval from the Minister for Corrective Services.

## 8. Adjournment

The Committee adjourned at 11.05 am until 9am, Monday 23 February 2009 in Jubilee Room (public hearing).

Rachel Simpson  
**Clerk to the Committee**

### Minutes No. 23

Monday 23 February 2009  
General Purpose Standing Committee No. 3  
Jubilee Room, Parliament House, Sydney, at 9.00am

## 1. Members present

Ms Amanda Fazio (*Chair*)  
Mr John Ajaka (*Deputy Chair*)  
Mr Greg Donnelly  
Ms Sylvia Hale  
Mr Trevor Khan  
Mr Roy Smith  
Ms Helen Westwood

## 2. Inquiry into privatisation of prisons and prison-related services – public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following representatives of the Department of Corrective Services, were sworn and examined:

- Commissioner Ron Woodham
- Deputy Commissioner Ian McLean
- Deputy Commissioner Gerry Schipp
- Assistant Commissioner Luke Grant

Mr Woodham tabled a copy of his opening statement.

The evidence concluded and the witnesses withdrew.

The following representatives from the Public Service Association of NSW were sworn and examined:

- Mr Steve Turner, Assistant Secretary
- Mr Matt Bindley, Chair, Prison Officers Vocational Branch
- Mr Stewart Little, Senior Industrial Officer

The evidence concluded and the witnesses withdrew.

The following representatives of Justice Action were sworn and examined:

- Mr Brett Collins, Co-ordinator
- Mr Michael Poynder, Co-ordinator

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Mark Aronson, Emeritus Professor, Faculty of Law, University of New South Wales

The Chair welcomed representatives from the Inter-Parliamentary Study Group to the hearing.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.35pm.

The public and media withdrew.

### 3. Transcript of Commissioner Woodham's evidence

Resolved, on the motion of Mr Donnelly: That projected savings at Cessnock and Parklea prisons resulting from privatisation, mentioned by Commissioner Woodham during his evidence, be suppressed, at the request of the Department of Corrective Services, because they are commercial-in-confidence.

### 4. Questions on notice

Resolved, on the motion of Mr Khan: That witnesses be requested to return answers to questions taken on notice during the hearing within 21 days of the day on which the questions are forwarded to the witnesses by the Committee Clerk.

Resolved, on the motion of Mr Khan: That Committee members forward additional questions on notice for witnesses at the hearing to the secretariat by 5pm Thursday 26 February 2009.

### 5. Previous minutes

Resolved, on the motion of Ajaka: That Draft Minutes No. 22 be confirmed.

### 6. Correspondence

The Committee noted the following items of correspondence sent and received:

#### *Sent:*

- 22 January 2009 – From Chair to Commissioner Ron Woodham inviting all staff and inmates to make a submission to the prisons inquiry, and reminding that all submission makers should be free from repercussions.
- 12 February 2009 – From Chair to the Minister for Corrective Services inviting him to appear as a witness at the Committee's first public hearing.
- 16 February 2009 – From Chair to Minister for Corrective Services requesting permission to visit Parklea, Cessnock and Juncie Correctional Centres, and requesting permission to have a union representative accompany the Committee on its visits to public prisons.
- Letters inviting submissions, to: NSW Police Commissioner, NSW Chief Magistrate and Magistrate Wayne Evans.
- Letters inviting departmental witnesses, to: QLD Minister for Police and Corrective Services, SA Minister for Correctional Services and WA Minister for Corrective Services.

#### *Received:*

- 10 February 2009 – From Ms Roslyn Kelleher, Executive Director, Victorian Department of Justice, to Principal Council Officer, advising that Corrections Victoria will not be available to attend a public hearing, nor will it be making a formal submission.
- 16 February 2009 – From the Minister for Corrective Services, to Chair, advising that he will not be available to attend committee hearings as a witness.
- 16 February 2009 – From Mr Christopher Bone, Batemans Bay Magistrate, to Principal Council Officer, advising that he will not be available to attend any hearings in Sydney, and offering to answer written questions or speak via teleconference if the Committee would like more information.
- 18 February 2009 – From Mr Michael Poynder, Community Justice Coalition (CJC), to Principal Council Officer, requesting an extension until 13 March for their submission, and asking for CJC to be invited as a witness at a prisons inquiry hearing.
- From Mr Larry McGrath, Infrastructure Partnerships Australia (IPA), to the Principal Council Officer, requesting that IPA be invited as a witness to the public hearing on 27 March 2009.

**7. Submissions****Public submissions**

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 16, 20, 22, 27-29.

**Partially confidential submissions – name suppressed**

Resolved, on the motion of Mr Khan: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submissions No. 5a, 17, 18, 21, 23-26 with names suppressed at the request of the author.

**Partially confidential submission – name and other identifying information suppressed**

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submission No. 19 with name and other identifying information suppressed at the request of the author.

**8. Public Hearings 20 and 27 March 2009**

The Secretariat provided a verbal update on status of witnesses invited to public hearings on 20 and 27 March 2009.

**9. Site visits**

Resolved, on the motion of Mr Khan: That the Committee visit Dillwynia Correctional Centre following the visit to Parklea Correctional Centre on 9 April 2009.

Resolved, on the motion of Mr Donnelly: That the Committee fly to Wagga Wagga on the evening of 21 April 2009, and travel from Wagga Wagga to Junee by bus on 22 April 2009.

The Committee agreed to take no evidence during site visits, and to invite local witnesses to attend public hearings in Sydney.

**10. Adjournment**

The Committee adjourned at 4.05pm until the lunch break, Wednesday 11 March 2009 in the Members Lounge.

Rachel Simpson  
Clerk to the Committee

**Minutes No. 24**

Wednesday 11 March 2009  
General Purpose Standing Committee No. 3  
Members Lounge, Parliament House, Sydney, at 1.00pm

**1. Members present**

Ms Amanda Fazio (*Chair*)  
Mr John Ajaka (*Deputy Chair*)  
Mr Greg Donnelly  
Ms Sylvia Hale  
Mr Trevor Khan  
Mr Roy Smith  
Ms Helen Westwood

**2. Previous minutes**

Resolved, on the motion of Mr Ajaka: That draft Minutes No 23 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence sent and received:

**Sent:**

- 26 February 2009 - From Chair to Hon John Robertson MLC, Minister for Corrective Services, regarding the committees proposed visit to Dillwynia Correctional Centre and appearance of the Commissioner at the 3rd public hearing in March.
- 5 March 2009 – From Chair to Director General, Department of Premier and Cabinet and Secretary, NSW Treasury, seeking clarification regarding KPIs to be included in contracts for operation of privatised prisons.
- Letters inviting witnesses to Mayors of: Junee Shire Council, Cessnock City Council and Blacktown City Council.

**Received:**

- 19 February 2009 – Letter from Bruce Barbour, NSW Ombudsman, declining the Committee’s invitation to make a submission to the Inquiry
- 24 February 2009 - Letter from Graeme Henson, Chief Magistrate of the Local Court NSW, declining the Committee’s invitation to make a submission to the Inquiry
- 2 March 2009 – Letter from Dr Jane Andrew, School of Accounting & Finance, University of Wollongong, enclosing the book *In Government We Trust, Market Failure and the Delusions of Privatisation*
- 2 March 2009 - Letter from Director General, Department of Corrective Services, Queensland advising that as Queensland Government in caretaker mode it is inappropriate for any departmental officer to appear as a witness
- 3 March 2009 - Letter from NSW Treasury advising they will not make a submission, as submission provided by Commissioner for Corrective Services is including information on comparative costs
- 3 March 2009 - Email from Brian Lawrence, Corrective Services, Western Australia, confirming his attendance to appear as a hearing witness.
- 3 March 2009 - Email from Therese Downes, Department of Corrective Services NSW, outlining a schedule for Committee site visits
- 4 March 2009 - Letter from Peter Muir, Director General, NSW Dept of Juvenile Justice, declining the Committee’s invitation to make a submission to the Inquiry
- 24 February 2009 – Email from Karen Batt, State Secretary, CPSU Victoria, declining the Committee’s invitation to be a witness at a hearing in Sydney.
- 9 March 2009 – Letter from Alison Churchill, CRC NSW, declining the Committee’s invitation to be a witness at a hearing in Sydney.
- 9 March 2009 – Letter from Greg Campbell, General Manager, Junee Shire Council, in response to the Committee’s invitation for the Mayor to appear as a witness at a hearing in Sydney.

**Petitions received:**

The Committee received 2 petitions:

- 20 February 2009 - Petition from 210 residents from State Electorate of Riverstone, opposing the privatisation of prisons
- 24 February 2009 - Petition from 317 residents of Parklea and concerned community members, opposing privatisation of Parklea Correctional Centre

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of petitions from residents of Electorate of Riverstone and residents of Parklea.

**4. Corrections to transcript by Department of Corrective Services**

The Committee noted the following corrections of fact made at the request of the Department of Corrective Services:

**Page 8 – Mr Grant** - Yes, they do. In Junee the contract imposes ~~three~~ specific requirements on the provider to provide programs to a certain standard.

**Page 17 – Mr McLean** - It peaked ~~last year~~ in 2006/2007, as was said earlier, at \$43 million

**Page 20 – Commissioner Woodham** - Dillwynia, for example, which is the newest women’s prison, is the most economically run women’s prison n New South Wales.

*Page 22 – Mr McLean* - We deleted 56 52 positions from that area.

*Page 22 – Commissioner Woodham* - At this stage, through attrition, we have in the executive ranks approximately 750 400 executives.

*Page 12 – Commissioner Woodham*

As an example, [words deleted] people that are interested in tendering for these two jails now ...

## 5. Publication of submissions

### *Public submissions*

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submissions No. 32-40, 46-51, 58, 60-61, 65-66, 68, 74-75, 82-99, 102, 104-109, 111-119, 121-122, 124-125, 127-129, 145-148, 159-160, 162-163, 166-172, 174-179, 186, 190-191, 193, 196-199, 201-211, 215, 218, 221-222, 235-246, 252-253, 255, 257-258, 261, 263, 266-274, 277, 279-280, 283-285, 290, 292, 299, 302, 306, 312-313, 315, 317-318, 331-334, 336-345, 347, 349, 352-353, 355-357, 359, 372-374, 377, 379-382, 386, 388-399, 402, 405, 407, 410-418, 421-422, 424-425, 426-431, 435.

### *Partially confidential submissions – name suppressed*

Resolved, on the motion of Ms Westwood: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the partial publication of Submission No. 5a, 17a, 30-31, 31a, 41-45, 52-57, 62-64, 67, 69-72, 76-81, 100-101, 103, 120, 123, 126, 130-133, 138-144, 149-155, 155a, 158, 161, 164-165, 180-185, 181a, 187-189, 192, 194-195, 200, 212-214, 216-217, 219-220, 223-234, 247-251, 254, 256, 259-260, 262, 264-265, 275, 276, 278, 281-282, 286-289, 291, 294-298, 300-301, 303-305, 307-309, 310-311, 314, 316, 319-330, 335, 346, 348, 350, 354, 354a, 358, 360-371, 375-376, 378, 383-385, 387, 400-401, 403-404, 406, 408-409, 409a, 419-420, 423, 432, 434 with name and other identifying information suppressed at the request of the author.

### *Partially confidential submissions – name and other information suppressed*

Resolved, on the motion of Ms Hale: That, That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the partial publication of Submission Nos. 135 and 136, with name and other confidential information suppressed at the request of the author.

### *Partially confidential submissions – name published and other information or appendices suppressed*

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submission Nos 59 and 110 with appendices suppressed and Nos 137 and 150 with other confidential information suppressed, at request of author.

### *Fully confidential submissions*

That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee keep Submission Nos. 13, 73, 134, 173, 293 and 433 confidential, at the request of the author.

## 6. Ongoing acceptance of submissions and supplementary submissions

Resolved, on the motion of Mr Ajaka: That the Committee continue to accept submissions and supplementary submissions to the inquiry into the privatisation of prisons and prison-related services after the closing date.

