

Submission
No 102

**INQUIRY INTO THE PRIVATISATION OF PRISONS AND
PRISON-RELATED SERVICES**

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**SUBMISSION BY THE PUBLIC SERVICE ASSOCIATION OF
NEW SOUTH WALES**

TO

**THE INQUIRY INTO PRIVATISATION OF PRISONS AND
PRISON RELATED SERVICES IN NSW**

GENERAL PURPOSE STANDING COMMITTEE NO 3

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1. INTRODUCTION

The Public Service Association (PSA) is the trade union that covers employees of the Department of Corrective Services (DCS). The union has approximately 5600 members in the Department – 83% of eligible employees.

The union has played an active and constructive role in the development and implementation of 'The Way Forward' reforms and remains open to further discussion on ways to improve the efficiency and effectiveness of Corrective Services in NSW without the need to privatise facilities or to involve the private sector in the delivery of services like court escorts.

However, the PSA opposes the privatisation of prisons in NSW on the following basis:

- The maintenance of community safety and appropriate rehabilitation and humane care for prisoners is best delivered by the public sector, based on evidence and best practice, not by the private sector whose sole motivation is profit.
- There is little evidence that private provision of corrective services will be more cost effective or efficient than public provision.
- Privatisation will lead to an erosion of the wages and conditions of workers in the corrections sector.
- Privatisation will lead to a reduction in services available to inmates

It is the union's view that the Government's decision to privatise Cessnock and Parklea is essentially an industrial tactic aimed at undermining the unionised workforce and reducing workers' conditions. Commissioner Woodham's recent statements before the Inquiry confirm this view. We are dismayed that such a fundamental shift in public policy – one directly at odds with Labor Party policy which "opposes the private contract management of prisons"¹ - would be employed as a substitute for appropriate industrial relations.

The PSA's opposition to privatisation is not simply an ideological one nor is it simply an attempt to protect its member's jobs and conditions; the union also has serious concerns about the implications of for-profits corrections services for offenders and the community.

¹ Australian Labor Party NSW Branch – 2006-2008 Policy - Section 11.2 p87

2. ABOUT THE PSA

Membership

The Public Service Association (PSA) is a state based union of employees registered under the NSW Industrial Relations Act. We represent workers employed predominantly by the NSW Government and General Staff employed in the Higher Education Sector. We represent a small number of members employed by private employers mainly in areas that have been transferred to the private sector from government.

The PSA is a progressive union. By this we mean that we do not take a narrow view of our member's interests. We recognise that our members are citizens and members of the community that benefit from the PSA being a strong advocate for the public interest.

Within our coverage we represent employees of the NSW Department of Corrective Services (DCS) where we have approximately 5600 members. There are thirty one (31) correction centres within metropolitan and regional NSW that employ members of the PSA. In addition to this our members are also employed within the various courts around metropolitan and regional NSW and also within the transportation unit of the Department.

Structure of PSA in the Department of Corrective Services

Our membership within the Department is organised around a number of sub branches:

- Governors & Deputy Governors Vocational Branch (representing General managers , Managers Security, Supervisors and Deputy Supervisors)
- Commissioned Officers Vocational Branch (COVB) – Representing Executive Officers in Correctional centres
- Prison Officers Vocational Branch (POVB) –Representing Correctional Officers
- Probation and Parole Vocational Branch
- Corrective Services Non Custodial Departmental Committee representing all other employees in the department including those involved in program delivery in Correctional centres

Industrial Awards and Agreements covering staff:

- Crown Employees (Correctional Officers, Department of Corrective Services) Award
- Crown Employees (General Managers, Superintendents, Managers Security and Deputy Superintendents, Department of Corrective Services) Award 2005
- Crown Employees (Correctional Officers, Department of Corrective Services) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres
- Crown Employees (Senior Assistant Superintendents and Assistant Superintendents, Department of Corrective Services) Award 2005
- Crown Employees (Public Sector - Salaries 2008) Award
- Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006

3. PRIVATISATION - WRONG IN PRINCIPLE

The punishment of citizens should be the sole preserve of the state and subject to the utmost transparency and accountability. As Field has argued:

Not only are corrections one of the government's most basic responsibilities, it is probably the most sobering. The ability to deprive citizens of their freedom, force them to live behind bars and totally regulate their lives, is unlike any other power the government has. The responsibility for corrections goes beyond issues of cost efficiency and touches on whether a private company should be able to regulate the affairs of a citizen deprived of his freedom.²

The allocation of punishment can not be separated from the administration of punishment. When individuals are in custody the range of day-to-day decisions made by their custodians define the nature of their incarceration. As Dilulio argues "there is a mountain of empirical studies that show how much discretion at every level – from the commissioner's office to the cell block – is of necessity vested in those who run prisons".