## 7. Public hearings – 20 and 27 March 2009

Resolved, on the motion of Ajaka: That the following witnesses be invited to appear at public hearings on Friday 20 and Friday 27 March 2009:

### *20 March 2009*

- Mr Peter Bezuidenhout, Managing Director, The GEO Group Australia Pty Ltd
- Mr Bob Lipscombe, President, and Mr Peter de Graaf, Organiser, NSW Teachers Federation
- Ms Tanya Roe and Mr James Ryan, Spokespersons, Community Against Privatisation
- Cr Graham Smith, Councillor, Cessnock City Council
- Dr Jane Andrew, Lecturer, University of Wollongong
- Dr Damien Cahill, Lecturer, University of Sydney



- Mr Craig Baird, Manager, Prisoners' Aid Association of New South Wales Inc,
- Ms Alison Peters, Director and Ms Kristie Brown, Senior Policy Officer, NCOSS (Council of Social Service of NSW)
- Ms Kat Armstrong, Public Officer and Ms Suzette Broderick, Vice President, Women in Prison Advocacy Network (WIPAN)

**27 March 2009**

- The Hon Justice John Dowd AO QC, President, International Commission of Jurists
- Mr Greg Weir, Director, Strategic Services, Department of Corrective Services, South Australia
- Mr Frank Menelli, A/ Deputy Commissioner & Corporate Spokesperson, custody and corrections, NSW Police Force
- Mr Gary Sturgess, Executive Director, The Serco Institute
- Ms Robyn Banks, Chief Executive Officer and Mr Peter Dodd, Solicitor, Health Policy & Advocacy, Public Interest Advocacy Centre Ltd
- Commissioner Ron Woodham, Deputy Commissioner Ian McLean, Deputy Commissioner Gerry Schipp and Assistant Commissioner Mr Luke Grant, Department of Corrective Services
- Mr Brian Lawrence, Manager, Acacia Prison Contract and CS&CS Contract, Department of Corrective Services Western Australia
- Mr Brendon Lyon, Executive Director and Mr Larry McGrath, Manager, Policy & Infrastructure, Infrastructure Partnerships Australia

**8. Site visits**

The Committee noted travel arrangements for upcoming site visits:

Confirmation of travel arrangements:

- Thursday 9 April – Parklea & Dillwynia, bus departs Parliament House at 8.30am, returning at approximately 4.30pm
- Wednesday 15 April – Cessnock, bus departs Parliament House at 8.00am, returning at approximately 5.00pm
- Tuesday 21 April – Junee Flight departs Sydney Airport at 3.30pm, arrives Wagga Wagga 4.40pm, flight departs Wagga Wagga 1.00pm Wednesday 22 April, arrives Sydney 2.10pm

**9. General business**

Resolved, on the motion of Mr Khan: That the Committee seek the advice of the Clerk as to whether the imposition of overtime bans by the Prison Officers Vocational Branch of the Public Service Association of NSW, reported in the media to be in response to statements made by Commissioner Woodham during evidence before the Committee on 23 February 2009, constitutes a contempt of parliament.

**10. Adjournment**

The Committee adjourned at 1.35pm until Friday 20 March 2009 at 9am (public hearing)

Rachel Simpson

**Clerk to the Committee**

**Minutes No. 25**

Friday 20 March 2009

General Purpose Standing Committee No. 3

Jubilee Room, Parliament House, Sydney, at 9.00am

**1. Members present**

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Greg Donnelly (from 10:45am)

Ms Sylvia Hale

Mr Trevor Khan (to 4.30pm)

Mr Roy Smith

Ms Helen Westwood

## **2. Inquiry into privatisation of prisons and prison-related services – public hearing**

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following representatives from the GEO Group Australia were sworn and examined:

- Mr Pieter Bezuidenhout, Managing Director
- Domonique Karauria, Executive General Manager, Operations
- Timothy Mc Lean, Business Development Manager
- Frank John Thorn, Executive General Manager, Finance and Administration

The evidence concluded and the witnesses withdrew.

The following representatives from the NSW Teachers Federation were sworn and examined:

- Mr Bob Lipscombe, President
- Mr Peter de Graaff, Organiser

Mr Donnelly joined the meeting.

Mr Peter de Graaff tendered a copy a TRIM file – a student learning profile.

The evidence concluded and the witnesses withdrew.

The following representatives of Community Against Privatisation (CAP) were sworn and examined:

- Ms Tanya Roe, Spokesperson
- Mr James Ryan, Spokesperson
- Ms Marie Louise Howell, Spokesperson

Ms Howell tendered a petition from the community of Cessnock.

Mr Ryan tendered a supplementary submission from Community Against Privatisation.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Councillor Graham Smith, Cessnock City Council

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Jane Andrew, Lecturer, University of Wollongong
- Dr Damien Cahill, Lecturer, University of Sydney

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Craig Baird, Manager, Prisoners' Aid Association of New South Wales Inc.

The evidence concluded and the witnesses withdrew.

The following representatives of NCOSS (Council of Social Service of NSW) were sworn and examined:

- Ms Alison Peters, Director
- Ms Samantha Edmonds, Deputy Director

The evidence concluded and the witnesses withdrew.

Mr Khan left the meeting.

The following representatives of Women in Prison Advocacy Network (WIPAN) were sworn and examined:

- Ms Kat Armstrong, Public Officer
- Ms Suzette Broderick, Vice President

The public hearing concluded.

The public and media withdrew.

***Deliberative at conclusion of public hearing***

**3. Acceptance and publication of documents tendered during the public hearing**

Resolved, on the motion of Ms Westwood: That the Committee accept and publish, under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1) the following documents tabled during the hearing:

- TRIM file – a student learning profile, tendered by Mr de Graaff
- petition from the community of Cessnock, tendered by Ms Howell
- supplementary submission from Community Against Privatisation, tendered by Mr Ryan, with personal contact details removed.

**4. Questions on notice**

Resolved, on the motion of Ms Hale: That Committee members forward additional questions on notice for witnesses at the hearing to the secretariat by 5pm, Tuesday 24 March 2009.

**5. Previous minutes**

Resolved, on the motion of Mr Ajaka: That Draft Minutes No. 24 be confirmed.

**6. Correspondence**

The Committee noted the following items of correspondence sent and received:

***Received:***

- March 2009 - letter from Commissioner Woodham to Director, requesting two week extension to 6 April 2009 for return of answers to questions on notice
- 17 March 2009 - fax from Mr Michael Poynder, Justice Action, requesting that Mr Brett Collins join the Committee on its visits to correctional facilities
- 17 March 2009 - letter from the Minister for Correctional Services, South Australia, advising that Mr Greg Weir, Director Strategic Services, Department of Correctional Services, will attend the hearing on 27 March 2009

Mr Donnelly moved: That the Chair write to Justice Action explaining that after carefully considering their request, the Committee is rejecting Justice Action's request that Mr Brett Collins join the Committee on its visits to correctional facilities.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Smith, Ms Westwood

Noes: Ms Hale

Question resolved in the negative.

**7. Submissions**

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 436 and 437.

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submissions No. 319 a and 438-439 with the submission author's name suppressed at the request of the authors.

Resolved, on the motion of Mr Smith: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission No. 254.

**8. Consideration of Clerk's advice re actions of POV B**

The Chair tabled a copy of an email from Mr Khan to the Chair responding to the Clerk's advice.

Resolved, on the motion of Mr Ajaka: That the Committee defer consideration of the Clerk's advice regarding actions of the POV B until the Committee's deliberative meeting following the public hearing on Friday 27 March 2009.

**9. Other business**

Resolved, on the motion of Ms Westwood: That the Committee invite representatives of the Civil Chaplaincies Advisory Committee NSW to attend the public hearing on 27 March 2009.

Resolved, on the motion of Ms Westwood: That the Chair write to the Public Service Association of NSW, informing them of the POV B Cessnock Branch's request to give evidence, and seeking their advice in relation to this request in light of previous verbal advice given to the Committee secretariat that the PSA does not wish to reappear before the Committee.

**10. Adjournment**

The Committee adjourned at 5:55pm until Friday 27 March 2009 at 9:00am in the Jubilee Room.

Rachel Simpson

**Clerk to the Committee**

**Minutes No. 26**

Friday 27 March 2009

General Purpose Standing Committee No. 3

Jubilee Room, Parliament House, Sydney, at 9.05am

**1. Members present**

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Greg Donnelly

Ms Sylvia Hale

Mr Trevor Khan

Mr Roy Smith

Ms Helen Westwood

**2. Publication of submission**

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 442.

**3. Inquiry into privatisation of prisons and prison-related services – public hearing**

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- The Hon Justice John Dowd AO QC, President, International Commission of Jurists, Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Greg Weir, Director, Strategic Services, Department of Corrective Services, South Australia

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Frank Mennilli, A/Deputy Commissioner and Corporate Spokesperson, Custody and Corrections, NSW Police Force

Ms Sylvia Hale tendered a document *Circular No 8, 4 March 2009, Privatisation of NSW Prisons*, by Police Association of New South Wales

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Gary Sturgess, Executive Director, The Serco Institute

The evidence concluded and the witness withdrew.

The following representatives from the Public Interest Advocacy Centre Ltd were sworn and examined:

- Ms Robyn Banks, Chief Executive Officer
- Mr Peter Dodd, Solicitor, Health Policy and Advocacy

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Reverend Rod Moore, Chaplaincy Coordinator Corrective Services NSW, Civil Chaplaincies Advisory Committee NSW

The evidence concluded and the witnesses withdrew.

The following representatives of Department of Corrective Services were examined on their former oath:

- Mr Ron Woodham, Commissioner
- Mr Ian McLean, Deputy Commissioner
- Mr Gerry Schipp, Deputy Commissioner
- Mr Luke Grant, Assistant Commissioner

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Brian Lawrence, Manager, Acacia Prison Contract and CS & CS Contract, Department of Corrective Services Western Australia

The evidence concluded and the witnesses withdrew.

The following representatives of Infrastructure Partnerships Australia were sworn and examined:

- Brendan Lyon, Executive Director
- Mr Larry McGrath, Manager Policy

The evidence concluded and the witnesses withdrew.

The public hearing concluded.

The public and media withdrew.

**4. Acceptance and publication of documents tendered during the public hearing**

Resolved, on the motion of Mr Donnelly: That the Committee accept and publish, under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1) the following documents tendered by Commissioner Woodham, with the name of individual officers and inmates suppressed:

- Staff Health Services support to Cessnock and Parklea Correctional Centres
- Human Resource Services support to Cessnock and Parklea Correctional Centres
- Summary of abuse – General Manager Cessnock Correctional Centre
- Parklea Correctional Centre escape (over wall) report
- Parklea Correctional Centre escape (truck through front gates) report
- Parklea Correctional Centre IT review – inappropriate use – report
- Cessnock Correctional Centre report from Roster Clerk
- Manipulation of overtime
- Overtime graphs

Resolved, on the motion of Ms Hale: That the Committee accept and keep confidential the dvd tendered by Commissioner Woodham.

Resolved, on the motion of Ms Hale: That the Committee accept and publish, under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1) the following document tendered by Ms Hale:

- Police Association of New South Wales, *Circular No 8, 4 March 2009, Privatisation of NSW Prisons*

**5. Questions on notice**

Resolved, on the motion of Mr Ajaka: That Committee members forward additional questions on notice for witnesses at the hearing to the secretariat by 5pm, Tuesday 31 March 2009.

**6. Previous minutes**

Resolved, on the motion of Ms Hale: That Draft Minutes No. 25 be confirmed.

**7. Correspondence**

The Committee noted the following items of correspondence sent and received:

***Sent***

- 24 March 2009 – from Chair to Mr Michael Poynder, Justice Action, rejecting the request to accompany the Committee on prisons visits

***Received***

- 23 March 2009 – from Clr Graham Smith, Cessnock City Council, containing corrections to transcript of evidence 20 March 2009
- 24 March 2009 – Answers to questions on Notice, Department of Corrective Services.

Resolved, on the motion of Ms Westwood: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Clr Smith's correction to transcript of evidence from 20 March 2009.

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from the Department of Corrective Services, with names of individual officers suppressed.

**8. Submissions**

Resolved, on the motion of Mr Khan: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Submissions No. 440, 441 and 444.

Resolved, on the motion of Mr Smith: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the partial publication of Submission No. 351 with the submission author's name suppressed at the request of the authors.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and standing order 223(1), the Committee keep Submission No. 443 confidential, at the request of the author.

**9. Additional hearing 1 April 2009**

Resolved, on the motion of Mr Ajaka: That the following representatives from the Public Service Association of NSW be invited to give evidence at the public hearing on 1 April 2009:

- Mr Steve Turner, Assistant General Secretary
- Mr Matt Bindley, Chairperson, POVB
- Mr Steward Little, Senior Industrial Officer
- Mr Tony Hanson, Delegate, POVB Cessnock

**10. Consideration of Clerk's advice re actions of POVB**

Resolved, on the motion of Mr Khan: That the Committee note the advice of the Clerk as to whether the imposition of overtime bans by the Prison Officers Vocational Branch of the Public Service Association of NSW, reported in the media to be in response to statements made by Commissioner Woodham during evidence before the Committee on 23 February 2009, constitutes a contempt of parliament, and take no further action.

**11. Adjournment**

The Committee adjourned at 5:45pm until Wednesday, 1 April 2009 at 1:00 pm in Room 814/815.

Rachel Simpson  
**Clerk to the Committee**

**Minutes No. 27**

Wednesday, 1 April 2009  
 General Purpose Standing Committee No. 3  
 Room 814/815, Parliament House, Sydney, at 1:10pm

**1. Members present**

Ms Amanda Fazio (*Chair*)  
 Mr John Ajaka (*Deputy Chair*)  
 Mr Greg Donnelly  
 Ms Sylvia Hale  
 Mr Trevor Khan  
 Mr Roy Smith  
 Ms Helen Westwood

**2. Publication of submission**

Resolved, on the motion of Mr Ajaka: That Minutes No 26 be confirmed.

**3. Inquiry into privatisation of prisons and prison-related services – public hearing**

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following representatives from the Public Service Association of NSW gave evidence on their former oath:

- Mr Steve Turner, Assistant Secretary
- Mr Matt Bindley, Chairperson, Prison Officers Vocational Branch

The following representatives from the Public Service Association of NSW were sworn and examined:

- Mr Tony Howen, Delegate, Cessnock POVB
- Mr Peter Williams, Delegate, Cessnock POVB

Mr Turner tabled a document, *Answers to Questions on Notice 23 February 2009*.

Mr Howen tabled a document, *Supporting documents from Cessnock Prison Officers Vocational Branch Union archives*

The evidence concluded and the witnesses withdrew.

The public hearing concluded.

The public and media withdrew.

**4. Acceptance and publication of documents tendered during the public hearing**

Resolved, on the motion of Mr Donnelly: That the Committee accept and publish, under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1) the following document tendered by Mr Turner:

- Answers to Questions on Notice 23 February 2009

Resolved, on the motion of Ms Westwood: That the Committee accept and publish, under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1) the document tendered by Mr Turner, with the names of individual officers suppressed:

- Supporting documents from Cessnock Prison Officers Vocational Branch Union archives

**5. Questions on notice**

Resolved, on the motion of Mr Ajaka: That Committee members forward additional questions on notice for witnesses at the hearing to the secretariat by 5pm, Friday 3 April 2009.

**6. Correspondence**

The Committee noted the following items of correspondence received:

- 31 March 2009 - from Mr Pieter Bezuidenhout, Managing Director, the GEO Group Australia, containing corrections to transcript of evidence 20 March 2009
- 1 April 2009 - From Mr John Lee, Director General, Department of Premier and Cabinet, in response to the Committee's request for information about key performance indicators

Resolved, on the motion of Mr Ajaka: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of Mr Bezuidenhout's correction to transcript of evidence from 20 March 2009.

**7. Adjournment**

The Committee adjourned at 2:20 pm until Thursday, 9 April 2009 at 8:30 am (site visit to Parklea and Dillwynia Correctional Centres).

Rachel Simpson

**Clerk to the Committee**

**Minutes No. 28**

Thursday 9 April 2009

General Purpose Standing Committee No. 3

Parklea Correctional Centre, then Dillwynia Correctional Centre

**1. Members present**

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Ms Sylvia Hale

Mr Trevor Khan

Mr Roy Smith

Ms Helen Westwood

**2. Apology**

Mr Greg Donnelly



**3. Site visit to Parklea Correctional Centre**

The Committee attended Parklea Correctional Centre and was met by the following staff from the Department of Corrective Services:

- Mr Ian McLean, Assistant Commissioner
- Mr Don Rogers, Acting Deputy Commissioner
- Ms Bernadette O'Connor, Assistant Commissioner
- General Manager, Parklea Correctional Centre
- Manager, Security, Parklea Correctional Centre
- Mr Matt Bindley, Chair, Prison Officers Vocational Branch, Public Service Association of NSW

The Committee received a briefing on the Correctional Centre and undertook a tour of the Centre.

The Committee travelled to Dillwynia Correctional Centre.

**4. Site visit to Dillwynia Correctional Centre**

The Committee attended Dillwynia Correctional Centre and was met by the following staff from the Department of Corrective Services:

- Mr Ian McLean, Assistant Commissioner
- Mr Don Rogers, Acting Deputy Commissioner
- Ms Bernadette O'Connor, Assistant Commissioner
- General Manager, Dillwynia Correctional Centre
- Manager, Security, Dillwynia Correctional Centre
- Mr Matt Bindley, Chair, Prison Officers Vocational Branch, Public Service Association of NSW

The Committee received a briefing on the Correctional Centre and undertook a tour of the Centre.

**5. Adjournment**

The Committee adjourned at 3.45pm until Wednesday 15 April 2009 at 8am.

Rachel Simpson

**Clerk to the Committee**

**Minutes No. 29**

Wednesday 15 April 2009

General Purpose Standing Committee No. 3

Cessnock Correctional Centre

**1. Members present**

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Greg Donnelly

Ms Sylvia Hale

Mr Trevor Khan

Mr Roy Smith

Ms Helen Westwood

**2. Submissions:*****Public submissions***

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of Submission No 451.

***Partially confidential submissions – name suppressed***

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the partial publication of Submissions Nos. 445-450 and No. 187a with the submission author's name suppressed.

**3. Correspondence**

The Committee noted the following items of correspondence received:

- 6 April 2009 – from Public Service Association of NSW, forwarding additional documents referred to during the public hearing on 1 April 2009
- 7 April 2009 – from Department of Corrective Services, forwarding outstanding answers to questions on notice from the public hearing on 23 February 2009

Resolved, on the motion of Mr Ajaka: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of:

- documents provided by the Public Service Association of NSW on 6 April 2009
- answers to questions on notice received from the Department of Corrective Services on 7 April 2009.

**4. Date to consider Chair's draft report**

Resolved, on the motion of Ms Hale: That the Committee consider the Chair's draft report at a deliberative meeting on Wednesday 27 May 2009, commencing at 9am.

**5. Site visit to Cessnock Correctional Centre**

The Committee attended Parklea Correctional Centre and was met by the following staff from the Department of Corrective Services:

- Mr Ian McLean, Assistant Commissioner
- Mr Don Rogers, Acting Deputy Commissioner
- Mr Col Kelaher, Assistant Commissioner
- General Manager, Cessnock Correctional Centre
- Manager, Security, Cessnock Correctional Centre
- Mr Matt Bindley, Chair, Prison Officers Vocational Branch, Public Service Association of NSW

The Committee received a briefing on the Correctional Centre and undertook a tour of the Centre.

**6. Attendance of POVB representatives at site visit to Junee Correctional Centre**

The Committee has been advised verbally that the PSA will request a representative of the Prison Officers Vocational Branch be permitted to accompany the Committee on its site visit to Junee Correctional Centre.

Resolved, on the motion of Mr Donnelly: That representatives of the POVB not be permitted to join the Committee on its site visit to Junee Correctional Centre on 22 April 2009.

**7. Adjournment**

The Committee adjourned at 3.45pm until Wednesday 22 April 2009.

Rachel Simpson

**Clerk to the Committee**

**Minutes No. 30**

Wednesday 22 April 2009

General Purpose Standing Committee No. 3

Junee Correctional Centre

**1. Members present**

Mr John Ajaka (*Acting Chair*)  
Mr Tony Catanzariti (Donnelly)  
Ms Sylvia Hale  
Mr Trevor Khan  
Mr Roy Smith  
Ms Helen Westwood

**2. Apologies**

Ms Amanda Fazio

### 3. Acting Chair

The Deputy Chair, Mr John Ajaka, acted as Chair for the meeting in the Chair's absence.

### 4. Substitutions

The Acting Chair advised that he had received written advice from the Government Whip that Mr Tony Catanzariti would be substituting for Mr Greg Donnelly for the purposes of this meeting.

### 5. Attendance at site visit

Resolved, on the motion of Mr Khan: That the Committee not meet with the Mayor of Junee and that the Mayor not accompany the Committee during the site visit.

Resolved, on the motion of Mr Khan: That the Committee allow representatives of the LHMU to accompany the Committee during the site visit, subject to agreement by the prison operators.

### 6. Site visit to Junee Correctional Centre

The Committee attended Junee Correctional Centre and was met by the following representatives from GEO Australia:

#### *Head office representatives:*

- Pieter Bezuidenhout, Managing Director
- Dom Karauria, Executive GM Operations
- Frank Thorn, Executive GM Finance & Admin
- Tim McLean, Business Development Manager

#### *Junee representatives:*

- Mr Tim Hickie, General Manager
- Ms Anne Phillips, Health Services Manager
- Mr Col Caskie, Offender Services Manager
- Mr Peter Thompson, Operations Manager
- Mr Peter McDermott, Contract Compliance Manager
- Mr Matthew Karpanen, Finance & Admin Manager
- Ms Rachel Cooper, OH&S Officer
- Mr Geoff Lawler, LHMU Organiser

The Committee received a briefing on the Correctional Centre, and undertook a tour of the Centre.

### 7. Minutes

Resolved, on the motion of Mr Khan: That draft Minutes Nos 27, 28 and 29 be confirmed.

### 8. Submissions

Resolved, on the motion of Ms Hale: That according to section 4 of the Parliamentary Papers (Supplementary Provisions Act 1975 and Standing Order 223(1), the Committee authorise the partial publication of Submissions Nos. 452 and 453 with the submission author's name suppressed at the request of the author.

### 9. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 14 April 2009 – from NSW Treasury, in response to the Committee's request for information about key performance indicators
- 15 April 2009 – from Mr Steve Turner, Acting General Secretary, Public Service Association of NSW, requesting a representative be permitted to accompany the site visit to Junee Correctional Centre.

**Sent**

- 16 April 2009 – from Director to Mr Steve Turner, Acting General Secretary, Public Service Association of NSW, advising that the Committee has rejected their request to accompany the Committee's site visit to Junee Correctional Centre.

Resolved, on the motion of Mr Khan: That the Committee write to the Minister for Corrective Services, regarding the Committee's request seeking clarification regarding KPIs to be included in contracts for operation of privatised prisons.

**10. Additional questions on notice for GEO Group Australia**

Resolved, on the motion of Mr Khan: That Committee members forward additional questions on notice for the GEO Group to the secretariat by 1pm, Friday 24 April 2009, and that GEO be requested to return answers to questions on notice by 5pm, Friday 8 May 2009.

**11. Adjournment**

The Committee adjourned at 11.45am until Wednesday 27 May 2009 at 9.30am.