Andrews provides an example of how prison management decisions can effectively constitute the allocation of additional punishment, as "internal disciplinary regimes...involve an extension of state authority which has not been explicitly sanctioned":

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'.³

Beyond the influence on the day-to-day experience of offenders, privatisation has the capacity to create a lobby that would seek to influence broader justice policy in order to improve its commercial position. As Nathan observes:

[T]he terms of the debate about the future of the criminal justice system have shifted; the agenda is increasingly influenced by the interests of the private sector whose role is to open up new markets and expand business in order to fulfill its duty to generate profits and dividends for shareholders. This requires more people in the criminal justice system for longer and is squarely at odds with the public good.⁴

An examination of election funding returns indicates that GEO Group Aust Pty Ltd made considerable donations to both the Labor and Liberal parties. In 2007 the GEO Group Australia Pty Ltd donated \$47 000 to the Australian Labor Party in NSW and a further \$23 500 to the NSW Liberals.⁵ This is in the year just prior to the NSW Government's decision on the renewal of GEO's contract for the management of Junee. GEO has also been short listed for awarding of the contract for management of Cessnock and Parklea.⁶

Whilst the PSA is not alleging any improper conduct in the above cases, recent events in Pennsylvania, have exposed the inherent risks when the profit motive is permitted to enter a domain that should rightfully be reserved for the public sector. In January 2009 judges in Pennsylvania were found to have taken \$US 2.6 million in bribes from companies directly

² Field J, 'Making Prisons Private: An Improper Delegation of Government Power' (1986-1987) 15 Hofstra Law Review 649 at 668 quoted in Roth I, 'Privatisation of Prisons' NSW Parliamentary Library Research Service Back Ground Paper No.3/04 2004

³ Andrew J, 'The price of an ordered society' citing Private Prison Report International, *Report No 56, June 2003*, www.psiru.org/justice Chapter appears in *Government We Trust: Market failure and the delusions of privatisation* Warwick Funnell, Rober Jupe, Jane Andrew, UNSW Press 2009

⁴ Nathan S, 'Blind faith in private prisons' Independent Monitor, March 2008 p26

⁵ Figures are cited from the NSW Election Funding Authority through the Democracy4Sale <http://www.democracy4sale.org>.

⁶ Department of Commerce List of tenders closed - accessed 23/01/09 <https://tenders.nsw.gov.au/commerce>

involved in running juvenile detention centres in exchange for giving longer sentences to juvenile offenders.⁷

Whilst this may be seen as an extreme example, it is not an isolated one:

- A 1997 audit by Montana corrections officials identified 29 areas of noncompliance at a West Texas private prison that housed Montana inmates. In addition, the U.S. Justice Department was conducting an investigation for civil rights violations at the prison. However, a Texas state regulator gave the prison a clean bill of health in an inspection conducted for the Texas Commission on Jail Standards. It was later discovered that the state regulator was being paid \$42,000 a year as a consultant for the prison's operator.⁸
- In Tennessee CCA guards have reported that they are encouraged to send troublesome inmates into administrative segregation (solitary confinement), thereby adding 30 days to an inmate's sentence and earning the company an extra US\$1000. The potential conflicts of interest are magnified by CCA also encouraging guards to buy company stock, thereby ensuring that they have a personal financial stake in how profitably the company is being operated⁹
- Moyle cites an example at Borallon, a privately run facility in Queensland, where the manager of operations is reported to have said that it was acceptable to breach inmates' rights if they were a 'problem at the centre'. The manager clarified the meaning of 'problem at the centre' as 'protecting CCA's business name'¹⁰