Rachel Simpson

**Clerk to the Committee**

**Draft Minutes No. 31**

Wednesday, 27 May 2009

General Purpose Standing Committee No. 3

Room 1102, Parliament House at 9.30am

**1. Members present**

Ms Amanda Fazio (*Chair*)

Mr John Ajaka (*Deputy Chair*)

Mr Greg Donnelly

Ms Sylvia Hale

Mr Trevor Khan

Mr Roy Smith

Ms Helen Westwood

**2. Minutes**

Resolved, on the motion of Mr Khan: That draft Minutes No. 30 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence sent and received:

- 24 April 2009 – From Chair to Hon John Robertson MLC, Minister for Corrective Services regarding earlier request for anticipated contract key performance indicators and response to points raised in Professor Aronson's submission.
- 21 April 2009 – Substitution form advising that the Hon Tony Catanzariti MLC will be substituting for the Hon Greg Donnelly MLC on Wednesday 22 April at Committee site visit to Junee Correctional Centre.
- 21 April 2009 – From Councillor Graham Smith, Cessnock City Council regarding answers to Questions on notice.
- 22 April 2009 – From Mr Brian Lawrence, Department of Corrective Services, Western Australia regarding answers to Questions on notice.
- 24 April 2009 – From Hon John Robertson MLC, Minister for Corrective Services regarding the request for anticipated contract key performance indicators and points raised in Professor Aronson's submission.
- 24 April 2009 – From Mr Gary Sturgess, The Serco Institute regarding answers to Questions on notice.
- 27 April 2009 – From Mr Pieter Bezuidenhout, The GEO Group Australia Pty Ltd regarding answers to Questions on notice.
- 8 May 2009 – From Mr Peter Dodd, Public Interest Advocacy Centre Limited regarding answers to Questions on notice

- 13 May 2009 – From Mr Greg Weir, Department of Corrective Services, South Australia regarding answers to Questions on notice.
- 19 May 2009 – From Commissioner Woodham, NSW Department of Corrective Services regarding further information in respect to the transcript of evidence 27 March 2009.
- 20 May 2009 – From Mr Pieter Bezuidenhout, The GEO Group Australia Pty Ltd regarding the proposal to make public four items of their evidence.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from:

- Councillor Graham Smith, Cessnock City Council
- Mr Brian Lawrence, WA Department of Corrective Services
- Mr Gary Sturgess, Executive Director, The Serco Institute
- Mr Peter Dodd, Public Interest Advocacy Centre Limited
- Mr Greg Weir, SA Department of Corrective Services

#### 4. Partial publication of GEO evidence

Resolved, on the motion of Mr Khan: That under Section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the following extract from confidential submission no. 173:

- inmates at Junee "enjoy significantly greater periods out of their cells in comparison with the State average"

and the following extracts from confidential answers to questions taken on notice:

- GEO "has always achieved and exceeded the best practice target of 70%, receiving the maximum associated proportion of the Performance Linked Fee in this performance indicator" (answer to question 11)
- "The direct comparison between classifications (base salary) according to work requirements:
  - Probationary Correctional Officer 1st year vs GEO Correctional Officer 17.63%
  - Correctional Officer – First Class vs GEO Correctional Officer 3 3.61%
  - Senior Correctional Officer vs GEO Correctional Supervisor 5.46%" (answer to question 5)
- To ensure an appropriate quality of health care standards, the health service at GEO is audited by Justice Health, as well as the Australian Council on Healthcare Standards. It is also independently certified under ISO 9000 (answer to question 4)

#### 5. Consideration of Chair's draft report

The Chair tabled her draft report entitled *Inquiry into the privatisation of prisons and prison-related services*, which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Ms Hale: That paragraph 1.19 be amended by omitting the sentence 'The report determined that Junee prison was significantly cheaper to run than the state's publicly operated prisons'.

Resolved, on the motion of Ms Hale: That Chapter 1, as amended, be adopted.

Chapter 2 read.

Ms Hale moved: That a new paragraph be inserted after paragraph 2.3 to read: 'The Committee recognises, however, that the privatisation of a prison, does, however, place in the hands of the private sector day-to-day control over inmates as well as decisions relating to the delivery of services and discipline or punishment regimes within the privatised centre'.

Mr Khan moved: That the motion of Ms Hale be amended by omitting 'discipline or punishment regimes'.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Mr Khan, Ms Fazio, Mr Smith, Ms Westwood

Noes: Ms Hale

Question resolved in the affirmative.

Resolved, on the motion of Mr Smith: That the motion of Ms Hale be further amended by inserting "The Committee recognises, however, that" before the words "The privatisation".

Original question, as amended, put and resolved in the affirmative.

Resolved, on the motion of Mr Khan: That paragraph 2.11 be amended by reversing the order of the words 'Western Australia' and 'Queensland'.

Resolved, on the motion of Mr Khan: That a table be inserted after Table 2.2 to outline the total net recurrent and capital expenditure on prisons in New South Wales over the past five years.

Resolved, on the motion of Mr Khan: That a table be inserted after paragraph 2.21 outlining the relationship between inmate numbers and officer numbers from 1998-99 to 2007-08.

Ms Hale moved: That paragraph 2.29 be amended by omitting 'modernised' and instead inserting 'amended' in dot point 1, and omitting the 'leaner' and instead inserting 'lower' in dot point 2.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Mr Khan, Ms Fazio, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Ms Hale: That paragraph 2.33 be amended by inserting a new final sentence to read: 'In New South Wales, the recidivism rate in 2005/06 was 43 per cent, significantly higher than the national average'.

Resolved, on the motion of Mr Donnelly: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Ms Hale: That paragraph 3.7 be amended by inserting after the second sentence 'In response to a question on notice asking whether overtime was one of the main reasons behind the move to privatise Cessnock and Parklea prisons, the Commissioner replied "No"'.

Resolved, on the motion of Ms Hale: That a new paragraph be inserted immediately after the quote in 3.9 to read: 'In answer to a direct request to provide evidence to the Committee that substantiated his claim that officers were watching cricket on television at the time of the escape, the Commissioner did not provide evidence of the allegation that the guards were watching television'.

Resolved, on the motion of Mr Khan: That paragraph 3.13 be amended by omitting the sentence 'The Department did not explain its methodology for arriving at these figures' and inserting instead 'The Department was not questioned by the Committee on the methodology used for arriving at the Department's figures'.

Resolved, on the motion of Mr Khan: That a 'Committee comment' be inserted after paragraph 3.14 to read:

*'Committee comment*

The Committee is of the view that some of the evidence introduced by Commissioner Woodham was of little assistance to the Committee due to its age and apparent lack of relevance.

The Committee notes that some of the allegations made by Commissioner Woodham were satisfactorily explained by representatives of the POVB, and in consequence the Committee is of the view that some of the Commissioner's evidence had a tendency either to distract or in some cases mislead the Committee.

The Committee is also of the view that some of Commissioner Woodham's evidence had a tendency to inflame an already tense industrial relations environment and was therefore unhelpful to the proper administration of prisons in New South Wales.

Resolved, on the motion of Ms Hale: That a new paragraph be inserted after paragraph 3.16 to read:

'Figures showing actual versus budgeted overtime for the last nine financial years, however, indicate that the actual figure has exceeded the budgeted figure in every year by between 44 per cent and 128 per cent, suggesting that the overtime budget has never reflected the real level of overtime use. For example, the overtime budget for 2006/07 was set at \$20 million, despite actual overtime expenditure having substantially exceeded this figure in each year since at least 1999/00, including exceeding \$40 million in each of the two previous years, 2004/05 and 2005/06'.

Ms Hale moved: That paragraph 3.17 be amended by inserting a new final sentence to read: 'The Commissioner did not supply evidence to support the assertion that staff manipulated overtime'.

Question put.

The Committee divided.

Ayes: Ms Hale, Ms Westwood

Noes: Mr Ajaka, Mr Donnelly, Mr Khan, Ms Fazio, Mr Smith

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the Committee comment at paragraph 3.26, which reads: 'The Committee notes the arguments raised by inquiry participants in relation to overtime. Even if true that a small number of officers are 'manipulating' the system for personal gain, ultimately overtime is a management responsibility', be omitted.

Resolved, on the motion of Ms Hale: That a 'Committee comment' be inserted at paragraph 3.26 to read: 'Ultimately overtime is a management responsibility. The Commissioner's explanation as to why the annual overtime budget was not adjusted to recognise the real level of overtime expenditure indicates a serious flaw in the Department's budgetary processes'.

Ms Hale moved: That the new paragraph 3.26 be amended by inserting a new final sentence to read: 'When asked to explain the significant rise in overtime expenditure in 2004/05, the primary reason nominated by the Commissioner was "a rapidly rising inmate population requiring immediate expansion of operational capacity".'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Mr Khan, Ms Fazio, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 3.35 be amended by inserting a new second sentence to read: 'Indeed, in the case of the Cessnock community, there has been strong opposition.'

Resolved, on the motion of Ms Hale: That paragraph 3.49 be amended by inserting a new first sentence to read: 'The Committee considers that there was inadequate information provided to and consultation with stakeholders prior to the 2008 decision'.

Mr Ajaka moved: That a new recommendation be inserted after paragraph 3.49 to read: 'That any move to privatise Parklea Correctional Centre be delayed for three months to allow the Department of Corrective Services and the Prison Officers Vocational Branch of the Public Service Association to negotiate the comprehensive implementation of The Way Forward in all correctional centres'.

Ms Hale moved: That the motion of Mr Ajaka be amended by omitting 'for three months'.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Mr Khan, Ms Fazio, Mr Smith, Ms Westwood

Question resolved in the negative.

Original question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Khan, Mr Smith, Ms Westwood

Noes: Mr Donnelly, Ms Fazio

Question resolved in the affirmative.

Mr Khan moved: That paragraphs 3.53 and 3.54 and Recommendation 1 be deleted.

Question put and negatived.

Ms Hale moved: That paragraph 3.55 be amended by omitting 'Many of these were ideological, and many were based on misconceptions of how the private prison system operates in New South Wales'.

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Smith

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Ms Westwood

Question resolved in the negative.

## **6. Adjournment**

The Committee adjourned at 11.15am until Friday 29 May 2009 at 9.30am.

Rachel Simpson

**Clerk to the Committee**

### **Draft Minutes No. 32**

Friday, 29 May 2009

General Purpose Standing Committee No. 3

Room 1102, Parliament House at 9.30am



**1. Members present**

Ms Amanda Fazio (*Chair*)  
 Mr John Ajaka (*Deputy Chair*)  
 Mr Greg Donnelly  
 Ms Sylvia Hale  
 Mr Trevor Khan  
 Mr Roy Smith  
 Ms Helen Westwood

**2. Publication of answers to questions on notice**

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of answers to questions on notice received from:

- Reverend Rod Moore, Chaplaincy Coordinator Corrective Services NSW
- The Hon Justice Dowd AO QC, International Commission of Jurists
- Assistant Commissioner Mennilli, NSW Police Force
- Commissioner Woodham, NSW Department of Corrective Services

**3. Consideration of Chair's draft report**

Resolved, on the motion of Ms Hale: That a new paragraph be inserted immediately before paragraph 3.56 to read:

‘A key argument against privatisation is that the coercive powers of the state should not be placed in private hands. A submission by a serving prison officer summarised this view:

“ ... the setting and enforcing laws of society are inherently and essentially the functions of the state and ... incarceration of offenders is an integral part of the legal process. The management of prisons and functions of prison officers cannot be reduced to the carrying out of mere administrative or routine tasks. By its very nature, it involves the coercion by one group of people over another, and it is asserted that it is simply wrong for the state to allocate the responsibility of coercion to a private contractor. In the words of one US critic, ‘[t]o remain legitimate and morally significant, the authority to govern behind bars, deprive citizens of liberty, to coerce them must remain in the hands of government authorities.’”

Ms Hale moved: That a new ‘Committee comment’ section be inserted after paragraph 3.58 to read:

***‘Committee comment***

Prisons operate for the purpose of exercising coercive power, i.e. their purpose is to give effect to the deprivation of liberty of those sentenced by the courts or those denied bail. In addition, prisons operate their own internal disciplinary procedures, which can include additional coercive provisions, such as the use of physical restraint, solitary confinement or loss of access to services. The transfer of such powers from a public authority to a private provider is qualitatively different to the privatising of other government services that do not involve the exercise of coercive power. It raises serious concerns in relation to the protection of human rights that the state is required to guarantee under international treaty’.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Ms Hale: That paragraph 3.66 be amended by omitting ‘pointed out’ and inserting instead ‘argued’.

Resolved, on the motion of Ms Hale: That paragraph 3.69 be amended by omitting ‘pointed out’ and inserting instead ‘argued’.

Resolved, on the motion of Ms Hale: That the sub-heading above paragraph 3.72 be amended by omitting 'Misconceptions' and inserting instead 'Effect on justice policy'.

Resolved, on the motion of Ms Hale: That paragraph 3.72 be amended by omitting 'The majority of' and inserting instead 'A number of the'.

Resolved, on the motion of Ms Hale: That paragraph 3.72 be amended by inserting a new final sentence to read: 'Other submissions asserted that the introduction of the profit motive to the prison system might lead to private providers seeking to promote tougher sentencing laws in order to increase demand for their services'.

Ms Hale moved: That paragraph 3.72 be further amended by inserting a new final sentence to read: 'Evidence was provided of this occurring overseas'.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 3.73 be amended by omitting 'While this may ring true in the United States' and inserting instead 'While there was some evidence of this occurring in the United States'.

Resolved, on the motion of Mr Ajaka: That paragraph 3.74 be amended by omitting 'Other common' and inserting instead 'Another'.

Ms Hale moved: That a new paragraph be inserted following paragraph 3.73 to read:

"The NSW private prison system does not operate on a per diem rate of payment to the provider so there is reduced incentive for a private provider to seek to encourage higher detention rates to fill up empty beds. It may still, however, be in the interest of a private provider to seek an expansion of the prison population to provide an opportunity to extend the contract term or expand their numbers. GEO, for example, has expanded the number of beds it administers at Junee over the course of its management of that centre, delivering it an increased financial return.

The fact that private prison providers are willing to seek to change public policy to benefit their business interests is clearly demonstrated by the submissions and evidence of private prison providers to this committee, all of which supported an extension of privatisation to prisons other than Junee'.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Ms Hale: That paragraph 3.77 be amended by omitting 'formed one of the strongest arguments in favour of privatisation, and'.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted after paragraph 3.82 to read:

'It is worth noting the comments of Mr Gary Sturgess, Executive Director, The Serco Institute, when he gave evidence regarding the impact of privatisation in the UK. He said:

‘As a result, the first people to defend prison contracting were the prisoners themselves. I cite an early letter written to the *Observer* about the Wolds, which was the first contract prison. He wrote:

‘As someone who is committed to penal reform and as a prisoner, I prefer to adopt a ... pragmatic approach to this issue. Today I will spend 18 hours locked in my cell and I will spend tomorrow in exactly the same way. I look with envy at the Home Office tender document for the Wolds ... which demanded the delivery of a regime guaranteeing a minimum of 12 hours per day out of cell.’

In fact, by the time Wolds opened it was 14. A life-sentenced prisoner later recalled the debate that had taken place across the prison network when Wolds was opened. He wrote:

‘Many prisoners were sceptical about private prisons at first ... But the message began to spread that they were preferable to State-run prisons. A conversation with a prison auxiliary helped me understand why. He had transferred prisoners to a private prison. ‘You should see the difference,’ he said. ‘As soon as the cons get out of the van they are greeted with a “Good Morning, Mr Smith, would you like to come this way?” They’re reminded that they’re people first and prisoners second. Their whole demeanour changes. They’re polite in return to the staff, and to each other.’ I had to admit I had never been to a prison like that.’

Ms Hale moved: That paragraph 3.104 be amended by omitting ‘Ultimately, whether a person supports privatisation comes down to a philosophical decision. The Committee sees one benefit of this Inquiry being to continue the debate about privatisation, and to highlight some of the misconceptions surrounding the private management of prisons in Australia. However, while debate should be encouraged, it should also be properly informed. Transparency about the operation of private prisons will go a long way in eliminating misconceptions. This is discussed in Chapter 6.’ and inserting instead ‘The evidence presented to the committee does not prove that privatisation of a prison will result in a benefit to the public. The evidence before the committee indicates that privatisation may or may not lead to improved operation and performance of a prison and that privatisation itself is not the key consideration in whether or not a prison is run in an effective way.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 3.104 be amended by omitting ‘The Committee heard a range of evidence both in favour of and against privatisation. Inquiry participants on both sides of the argument were passionate and persuasive. Ultimately, whether a person supports privatisation comes down to a philosophical decision. The Committee sees one benefit of this Inquiry being to continue the debate about privatisation, and to highlight some of the misconceptions surrounding the private management of prisons in Australia.’ and inserting instead:

‘The Committee heard a range of evidence in favour of and against privatisation. The Committee sees one benefit of this Inquiry being to highlight some of the misconceptions surrounding the private management of prisons in Australia.

It is also the Committee’s view, having heard the evidence, that there is considerable weight in the argument that the Government, whether in respect to publicly or privately managed prisons, must adopt a service delivery model which emphasises fulfilling the principles of sentencing, improves inmate welfare, and achieves lower rates of recidivism in a cost effective manner.’

Resolved, on the motion of Ms Hale: That a new paragraph be inserted after paragraph 3.108 to read: ‘This same study found that: “[t]he main savings come from reducing labour costs, both through lower wages and through more efficient use of labour.’”

Resolved, on the motion of Ms Hale: That paragraph 3.125 be amended by inserting ‘(G4S)’ after ‘the private prison operator’.

Ms Hale moved: That paragraph 3.130 be omitted: ‘According to evidence received by the Committee, the decision to privatise Parklea and Cessnock came as a surprise to most stakeholders’.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 3.131 be amended by inserting two new final sentences to read: ‘The 2008 report by Inspector Richard Harding does, however, identify 10 areas of ongoing weakness in the performance of Acacia, including “Poor communication between management and staff” and “A lack of clear and accessible rules and procedures governing many areas of the prison’s operations. This was affecting practices in many areas, including the use of ‘loss of privileges’, the management of prisoners’ property, accounting for artwork sales, and the administration of the ARMS and PRAG systems.”’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 3.131 be amended by omitting ‘According to Assistant Commissioner Grant, this was further supported in a recent report by Inspector Richard Harding, which noted that the quality of services at Acacia is now being run at ‘a very high standard’.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Westwood left the meeting.

Ms Hale moved: That paragraph 3.145 be amended by inserting a new first sentence to read: ‘Many submissions clearly indicated that the issue of private versus public operation is an issue of major concern.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith

Question resolved in the negative.

Ms Hale moved: That paragraph 3.150 be amended by omitting ‘very’ from the first sentence.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Mr Khan

Noes: Mr Donnelly, Ms Fazio, Mr Smith

Question resolved in the negative on the casting vote of the Chair.

Ms Westwood rejoined the meeting.

Resolved, on the motion of Ms Hale: That paragraph 3.150 be amended by inserting at the beginning of the second sentence 'In terms purely of economic efficiency and effectiveness,'.

Ms Hale moved: That paragraph 3.151 be omitted and a new paragraph inserted to read: 'The direct evidence in relation to cost and effectiveness does not overwhelmingly support privatisation. In some cases private prisons perform well, in other cases they perform poorly. The same can be said for public prisons.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 3.151 be amended by inserting at the beginning of the paragraph: 'The direct evidence in relation to cost and effectiveness does not overwhelmingly support privatisation.'

Mr Smith moved: That paragraph 3.151 be further amended by omitting 'the' and inserting instead 'there is a sound' after 'The Committee believes that'; omitting 'is compelling, as' and inserting instead 'and'; and omitting 'mixed economy' and inserting instead 'combination of public and private operators'.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Hale

Question resolved in the affirmative.

Ms Hale moved: That paragraph 3.151 be further amended by omitting 'can' and inserting instead 'may' in the last sentence.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That a new paragraph be inserted after paragraph 3.151 to read: 'In circumstances where there is no clear evidence before the committee that privatisation will deliver public benefits and where serious concerns exist about the placing of coercive powers of the state into private hands, the committee cannot endorse the privatisation of any additional prisons in NSW.'

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 3.152 be omitted: ‘as such, the Committee’s report reflects our acceptance that Parklea prison will be privatised. In later chapters we therefore steer our focus away from whether or not a prison is run publicly or privately, and instead focus on what factors should be in place to ensure quality standards and outcomes in private prisons.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 3.152 be amended by omitting ‘As such, the Committee’s report reflects our acceptance that Parklea prison will be privatised.’ and ‘therefore’.

Resolved, on the motion of Mr Khan: That paragraph 3.152 be further amended by omitting ‘whether or not a prison is run publicly or privately, and instead focus on what factors should be in place to ensure quality standards and outcomes in private prisons.’ and inserting instead ‘whether or not a prison is run publicly or privately, and instead focus on what factors should be in place to ensure quality standards and outcomes in the operation of all prisons in New South Wales.’

Resolved, on the motion of Mr Smith: That the decision of the Committee of 27 May 2009 to insert a new ‘Committee comment’ section after paragraph 3.14 be rescinded.

Resolved, on the motion of Mr Smith: That a new ‘Committee comment’ section be inserted after paragraph 3.14 to read:

***‘Committee comment***

The Committee is of the view that some of the evidence introduced by Commissioner Woodham was of little assistance to the Committee due to its age and, in some instances, lack of relevance, with many of the issues raised by the Commissioner seen as failures by management.

The Committee further notes that some of the allegations made by Commissioner Woodham were satisfactorily explained by representatives of the POVB.

The Committee is also of the view that some of Commissioner Woodham’s evidence had a tendency to inflame an already tense industrial relations environment and was therefore, at times, unhelpful and counterproductive.’

Resolved, on the motion of Mr Smith: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Ms Hale moved: That the section headed ‘Cost savings’ (paragraphs 4.1 to 4.6) be moved to after the section headed ‘Difficulties in comparing costs’ (paragraphs 4.7 to 4.17).

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 4.19 be omitted: ‘However, given the evidence raised in Chapter 3 regarding efficiencies and innovations introduced by the private sector, the Committee is satisfied that Junee would cost less to operate by a private contractor than by the Department of Corrective Services. Based on this, we are confident that the private management of prisons will also likely produce greater cost savings and efficiencies than if they were to remain in the public system.’

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Smith

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 4.19 be amended by omitting ‘Parklea’ and by inserting ‘s’ at the end of ‘prison’.

Mr Khan moved: That paragraph 4.19 be amended by inserting ‘likely’ before ‘produce’, and by omitting ‘it’ and inserting instead ‘they’ in the final sentence.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan

Noes: Ms Hale, Mr Smith, Ms Westwood

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That two additional paragraphs be inserted after paragraph 4.19 to read:

‘The Committee emphasises that based upon the evidence received that the achievement of cost savings are, in and of themselves, not sufficient to justify the privatisation of prisons.

Moreover the Committee notes that the evidence received suggests that the privatisation of correctional facilities can assist in achieving the primary objectives of the operation of the prison system, which are:

1. fulfilling the principles of sentencing
2. improving inmate welfare and
3. lowering rates of recidivism  
in a cost effective manner.’

Resolved, on the motion of Mr Khan: That a new section be inserted after paragraph 4.19 to read:

**‘Nature and size of prisons**

In evidence Mr Bezuidenhout was asked by the Committee a question relating to the optimal size for correctional facilities. In answer to the question, he stated:

“No. I do not have a strong view on it, but I will give you a practical example. In South Africa currently the Government is tendering for 3,000-bed jails. One jail has 3,000 beds. We are currently running—not the current ones being tendered, but previously tendered—the largest private jail in the world and that is a 3,024-bed jail in South Africa. I understand from comment—and Dom actually worked there—that those become very difficult to manage. So I think you can have an optimal size, but I do not know what that is. On a costs structure, certainly 3,000 would be desirable, but whether from an operational infrastructure point of view it is desirable, that may be debatable.”

***Committee Comment***

The Committee acknowledges that in addition to variations in age, design and inmate classification, the cost per inmate per day will be impacted by the size of the correctional facility. In evidence given before the Committee

it is plain that there has been a significant increase in the prison population over the past decade. If this increase in inmate numbers continues over the next decade then the size and location of correctional facilities will need further investigation to determine the optimal operational size for correctional facilities.'

Mr Khan moved: That paragraph 4.40 be omitted: 'The Committee believes that it is vitally important that the public can trust the methodology upon which claims of prospective cost savings, which underpinned the decision to privatise Cessnock and Parklea prisons, are made. The Committee believes that recommendations in Chapter 6 of this report, to increase transparency and accountability, may assist in this regard.'

Question put and negatived.

Resolved, on the motion of Mr Smith: That paragraph 4.41 be amended by omitting the words 'a concerted' and inserting instead the word 'an'.

Resolved, on the motion of Mr Donnelly: That Chapter 4, as amended, be adopted.

Chapter 5 read.

Mr Khan moved: That a new paragraph be inserted after paragraph 5.9 to read: 'The Committee notes that the Minister for Corrective Services was invited to appear before the Committee to give evidence but declined to do so.' Further, that a new paragraph be inserted as the first paragraph of the Committee Comment at paragraph 5.15, to read: 'The Committee considers that the refusal of the Minister to give evidence before the Committee hampered the Committee's capacity to understand the Government's reasoning behind the making of the 2008 decision.'

Question put.

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Fazio, Ms Westwood

Question resolved in the affirmative.

Resolved, on the motion of Ms Hale: That paragraph 5.15 be amended by omitting the final sentence: 'While this is an unfortunate outcome, the Committee emphasises that prisons are run for the benefit of inmates, not the benefit of prison officers; and as such the impact of privatisation on inmates should be the focus of this Inquiry.'

Resolved, on the motion of Mr Khan: That paragraph 5.15 be amended by inserting a new final sentence to read: 'Whilst this is not a desirable outcome, the Committee emphasises that the primary goals of the operation of a prison system are to:

1. fulfil the principles of sentencing;
  2. improve inmate welfare; and
  3. lower rates of recidivism;
- in a cost effective manner.'