⁷Reuters 'Judges jailed kids for money' –February 13 2006

⁸Mary Alice Robbins, "Texas Jail Commission Looks To Prevent Conflicts Of Interest," Morris News Service, December 5, 1997; Ken Herman, "Jails Official Quits Private Consulting Job," *Austin American* quoted from AFSCME : *The evidence is clear crime shouldn't pay* <http://www.afscme.org/publications/1238.cfm>

⁹Andrew Op. Cit. quoting from *Prisons for Profit* The Nation, January 5 1998 p256

¹⁰Andrew Op. Cit. p255 quoting from Moyle, P (1999), "Separating the allocation of punishment from its administration: theoretical and empirical observations", *Current Issues in Criminal Justice*, 11(2) 153-76

4. ARE PRIVATE PRISONS MORE COST EFFECTIVE?

Arguments about cost-effectiveness have been at the centre of the debate about further privatisation. Putting aside the issue of whether cost is an appropriate indicator of a 'good' corrections system, the union has serious doubts regarding the claims that private operators will be more cost effective and/or efficient than the public sector.

The private sector has continually asserted that it is able to provide the same services as the public sector at a lower unit cost. Despite almost thirty years of global experience with prison privatisation the debate over this assertion remains inconclusive.

A comprehensive analysis of private prisons in the United States, commissioned by the National Corrections Institute on behalf of the US Attorney General concluded that:

Of the approximately 140 secure confinement facilities currently in existence, or the 84 that held active contracts with state or federal agencies at the end of 1997, only a handful have been studied to learn if contracting is less costly to the taxpayer. Fewer still have employed reasonably strong research designs and reported the data in sufficient detail to permit an assessment of the validity of the findings. The results are mixed and subject to different interpretations.¹¹

In the detailed comparison of public and private prison costs undertaken for this study, Nelson found that:

Differences in the age, health, gender and security risk of inmates imply differences in the reported cost per inmate-day even among equally efficient prison facilities. The same may be said for differences in the size of the inmate population.¹²

In 1999, researchers at the University of Cincinnati conducted a meta analysis of 33 cost-effectiveness evaluations of private and public prisons from 24 independent studies. They concluded that:

[I]nstitutional characteristics (other than ownership) were significant predictors of a prison's daily per diem cost ... Overall, the results indicate that regardless of the owner of the facility, it is the economy of scale achieved by the prison, its age, and its security level that largely determine its daily per diem cost.

Although specific privatisation policy alternatives may result in modest cost savings (e.g., private prison construction and private contracts for specific services such as rehabilitation and medical programs), relinquishing the responsibility of managing prisons to the private sphere is unlikely to alleviate much of the financial burden on state correctional budgets.¹³

Past attempts to undertake a rigorous comparison of private and public sector prison costs in NSW have displayed the same limitations identified in the international research. NSW attempts have been further undermined by the fact that the real costs of operating Junee Correctional Centre have been, and remain, shrouded in the secrecy of 'commercial confidentiality'.

In his 2004 report to Parliament the Auditor General made observations on the relative performance of DCS facilities when compared with other state jurisdictions and between DCS facilities and the privately operated Junee Correctional Centre.

At the time, DCS rejected the Auditor General's analysis, arguing that costs could not be readily compared because:

¹¹ Abt Associates Inc. "Private Prisons in the United States: An Assessment of Current Practice," July 16, 1998 p iv

¹² Nelson J, 'Comparing Public and Private Prison Costs' p4 (Appendix 1 in Abt Associates Inc. "Private Prisons in the United States: An Assessment of Current Practice," July 16, 1998)

¹³ Travis C Pratt & Jeff Maahs "Are private prisons more cost effective than public prisons? A meta-analysis of evaluation research studies" - Crime & Delinquency Vol.45 Issue 3 July 1999

- 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.¹⁴

In 2005 the NSW Legislative Assembly Public Accounts Committee (PAC) considered the issue of comparative costs in its inquiry into *Value for Money from NSW Correctional Centres*. The inquiry report found a number of significant obstacles to arriving at an accurate comparison of costs, including variations in

- The size and scale of operations
- The physical layout and design of the prison
- Location
- Programs offered
- Classification and sex of the offender

The report also contains a detailed discussion of the various methodologies for arriving at a comparative cost per inmate per day and their limitations. In fact, GEO and DCS provided the PAC with different cost per day figures for the Junee Corrections Centre (GEO \$81.86¹⁵ and DCS \$82.31¹⁶) and, the Department calculated that, Mid North Coast Correctional Centre was able to out perform Junee (on either costing) with a cost per inmate per day of \$80.12.