Resolved, on the motion of Ms Hale: That paragraph 5.24 be amended by omitting the final sentence: 'The Government's 2009 decision appears to have been in response to the Cessnock community's concerns.'

Resolved, on the motion of Mr Smith: That paragraph 5.37 be amended by omitting 'and' and inserting instead 'and/or', and by omitting 'would increase significantly' and inserting instead 'are likely to increase'.

Resolved, on the motion of Ms Hale: That paragraph 5.45 be amended by omitting 'the majority' and inserting instead 'a number'.

Ms Hale moved: That paragraph 5.49 be amended by inserting a new final sentence to read: 'While Juneec itself has always been kept below capacity the same is not the case for DCS run prisons, indicating that with Juneec quarantined from running over capacity the publicly-run prisons must cope with the full impact of above capacity inmate levels.'

Question put.



The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 5.58 be amended by omitting the final sentence: 'However, as clarified in that chapter, most of those arguments were based upon a misconception that private operators are paid per prisoner.'

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Smith

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Ms Hale: That paragraph 5.65 be amended by omitting from the end of the final sentence 'which concluded that that there were no significant differences in recidivism rates between publicly and privately managed facilities.'

Ms Hale moved: That paragraph 5.71 be amended by inserting a new final sentence to read: 'The exception is the vocational training programs in the form of Traineeships under an agreement with the NSW Department of Education and Training, and facilitates the issuing of Work Cover licences under agreement with Work Cover NSW. Currently approximately 100 inmates in 13 NSW correctional centres are engaged in traineeships. This program is not delivered at Junee.'

Question put.

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Ms Westwood

Noes: Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith

Question resolved in the negative.

Ms Hale moved: That paragraph 5.81 be omitted: 'Interestingly, we note that Victoria and Queensland have significantly lower rates of recidivism than NSW, and that both states also have a higher proportion of private prisons than New South Wales, although the Committee does not draw any conclusion about a possible causal relationship between the two.'

Question put.

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Fazio, Ms Westwood

Question resolved in the affirmative.

Ms Hale moved: That paragraph 5.95 be amended to insert a new first sentence to read: 'The Committee noted reports from overseas experience of lower staff ratios at private prisons causing security and welfare problems.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 5.95 be amended by omitting the final sentence: 'Private operators that participated in the Inquiry provided a range of responses to this assumption.'

Ms Hale moved: That paragraph 5.102 be amended to insert a new final sentence to read: 'This table shows that correctional officers at Junee have lower conditions of employment than equivalent DCS employees in the following areas:'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Mr Ajaka left the meeting.

Ms Hale moved: That a new paragraph be inserted above paragraph 5.105 to read: 'The Committee notes the evidence provided by Mr Lawrence regarding pay parity in Western Australia and the evidence of potential detriment to current DCS officers who move to employment by a private provider.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 5.105 and Recommendation 4 be amended by omitting 'consider providing' and inserting instead 'provide'.

Mr Ajaka rejoined the meeting.

Ms Hale moved: That a new recommendation be inserted after Recommendation 4 to read: 'Should the NSW Government proceed with the privatisation of Parklea Correctional Centre, that, consistent with the practice in previous and currently proposed privatisations in the NSW public sector, the NSW Government incorporate into the contract with the incoming private provider a requirement that current Parklea employees are able to transfer to the incoming private provider with full recognition of service and a security of employment guarantee that preserves current wages and conditions until the employee agrees to new conditions.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That a new recommendation be inserted after Recommendation 4 to read:

‘That consistent with the best practice approach of the Western Australian Department of Corrective Services, employee wages and benefits be taken out of competition with the private sector through the implementation of parity of pay and conditions between the public sector and the private sector (see paragraph 5.100).’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted after paragraph 5.107 to read:

‘The Committee notes the comments of Mr Gary Sturgess, Executive Director, The Serco Institute, regarding the qualification of prison officers in private gaols in the United Kingdom:

The Government has certification requirements so people have got to be trained and certified. The answer is to say it is not the United Kingdom experience. I am not familiar with all of the privately managed prisons in this country but those that I have seen it is not the experience here. I will stick with the United Kingdom where I have done the most work, but a succession of reports by independent academic observers, a succession of reports by the Inspector of Prisons and indeed by some critics of prisons have acknowledged the huge contribution that the private prison managers made to the so-called decency agenda; to the way in which prisoners were treated, the way in which they were brought into drug rehabilitation programs, resettlement programs were built for them and so on. There is considerable literature on this.

If you read the reports of the Inspector of Prisons for England and Wales these are comparable establishments that are delivering similar quality services. There is no suggestion of a navy. There have been huge innovations in some of the privately managed prisons that have contributed to the development of the profession. I can think of some publicly managed prisons where that professional ethos that you talk about was simply not present.’

Resolved, on the motion of Mr Smith: That paragraph 5.110 be amended by omitting ‘rebutted’ and inserting instead ‘responded to’.

Mr Khan moved: That a new ‘Committee comment’ section be inserted after paragraph 5.111 to read:

***‘Committee comment***

The Committee notes that government regulation has a primary role to play in ensuring appropriate staff training standards and qualifications exist in both publicly and privately run prisons. On the evidence presented, the Committee is satisfied that concerns raised regarding the level of training and professionalism of prison officers at private institutions in Australia are misconceived.’

Ms Hale moved: That the motion of Mr Khan be amended by omitting the final sentence: ‘On the evidence presented, the Committee is satisfied that concerns raised regarding the level of training and professionalism of prison officers at private institutions in Australia are misconceived.’

Question put and negatived.

Original question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Hale

Question resolved in the affirmative.

Ms Hale moved: That paragraph 5.113 be amended by inserting a new final sentence to read: 'The Committee notes that the lack of alternative employment opportunities in Junee may affect these figures.'

Question put and negatived.

Ms Hale moved: That paragraph 5.115 be amended by omitting the second sentence: 'The Committee believes that staff training and qualification requirements can be guaranteed through a well-defined contract' and inserting instead: 'The Committee believes that training and qualification requirements must be applied consistently in all prisons, regardless of whether they are run by DCS or a private provider.'

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Mr Smith, Ms Westwood

Noes: Mr Donnelly, Ms Fazio, Mr Khan

Question resolved in the affirmative.

Ms Hale moved: That paragraph 5.126 be omitted: 'We note that Justice Health will continue to provide the health service at Parklea, and support this decision. With regard to Junee, we note that Justice Health and the Australian Council on Healthcare Standards independently monitor health services. We also note that we have not seen any evidence, whether through this Inquiry or externally, such as through NSW Ombudsman reports, to suggest that the health service provided at Junee is inferior.'

Question put and negatived.

Mr Khan moved: That paragraph 5.126 be amended by omitting 'and support this decision' in the first sentence.

The Committee divided.

Ayes: Mr Ajaka, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Hale, Ms Fazio, Ms Westwood

Question resolved in the negative.

Mr Khan moved: That paragraph 5.127 be omitted and a new paragraph inserted instead to read: 'The Committee is mindful of the contention that a conflict of interest may arise where the health services of a prison institution are owned and operated by the prison operator. Further analysis should be undertaken on the current arrangements and whether additional safeguards needs to be introduced. The Committee has not considered whether the provider of medical services at prisons in NSW should be the exclusive domain for Justice Health or whether other public or private health providers could provide these services.'

The Committee divided.

Ayes: Mr Ajaka, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Fazio, Ms Hale, Ms Westwood

Question resolved in the negative.

Mr Khan moved: That Recommendation 5 be omitted 'That the NSW Government consider the need to have an independent health service provider at all NSW prisons' and a new recommendation inserted instead to read: 'That the NSW Government investigate the requirement for independent health service providers at all New South Wales prisons.'

The Committee divided.

Ayes: Mr Ajaka, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Fazio, Ms Hale, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 5.141 be omitted and a new paragraph inserted instead to read: 'Despite the cited examples of innovative practices implemented at private prisons, evidence of such innovations being introduced into public prisons is scant. Although Mr Lawrence asserted that some cross-fertilisation occurs in Western Australia, neither DCS nor GEO produced any evidence of any innovation introduced at Junee that has been rolled out across the public prisons in NSW. In response to a question on notice, GEO stated that none of its officers had ever attended a DCS prison for the purpose of demonstrating or otherwise assisting with the implementation of an innovation developed at Junee.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 5.142 be omitted and a new paragraph inserted instead to read: 'The Committee notes the evidence that innovative processes may be developed at private prisons. The committee also notes the extensive evidence from DCS of innovative processes introduced in public prisons including those under "The Way Forward". Despite the assertion in a number of submissions that privatisation will lead to innovation that will spread from the private system to the public system, there is a lack of evidence of any significant cross-fertilisation between the Junee prison and NSW public prisons in the 16 years since Junee was established as a private prison.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 5.142 be amended by inserting 'majority of the' before 'Committee'.

Ms Hale moved: That the amended paragraph 5.142 be omitted.

Question put and negated.

Resolved, on the motion of Mr Khan: That paragraph 5.143 be amended by omitting the final sentence: 'We are optimistic that the privatisation of Parklea will similarly produce innovations that will have a positive effect on the efficiency of public prisons' and inserting instead: 'The Committee is optimistic that the privatisation of Parklea Correctional Centre will enhance the achievement of the primary objectives of the operation of the prison system.'

Resolved, on the motion of Mr Ajaka: That Chapter 5, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Mr Khan: That the following paragraphs be inserted after paragraph 6.20:

'As noted elsewhere in the Report, such overall measures as recidivism are measures that are impacted by an inmates stay at various institutions where the number of hours out of cells, the access to alcohol and drug rehabilitation programs, educational programs and trade skilling may well impact upon the inmate's success in reintegrating into the community.'

The Committee considers that there is a need for the publication of performance against common performance indicators for all prisons in New South Wales irrespective of whether they are publicly or privately operated.'

Resolved on the motion of Mr Khan: That Recommendation 7 be omitted: 'That the Department of Corrective Services report the results of private correctional centres against all contractual Key Performance Indicators in the Department's Annual Report', inserting instead: 'That the Department of Corrective Services report the results of all New South Wales correctional centres against common Key Performance Indicators in the Department's Annual Report. Key Performance Indicator data should also be published on the Department's website.'

Resolved, on the motion of Ms Hale: That paragraph 6.27 be amended by omitting 'refuted' and inserting instead 'disputed'.

Mr Khan moved: That paragraph 6.41 be omitted: 'The Committee notes the range of independent bodies, such as the NSW Ombudsman, that can review performance aspects of New South Wales prisons, and considers them to be adequate.', inserting instead:

'The Committee notes the range of independent bodies such as the NSW Ombudsman that can review performance aspects of New South Wales prisons. The Committee is however concerned that the Corrections Inspectorate is part of the DCS and therefore appears to lack a capacity for independent oversight.

The Committee considers that the Corrections Inspectorate of NSW may more appropriately sit within another Department, such as the Attorney General's Department, so as to ensure a degree of independent review and reporting.'

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Fazio, Mr Donnelly

Question resolved in the affirmative.

Ms Hale moved: That a new recommendation be inserted following paragraph 6.42 to read: 'That the position of NSW Inspector General of Prisons be reinstated to report on both public and private prisons.'

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Fazio, Mr Donnelly

Question resolved in the affirmative.

Mr Khan moved: That a new recommendation be inserted after paragraph 6.41 to read: 'That the NSW Corrections Inspectorate be removed from the control of the Department of Corrective Services and placed under the authority of another government department, such as the Attorney General's Department or the Department of Premier and Cabinet.'

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Fazio, Mr Donnelly

Question resolved in the affirmative.

Mr Khan moved: That the following new paragraphs and recommendation be inserted after Recommendation 9 to read:

‘The Committee has heard evidence from a number of Inquiry participants urging the need for greater transparency both with respect to privately run institutions but also with respect to the operation of Corrective Services generally.

The Committee considers that greater independent oversight of both public and private prisons in New South Wales would be achieved through the establishment of a Parliamentary oversight Committee that would allow for the regular taking of evidence, and of inspections of prisons whether they be publicly or privately operated.

The establishment of a prisons oversight Committee will assist in improving community confidence in both the operation of prisons in New South Wales and also in the transparency of Government decision making with respect to any future moves towards the privatisation of other prisons in New South Wales.’

**Recommendation:**

That the NSW Government establish a Prisons Parliamentary Oversight Committee, with powers and authority similar to the Committee of the Independent Commission Against Corruption.’

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Khan, Mr Smith, Ms Westwood

Noes: Ms Fazio, Mr Donnelly

Question resolved in the affirmative.

Resolved, on the motion of Mr Smith: That Recommendation 10 be amended by deleting ‘consideration be given to employing’ and inserting instead ‘the Department of Corrective Services employ’.

Ms Hale moved: That a new recommendation be inserted after paragraph 6.95 to read: ‘That the government make explicit how it has factored into its cost assumptions the potential risks of private sector failure and that financial guarantees that limit public liability in the case of failure of the private operator to fulfil its contract obligations be provided in any future private management contract.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Ms Fazio, Mr Donnelly, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That a new recommendation be inserted after paragraph 6.99 to read: ‘That the Government extend the same human rights protection to inmates of private prisons and provide them with avenues of redress.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Ms Fazio, Mr Donnelly, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Mr Smith: That paragraph 6.99 be amended by omitting ‘we are concerned’ inserting instead ‘in order to address the concerns of some Inquiry participants’.

Resolved, on the motion of Mr Khan: That Chapter 6, as amended, be adopted.

Chapter 7 read.

Resolved, on the motion of Mr Khan: That the Introduction be amended by deleting the first sentence: 'As discussed in Chapter 3, overtime expenditure was cited as one of the primary reasons for the Government's 2008 decision to privatise Parklea and Cessnock prisons.'

Resolved, on the motion of Ms Hale: That a new paragraph be inserted before paragraph 7.26 to read: 'The Committee notes that DCS's own figures show that actual overtime expenditure exceeded \$20 million in every year since 1999-2000, and exceeded \$40 million in each of the previous two years. To continue to set the overtime budget at a figure that had been significantly exceeded in every year for nearly a decade appears to be unrealistic and suggests an ongoing failure of management to address the issue.'

Ms Hale moved: That paragraph 7.42 be amended by inserting a new final sentence to read: 'This assertion by Commissioner Woodham appears to be contradicted by evidence from GEO that all of its Custodial Officers, Supervisors and Managers at Junee are permanent employees.'

Question put and negatived.

Ms Hale moved: That paragraph 7.46 be amended by inserting a new final sentence to read: 'This assertion by Mr Bezuidenhout appears to be contradicted by evidence from GEO that all of its Custodial Officers, Supervisors and Managers at Junee are permanent employees.'

Question put and negatived.

Mr Khan moved: That paragraph 7.49 be omitted: 'The Committee acknowledges the concerns raised about casual prison officers, however, as long as casuals are provided with the same level of training as permanent officers, and work among permanent officers, we believe any issues that may potentially arise are minimised. We therefore support the limited use of casual prison officers, and believe that they will significantly assist in reducing the Department's overtime expenditure.', inserting instead:

'The Committee acknowledges the efficacy of the use of casual prison officers where they have been provided with training equivalent or similar to that of permanent officers. The use of such officers may assist in reducing the Department's overtime expenditure but more importantly may minimise such detrimental outcomes as prisoner lock-downs caused by the unavailability of staff from time to time.'

The introduction of casual prison officers will assist in achieving the primary objectives of the operation of the prison system.

The Committee notes that despite the engagement of casual staff being a central component of The Way Forward, evidence given to the Committee by the POVB indicated that there was still not acceptance of the necessity for this reform to be introduced across all prisons in New South Wales.

The Committee is concerned, based on the evidence as a whole, that the reluctance of the POVB to embrace workplace reform has unreasonably frustrated the achievement of the primary objectives of the operation of the prison system.'

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Ms Westwood

Noes: Ms Hale, Mr Smith

Question resolved in the affirmative.

Ms Hale moved: That paragraph 7.49 be omitted, inserting instead:



‘The Committee notes the potential costs savings to DCS of having an alternative mechanism for covering unplanned, short-term vacancies and that casual employment may be appropriate in these very limited circumstances. The Committee acknowledges the concerns raised about the employment of casual prison officers. It notes the potential economic and social detriment suffered by employees who are employed on a long-term casual rather than a permanent basis. For circumstances other than genuinely unplanned short-term vacancies, the Committee recommends that DCS use permanent employees, whether full time or part time, to fill planned long-term vacant positions.’

Question put.

Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 7.54 be omitted: ‘The Committee notes the concerns raised by the PSA regarding centralised rostering, however a majority of the Committee believe that centralising the system is a sensible approach to addressing overtime issues. We therefore support the use of centralised rostering.’

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Smith

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Ms Westwood

Question resolved in the negative.

Resolved on the motion of Ms Hale, That paragraph 7.54 be amended by inserting ‘a majority of the Committee after ‘however’, and omitting the word ‘we’ from the first sentence.

Mr Khan moved: That a new paragraph be inserted after paragraph 7.54 to read: ‘The majority of the Committee is concerned, based on the evidence as a whole, that the reluctance of the POVB to accept centralised rostering has unreasonably frustrated the achievement of the primary objectives of the operation of the prison system’.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan

Noes: Ms Hale, Mr Smith, Ms Westwood

Question resolved in the affirmative.

Resolved, on the motion of Ms Hale: That paragraph 7.59 be amended by omitting ‘conservative’.

Resolved on the motion of Mr Khan that paragraph 7.59 be amended by omitting ‘appears’.

Ms Hale moved: That paragraph 7.62 be amended by omitting the first sentence: ‘The Committee supports the Way Forward, and the expeditious roll-out of the reforms across the State’, and ‘under ‘The Way Forward’ in the last sentence, inserting instead ‘The evidence shows that a reform program across NSW prisons has been underway for some time and the Committee supports that process continuing through a process of negotiation between management, employees and their union.’

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That Recommendation 11 be amended by omitting references to Parklea and The Way Forward.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Westwood moved: That Recommendation 12 be omitted: 'That the NSW Government compete with the private sector for management of Parklea and Junee Correctional Centres at the end of their contract terms.', inserting instead: 'That the NSW Government monitor the private sector management of Parklea and Junee Correctional Centres and should they fail to meet their fundamental contractual obligations, the centres revert back to public management'.

Question put.

The Committee divided.

Ayes: Mr Donnelly, Ms Fazio, Ms Hale, Ms Westwood

Noes: Mr Ajaka, Mr Khan, Mr Smith

Question resolved in the affirmative.

Ms Hale moved: That the motion of Ms Westwood be recommitted.

Question put and negated.

Resolved on the motion of Mr Khan: That a new recommendation be inserted after Recommendation 12 to read:

'That the Department of Corrective Services publish details of the implementation of The Way Forward and the cost savings achieved through the implementation of The Way Forward for each correctional centre in New South Wales. Details of the implementation of The Way Forward are to be published on the Department's website biannually with the first report of progress to occur by 1 November 2009.'

Resolved, on the motion of Mr Donnelly: That Chapter 7, as amended, be adopted.

Chapter 8 read.

Mr Khan moved: That paragraph 8.23 and Recommendation 13 be omitted: 'We note the arguments submitted by inquiry participants that the CESU already runs as efficiently as possible, and that the overtime costs incurred by the Unit are largely unavoidable. Therefore, with regard to the Government's 'second chance' offer to DCS to achieve \$5m in savings within five months, the Committee is of the opinion that this is an unrealistic target within the given timeframe. As such, we recommend that the Government extend the timeframe to one year, and request that DCS provide a review after six months to advise of its actions and progress in attempting to achieve the target.' Recommendation 13: That the NSW Government give the Department of Corrective Services one year to achieve \$5 million in savings per annum in the Court Escort Security Unit, before it considers privatising the Unit. The Department should provide the Government with an update after six months to advise of the actions and progress it has made toward achieving this target.'

Question put and negatived.

Ms Hale moved: That Recommendation 13 be amended by omitting 'before it considers privatising the unit.'

Question put and negatived.

Mr Smith moved: That Recommendation 13 be amended by omitting 'achieve' and inserting instead 'identify'.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Ms Hale, Mr Khan, Mr Smith

Noes: Mr Donnelly, Ms Fazio, Ms Westwood

Question resolved in the affirmative.

Mr Khan moved: That a new Recommendation be inserted after Recommendation 13 to read: 'In the event that cost savings are achieved in Court Escort Security Unit, whether they be by work practices changes or contracting out of the CESU, one half of such savings shall be applied to increase the scope of service undertaken by the unit so as to release the NSW Police Force from undertaking some of its present prisoner escort duties.'

Question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Khan

Noes: Mr Donnelly, Ms Fazio, Ms Hale, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That paragraph 8.53 be omitted: 'The Committee acknowledges the concerns raised during the Inquiry regarding the use of private guards in perimeter security of prisons, however we do not believe there is enough evidence to warrant a recommendation to cease this practice. We understand that private guards have been used in perimeter security for some time now, and believe that their employment is beneficial as it frees up prison officers to undertake core duties.' and a new paragraph and recommendation inserted instead to read:

'The Committee shares the concerns raised in relation to the use of private guards in perimeter security of prisons and recommends that the practice be independently reviewed before any further perimeter privatisation takes place.'

**Recommendation:**

That the use of private guards in perimeter security of prisons be independently reviewed before any further perimeter privatisation takes place.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Ms Hale moved: That a new section and two new recommendations be inserted after paragraph 8.53 to read:

**'Management of DCS**

The Committee is concerned that the evidence presented by DCS management, DCS employees, the PSA and the POVB is indicative of serious managerial problems within DCS. Evidence of bullying between staff and

managers, fears of reprisals against those who are critical of management, of an inability to set realistic budgets, and of an inability to negotiate and implement appropriate reforms raise serious concerns about the culture within DCS and the competence of its management.

The Committee is also concerned by the large number of submissions from DCS employees following the Commissioner's evidence to the public hearing, accusing the Commissioner of making sensational, unsubstantiated or out of date criticisms of custodial staff. The Committee is conscious that many of these criticisms appear to have foundation and that they illustrate a serious breakdown in the relationship between Commissioner Woodham and front line custodial officers.

The Committee believes that, as Commissioner, Mr Woodham must bear responsibility for the breakdown in the relationship and that a new leader who does not have such a dysfunctional relationship with front line DCS staff should be appointed as a matter of urgency.

The Committee also believes that a thorough external review of the Department and its management would assist in progressing the reform process.

**Recommendation:**

That an external review of the management of DCS be implemented as a matter of urgency.

**Recommendation:**

That the Minister appoint a new Commissioner for Corrective Services as soon as is practicable.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Mr Ajaka, Mr Donnelly, Ms Fazio, Mr Khan, Mr Smith, Ms Westwood

Question resolved in the negative.

Resolved, on the motion of Ms Westwood: That Chapter 8, as amended, be adopted.

Resolved, on the motion of Mr Donnelly: That the Secretariat update the 'Committee comment' sections to reflect new or amended recommendations.

Resolved, on the motion of Ms Hale: That dissenting reports be provided to the Secretariat by 10 am, Wednesday 3 June 2009.

Resolved, on the motion of Mr Ajaka: That if any member wishes to comment on the Executive Summary, that the comments be emailed to all Committee members by 10am, Wednesday 3 June 2009.

Resolved, on the motion of Mr Donnelly: That the Committee's report be tabled on Friday 5 June 2009.

Resolved, on the motion of Mr Ajaka: That the draft report, as amended, be the report of the Committee presented to the House, together with transcripts of evidence, submissions, tabled documents, minutes of proceedings, answers to questions on notice and correspondence relating to the inquiry, in accordance with standing order 231.

The Chair advised of her intention to conduct a press conference following the tabling of the report at lunchtime on Friday 5 June 2009.

Rachel Simpson

**Clerk to the Committee**



## Appendix 6 Dissenting statements

### DISSENTING STATEMENT – TREVOR KHAN & JOHN AJAKA

In Chapter 8 of the report entitled *Privatisation of other prison services* it was moved that:

*“In the event that cost savings are achieved in Court Escort Security Unit (CESU), whether they be by work practices changes or contracting out of the CESU, one half of such savings shall be applied to increase the scope of service undertaken by the unit so as to release the NSW Police Force from undertaking some of its present prisoner escort duties.”*

#### **Introduction**

The NSW Police Force in its submission to the Committee argued that the Force have suffered a shifting of responsibility for prisoner transfers from the Department of Corrective Services (DCS) to the NSW Police Force due in part to cost savings by DCS.<sup>1</sup>

In Chapter 8 of the report, the possible privatisation of CESU is discussed together with the implications of the Government's 2009 decision. It is contended that any privatisation or reform of the CESU should not be aimed simply at cost cutting, instead it should focus on expanding the existing service to relieve the NSW Police Force of responsibility, wherever possible, for guarding or transport of prisoners.