In its final calculation, the PAC concluded that the cost per day for Junee was \$73.59 when health costs were excluded. This itself was a flawed calculation which failed to allocate any departmental overheads to the Junee costs and discounted health costs twice¹⁷

In the past, DCS has consistently rejected cost comparisons between public and private prisons, and between jurisdictions. In its most recent Annual Report (2007/08) it explained the difference between NSW average costs per inmate per day and the national average as "partly a data comparability issue and partly due to specific factors in NSW such as land values"¹⁸

Departmental representatives appearing before this inquiry confirmed that the cost comparison between Junee and public sector facilities remains a case of 'apples and oranges':

Ms SYLVIA HALE: So it is not really a case of comparing apples with apples when you are talking about maximum cost per day as opposed to medium cost?

Mr SCHIPP: No, that is right.¹⁹

¹⁴ NSW Auditor General - Report to Parliament 2004 Volume 4 p240.

¹⁵ The GEO Group Australia – Submission to the PAC Inquiry "Value for Money from NSW Correctional Centres. p9.

¹⁶ NSW Department of Corrective Services - Submission to the PAC Inquiry "Value for Money from NSW Correctional Centres 9 May 2005. p8

¹⁷ DCS in its calculation to arrive at the \$82.31 figure had already deducted \$9 in estimated health costs.

¹⁸ NSW Department of Corrective Services Annual Report 2007/08 p34

¹⁹ Report of Proceedings before General Purpose Standing Committee No.3. Inquiry into the Privatisation of prisons and prison-related services. Uncorrected proof. Monday 23 February 2009.

Data from the Productivity Commission Report on Government Services, demonstrates that costs per inmate per day in NSW are in fact competitive, particularly when compared with states such as Victoria and Western Australia, which have a much higher proportion of the prison population in privately managed facilities.

State	NSW	QLD	VIC	WA
Cost Per prisoner per day ²⁰	210.5	180.3	221.4	224.9
Percentage of prison population in privately managed facilities ²¹	8	22.9	36.1	21.2
Percentage prison utilisation against capacity ²²	104.9	95.9	91.8 ²³	112.5

Facility age is also a critical factor influencing the cost competitiveness of the system, as older facilities tend to be more expensive to operate. This is because newer facilities are designed according to modern correctional management principles and can therefore operate on lower staff to inmate ratios. NSW operates some of the oldest correctional facilities in the southern hemisphere. The table below shows a sample of NSW prisons with the date the facility opened.

State	Prison	Date Built	No of Inmates	No of Staff
NSW	Berrima	1836	75	35
	Parramatta	1842	380	128
	Goulburn	1863	530	260
	Cooma	1873	140	32
	Bathurst	1888	560	120
	Grafton	1899	220	120
	Long Bay	1909	650	230
	Junee (Private)	1993	750	180
	Kempsey	2004	650	125
	Dillwynia	2004	200	95
	Wellington	2006	630	126

In contrast Victoria and Queensland operate systems with substantially more modern infrastructure which should have a beneficial impact on their overall cost of service.

State	Prison	Date Built	Security Status
VIC	Langi Kal Kal	1950	Minimum
	Dhurringile	1965	Minimum
	Ararat	1967	Minimum/Medium
	Tarrengower (Female)	1988	Minimum (Open)
	Barwon	1989	Maximum
	Melbourne Assessment Prison	1989	Maximum
	Loddon	1990	Medium
	Dame Phyllis Frost Centre (Female)	1996	Maximum/Medium/Minimum
	Port Phillip	1997	Maximum
	Fulham (Private)	1997	Medium/Maximum

²⁰ Productivity Commission Report on Government Services 2009 – Corrective Services Tables 8A.9, Figures are for the 2007/2008 period

²¹ Ibid table 8A.1.

²² Ibid table 8A.23

²³ Victorian Department of Justice Statistical Profile of the Victorian Prison System 2003-04 to 2007-08 This figures has been source directly from the Victorian Department of Justice as no figure was included in the Productivity Commission report.

State	Prison	Date Built	Security Status
	Woodford	1997	Maximum/Medium
	Wolston	1999	High
	Beechworth	2005	Minimum
	Marrngoneet	2006	Medium
	Metropolitan Remand Centre	2006	Maximum
QLD	Townsville (Male & Female)	1895	High/Low
	Palen Creek	1934	Minimum
	Nunimbah (Male & Female)	1970	Open
	Brisbane	1988	Maximum
	Lotus Glen (Main, Farm)	1989	Open
	Darling Downs	1990	Minimum
	Borallon (Private)	1992	Maximum/Medium
	Arthur Gorrie (Private)	1992	High/Maximum
	Woodford	1997	Maximum/Medium
	Brisbane Women's	1999	Maximum/Medium/Minimum
	Capricornia	1999	Medium
	Wolston	1999	High
	Maryborough	2003	Maximum/Medium

The current cost of overtime seems to be one of the Government's main arguments in relation to the cost-effectiveness of the public sector. However, we are yet to see any evidence of the overtime 'orts' alleged by the Government.

The allocation of overtime within the Department is governed by strict procedures documented in the Corrective Services overtime policy.²⁴ This policy outlines in detail the process to be adopted for the selection and allocation of staff for call-in to overtime. The eligibility of an officer to be called in to overtime is governed by criteria established within the computerized Employee Overtime Equalisation Call on System.

The truth of the overtime issue is that there is not enough staff at the right place at the right time. The Department and the union have differed in their preferred approach to this problem. The Department's preference is to utilise additional casuals to fill the gaps. The PSA is concerned that an overreliance on casual officers, unfamiliar with a facility or with inmates in a facility, could pose a risk to their own safety or the safety of others.

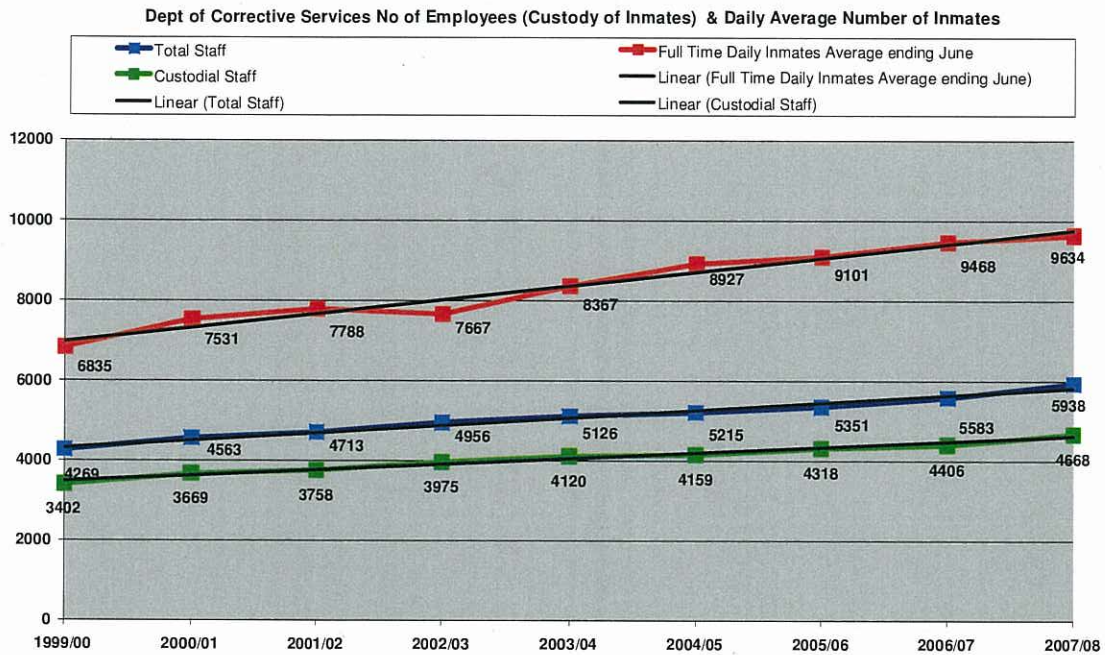
The Department has failed to appropriately budget to cover staffing gaps. This is the result of the retention of a rostering formula based on 209 ordinary shifts per year. This formula ignores the impact of changes in leave entitlements that have reduced the likelihood that an officer will be available to work this number of ordinary shifts.