#### **Current prisoner custody issues**

The current CESU responsibilities fall into the following areas:<sup>2</sup>

1. The guarding of prisoners at court;
2. Transport of prisoners to and from courts and their return to corrections facilities;
3. The transport of prisoners to hospitals for court ordered mental health assessments; and
4. Hospital guards.

In many instances responsibilities 1. & 2., particularly outside the major metropolitan areas, fall to local police.

It is the view of the NSW Police Force that greater attention must be paid to the time and resources consumed through the of police from their prime responsibilities to the non-core duties of the transportation and guarding of prisoners. The NSW Police Force identifies that the problem is particularly marked in rural and regional areas.<sup>3</sup>

As identified by Assistant Commissioner Mennilli, there is a need for the New South Wales Police Force to have access to reliable, efficient and timely custody and transportation services.<sup>4</sup>

Custody issues hamper the NSW Police Force's ability to achieve their core policing activities with the greatest impacts on Local Area Commands (LACs) in Northern, Western and Southern Regions. Police from these LACs are required to travel long distances in order to undertake a prisoner escort.<sup>5</sup>

Assistant Commissioner Mennilli gave evidence that the resource limitations and budget savings within the DCS had resulted in the Department being unable to meet their core responsibilities regarding prisoner security and transport.<sup>6</sup>

### ***Public vs. Private***

The question is not one of public vs. private but rather it is about ensuring that DCS, through whatever contractual means necessary, completes its responsibilities for prisoner transfers thereby alleviating Police to perform their core functions.

Indeed when questioned on this subject, Assistant Commissioner Mennilli conceded that the problem is about DCS not committing enough financial resources to the job of moving prisoners rather than that of privatisation.<sup>7</sup>

Merely replacing the CESU in its current function with a private contractor does not in itself lead to greater service delivery.

The Committee received a submission from Mr Christopher Bone, Magistrate, Batemans Bay Local Court who has operated in courts where persons in custody were the responsibility of the Police and others where they were the responsibility of the CESU. It was his experience that the CESU were better able to deal with this function given their ability to concentrate on it fully as opposed to the Police having to juggle this responsibility with their core activities.<sup>8</sup>

Whether the service is privatised or not, the Government contends that there are cost efficiencies in the order of \$4.5 million to \$5 million to be achieved through to reform of work practices, including the use of casuals and split shifts.<sup>9</sup>

In this context, any move to privatise the CESU should look at achieving greater efficiency and allowing greater responsibility of the CESU to carry out its core function.

### **Case Study: Scotland**

In the NSW Police Force's submission the example of Scotland was used for a similar jurisdiction that suffered the same problem of a lack of clear responsibility between two Government Agencies. The solution was to contract out, to a single private agency, the responsibilities of prisoner escort services. In commenting on the effectiveness of the privatisation of the prisoner escort services it was noted:

*"In Scotland, prisoner escorts and custody services have been undertaken by a private company since 2005. A 2006 review of these arrangements found that outsourcing of prisoner transport freed up an estimated 100 police officers from escorting duties, who were redeployed to front line duties across Scotland."*<sup>10</sup>

And:

*"The review found that the delivery of prisoner escort services by a single contractor improved accountability and removed duplication of effort between agencies. It resulted in savings, clarified reporting lines and promoted an improvement culture."*<sup>11</sup>

***Concluding Remarks***

Whether the CESU is contracted out or not should not be the prime consideration. The public of New South Wales expect that the NSW Police Force will direct its resources to undertaking its core responsibilities. The transport and guarding of prisoners is not one of those core responsibilities.

It is incumbent upon the Government to ensure that whether the privatisation path is adopted or not, the outcome is not simply a return of monies to the Government coffers, but rather an improvement in the service delivered to the public.

In this case, an improved service delivery model ensures not only the safe and efficient transfer of prisoners but also an increase in the time and resources available to the NSW Police Force to undertake their core responsibilities, particularly in rural and regional areas.

Trevor Khan MLC

John Ajaka MLC

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<sup>1</sup> Submission No 442, NSW Police, p 5

<sup>2</sup> Submission No 442, p 4

<sup>3</sup> Submission No 442, p 4

<sup>4</sup> Assistant Commissioner Frank Mennilli, NSW Police Force, Evidence 27 March 2009, p 21

<sup>5</sup> Submission No 442, p 5

<sup>6</sup> Assistant Commissioner Frank Mennilli, Evidence 27 March 2009, p 21

<sup>7</sup> Assistant Commissioner Frank Mennilli, Evidence 27 March 2009, p 23

<sup>8</sup> Submission 11, Mr Christopher Bone, p 2

<sup>9</sup> Submission 258, NSW Department of Corrective Services, p 25 and NSWPD (*Proof, Legislative Council*) 5 May, p 14567

<sup>10</sup> Submission No 442, Attachment 2 – International and national models of service delivery

<sup>11</sup> Submission No 442, Attachment 2 – International and national models of service delivery



**DISSENTING STATEMENT – GREG DONNELLY**

The following statement of dissent is made with respect to certain elements of the Inquiry's report.

In terms of Recommendation 1, support is not given to delaying the process that is underway in regard to Parklea Correction Centre. It is noted that many of the components of the "Way Forward" reforms are already in place including the recruitment of casuals and centralising the rostering. The parties are already committed to a process of negotiating the "Way Forward" reforms with the assistance of the Industrial Relations Commission.

With respect to Recommendations 10, 11, and 12, I note that the Department's activities are already oversighted by an number of independent agencies including, the Office of the NSW Ombudsman, the ICAC, the NSW Auditor-General, the Anti- Discrimination Board, the Privacy Commission, Official Visitors and the NSW Police Force. The existing privately operated prison is subject to external scrutiny and is also closely monitored for compliance through its contractual obligations.

It is also noted that some of the Recommendations fall outside the Terms of Reference of the inquiry.

Greg Donnelly MLC

### **DISSENTING STATEMENT – SYLVIA HALE**

This inquiry has the purpose of inquiring into the proposed privatisation of prisons and related services in NSW. The function of prisons and related services are significantly different to other types of government services that have been privatised.

Unlike financial, health, transport or similar government services, prisons operate for the purpose of exercising coercive power. Their purpose is to deprive of their liberty those sentenced by the courts or those denied bail. In addition, prisons operate their own disciplinary procedures, which can include physical restraint and solitary confinement.<sup>i</sup>

The transfer of such powers from a public authority to a private provider is qualitatively different to the privatising of other government services that do not involve the exercise of coercive power. It raises serious concerns in relation to the responsibility of government to ensure the protection of the human rights and dignity of its citizens.<sup>ii</sup>

Coercive powers should only be placed in the hands of the private sector in circumstances where there is an overwhelming case to show that it will result in a genuine benefit to all who will be affected by the decision; inmates, staff and the general public.

In my view the evidence before the committee does not provide a strong case to support the proposition that privatisation will result in a benefit to all concerned.

*“In the US, a 1998 report commissioned by the National Institute of Corrections, and a 2001 report by the Bureau of Justice Assistance (BJS), reviewed a number of studies and suggested that there was no definitive research evidence to support the conclusion that privately operated facilities were significantly cheaper or better in quality.”<sup>iii</sup>*

A Canadian experiment involving the Ontario government constructing two identical prisons and allowing one to be run by a private provider and the other to be run by the government and reviewing the outcome showed no significant advantage arising from the privately run prison. The government subsequently resumed control of the private prison.<sup>iv</sup>

While advocates claim that privatisation of additional NSW prisons or related services could provide benefits, there was no substantive evidence to show that privatisation will provide such benefits.

The direct evidence in relation to cost and effectiveness is inconclusive. The only direct evidence of potential cost savings is the comparison of employment conditions at Junee with those at NSW public prisons. This shows that officers at Junee receive lower pay and significantly lower entitlements than their public sector equivalents.<sup>v</sup> There is no clear evidence however to show that this directly translates to lower cost to the public. No evidence was presented to show what proportion of these lower labour costs are extracted as profit by the private provider. Public/private cost comparisons presented to the Committee do not adequately address the range of factors that distort such comparisons.<sup>vi</sup>

The evidence demonstrates that while in some cases private prisons perform effectively, in other cases they perform poorly and have failed in Victoria, the USA and the UK<sup>vii</sup>.

In light of my serious concerns about the placing of coercive powers into private hands and the lack of clear evidence that privatisation will deliver public benefits I cannot endorse the privatisation of any additional prisons or prison services in NSW.

This is not to suggest that no improvement is required in the administration of NSW correctional centres by the Department of Corrective Services (DCS).

The Committee heard disturbing evidence about the administration of the DCS, in particular the poor relationship between senior staff and front line correctional officers, the inability of senior management and the union to find constructive and agreed ways to continually improve the way centres operate and the inflexible and often unrealistic administrative processes that operate within DCS.

At times the Commissioner emphasised the alleged manipulation of overtime as a key driver of the privatisation push<sup>viii</sup>, although at other times he denied this<sup>ix</sup>. What is clear from the evidence is that the DCS has exceeded its overtime budget by a significant margin every year since at least 1999/2000. This shows a disturbing inflexibility in the DCS budget process with the formula used to calculate overtime being unchanged since 1986, despite its obvious inaccuracy<sup>x</sup>.

Commissioner Woodham's explanation for the excessive overtime expenditure is alleged "manipulation" of the sick leave and overtime system by some prison officers. He supports this assertion with graphs demonstrating that sick leave decreases on weekends and public holidays when an employee who takes sick leave suffers a loss of penalty rates<sup>xi</sup>.

I do not accept the proposition that this represents a manipulation of the system. The fact that an employee is less likely to take sick leave if he/she suffers a financial disadvantage is the very reason that we have paid sick leave. My view is further strengthened by the Commissioner's evidence that no prison officer has been subject to disciplinary or other action for alleged rorting of the overtime system.<sup>xii</sup>

I therefore conclude that the Commissioner's allegation of widespread manipulation of sick leave and overtime is not substantiated. It is disturbing that the Commissioner has promoted this allegation so publicly.

Equally disturbing is the allegation by the Commissioner that an escape occurred at Parklea Prison because prison officers were watching cricket instead of monitoring a closed circuit TV.<sup>xiii</sup> This allegation is not supported by the incident report tabled by the Commissioner.<sup>xiv</sup> The Commissioner was unable to provide any additional supporting evidence when requested.<sup>xv</sup> This is particularly disturbing given the extent of media coverage of the allegation at the time it was made, the damage done to the public reputation of prison officers, and the fact that the Commissioner made the allegation under oath to a public hearing of a parliamentary committee.

I consider that the Commissioner bears ultimate responsibility for the problems within DCS. In my view it would be appropriate for an external review of the management of DCS, including the role of the Commissioner, to be undertaken as a matter of urgency.

Sylvia Hale MLC

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<sup>i</sup> Submission 102, p.6

<sup>ii</sup> See for example Submissions 126 and 270

<sup>iii</sup> Submission 107, p.20

<sup>iv</sup> Submission 257, p4

<sup>v</sup> Submission 258, appendix 1

<sup>vi</sup> Commissioner Woodham, Answers to Questions on Notice, taken during evidence 23 February 2009 (Part 1), q.114, p.30

<sup>vii</sup> Submission 107, p.8-10, Submission 102, p.6, L.Roth, *Privatisation of Prisons*, p.84,

<sup>viii</sup> Commissioner Woodham, Evidence, 23 February 2009, p.4

<sup>ix</sup> Commissioner Woodham, Answers to Questions on Notice, 27 March 2009, q.16

<sup>x</sup> Submission 258, p33

<sup>xi</sup> Commissioner Woodham, Document tabled 27 March 2009, pp. 63-69

<sup>xii</sup> Commissioner Woodham, answers to questions on notice 27 March 2009, q.17

<sup>xiii</sup> Commissioner Woodham, Evidence, 23 February 2009, p.14

<sup>xiv</sup> Commissioner Woodham, Document tabled 27 March 2009, p.14

<sup>xv</sup> Commissioner Woodham, answers to questions on notice 27 March 2009, q.s 24 & 25.