Further the Department's budgeting formula is flawed as budgets are set with out due regard to contingencies that may arise such as where inmates require hospitalization. This scenario would result in a requirement for an additional 6 shifts of overtime per day. Budgets are also set on the basis of the salary level of the lowest graded officer and as a result may be inconsistent with the staffing profile of a centre that could have a much higher number of staff in senior grades.

The failure of staffing levels to keep pace with the growth in inmate numbers has also led to increased overtime.

²⁴ NSW Department of Corrective Services *Correctional Officers Rostering Procedures Manual Version 3* September 2002 Section 4 'Overtime', pp12-25

The following graph illustrates the 9 year trend on inmate numbers relative to custodial and non custodial staff²⁵:



The graph shows that while the growth in staff numbers has risen over the period, inmate numbers are rising at a steeper rate. In the period covered by the graph inmate numbers grew by 41% while total DCS staff grew by 32%, with custodial staff growing by only 29%.

The Department has itself recognise the cost pressures associated with increasing inmate numbers. In its most recent Annual Report (2007/08) DCS states that despite its best efforts to control costs through the Way Forward reforms, "with the continuing increase in the general inmate population in NSW, it is anticipated that keeping the recurrent cost per offender per day in check will remain a challenge".²⁶

It should also be noted that NSW corrective services run on a leaner staffing model than other Australian jurisdictions, with 27 offenders to every one operational staff member, compared to Victoria with 19.8 offenders to one operational staff and Western Australia with 16.9 offenders to every one operational staff.²⁷ As noted previously, these jurisdictions also have much higher proportions of offenders in privately-managed prisons.

²⁵ Data has been source from DCS Annual reports. Figures were not readily available in a comparable format before 1999/2000 reporting year

²⁶ NSW Department of Corrective Services Annual Report 2007/08 p34

²⁷ Productivity Commission, *Report on Government Service 2009 – Corrective Services* Table 8A.22

5. WHAT ABOUT QUALITY?

The union is disappointed that there has been so little attention paid to the quality of corrective service provision. Surely there is more to a 'good' corrective services system than cost-effectiveness. Prisons are not simply warehouses to store people away in the name of punishment. It is in the interests of offenders and the broader community to use prison as an opportunity to rehabilitate people – to reduce recidivism and to produce productive citizens.

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."²⁸

A key measure of the quality of corrective services from the offender and community perspectives is recidivism rates.

The extent to which corrective services are able to influence the rate of recidivism is still undetermined. However international evidence suggests that programs do make a difference. Andrews cites the example of Scandinavia:

Scandinavian countries have adopted an approach to incarceration that is substantially different to that of the rest of the world. Penal policy in Sweden, Norway and Finland is run largely on a principle of mutual respect and personal responsibility, rather than the punitive/correctional approach that is prevalent elsewhere. One striking difference is the commitment to education that dominates all prisons in these countries. As a result, their prisons may cost more in the shorter term but they have significantly lower rates of incarceration (62 per 100,000 people compared to 600 per 100,000 in the United States, lower levels of recidivism and, on average, the sentences are shorter."²⁹

The Department of Corrective Service's 2007/08 Annual Report promotes its commitment to rehabilitation programs. This includes programs in the following areas:

- Aggression and violence programs
- Alcohol, drug and gambling addiction
- Sober driving
- Vocational education leading to recognised qualifications
- Life management skills
- Parenting skills
- Health promotion
- Sexual offending
- Assistance with housing, education and finding employment to support transition back into the community

As noted in the Annual Report, many of these programs rely on effective partnerships with other public sector agencies, such as the Departments of Housing and Health, and with non-government organizations, such as Aboriginal community organisations.

While rehabilitation program provision may be mandated in a contract, it is doubtful that the same levels of diversity and innovation would be pursued by the private sector. It is also doubtful that the private sector could achieve similarly effective partnerships with public sector and non-government organizations.

²⁸ Quoted in Roth Op. Cit. (2004)

²⁹ Andrews, J, Op. Cit. quoting Bodeson, UV (2005) *Crime and Justice in Scandinavia*, Lossalg in Funnell. W, Jupe. R, & Andrews. J *In Governments We Trust: Market failure and the delusions of privatization*. UNSW Press 2009

Indeed, in the few publicly available reviews of the Junee Correctional Centre, DCS concluded that "by the end of the year four [of a four year study] opportunities for innovation in inmate management and the provision programs and services were limited"³⁰ Similarly, the reports of the 'Monitor' of Junee, whilst minimal at best, highlight a number of repeated breaches of KPIs in relation to work participation, regular case planning and classification review.

While DCS is struggling to improve its performance in relation to recidivism, at least it has a target and its performance against that target is public. No information is available to assess Junee's performance in the area of recidivism. Indeed, it is not even known if recidivism is included in the performance provisions of the contract with GEO.

³⁰ NSW Department of Corrective Services (1999) *Private Prisons in NSW: Junee a four year review* p viii

6. THE IMPACT OF PRIVATISATION ON WORKERS IN THE CORRECTIVE SERVICES SECTOR.

The principle argument of privatisation proponents is that it will achieve costs savings. The question is where are these savings to be achieved?

Most estimates place labour costs at between 60 and 80 percent of operational costs in running a prison. It is therefore likely that these costs will be the obvious source of 'savings' for a private sector operator.

The table below compares the conditions of employment, including overtime rates, of Correctional Officers employed by the Department of Corrective Services and by the Junee Correctional Centre (as at June 2007). It highlights the significant gap in conditions between correctional officers employed in the public sector and those employed at Junee.

Condition	DCS Crown Employees (Correctional Officers, Department of Corrective Services) Award	DCS 'Way Forward' facilities Crown Employees (Correctional Officers, Department of Corrective Services) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres	Junee LHMU Junee Correctional Centre – Correctional Officers – 2006 Enterprise Agreement
Overtime	The following rates are payable for any overtime worked by shift workers: <ul style="list-style-type: none"> • Monday-Friday paid for at the rate of time and one half for the first two hours and double time thereafter. • Saturday paid for at the rate of time and one half for the first two hours and double time thereafter. • Sunday be paid for at the rate of double time. • Public Holidays paid for at the rate of double time and one half. 	Officers who work additional hours beyond a standard 8 or 12-hour shift, or in excess of 152 hours per roster cycle shall be paid at a single rate of \$40.95 per hour for all additional time worked.	all time worked by permanent employees in excess of ordinary hours of duty shall be paid for at the rate of time and a half.
Sick Leave	15 days	15 Days	10 days
Family & Community Services Leave	5 days after first 2 years then 1 day per year	5 days after first 2 years then 1 day per year	None
Paid Maternity Leave	14 weeks	14 weeks	None
Long Service Leave	1 month accrual for every five years available pro rata after 7 years service.	1 month accrual for every five years available pro rata after 7 years service.	2 months after 10 years. 1 month for every additional 5 years on a pro rata

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	Then 5 Months for every 10 years after the completion of the first 10 years	Then 5 Months for every 10 years after the completion of the first 10 years	basis
Redundancy	3 week per year of service up to 39 weeks	3 week per year of service up to 39 weeks	Maximum of 16 weeks for six or more years of service (20 weeks if over 45)
Annual Leave	6 weeks (for shift workers)	6 weeks (for shift workers)	5 weeks

On a range of core conditions such as sick leave, annual leave, long service leave, maternity leave, and redundancy entitlements the public sector clearly provides better conditions.

On salaries the situation is similarly stark.

Salaries	DCS (All facilities)	Junee
Trainee Correctional Officer –Junee & Correctional Officer Training -DCS	\$45967	\$22386
Base Grade (Correctional Officer One – Junee) and (Correctional Officer Probationary -DCS)	45967 + 756 \$46723	\$42725
Top of Salary Scale:(Correctional Officer three – Junee) and (Correctional Officer First Class Year two)	54480+2266 \$56746	\$47966
Correctional Supervisor –Junee &Senior Correctional Officer -DCS)	57772+3777 \$61549	\$51400

Junee salaries range between 51% less than the public sector for trainee Correctional Officers to a gap of 9% for base grade entry level correctional officers. At the supervisory level the gap is 16%. And at the top of the Correctional Officer scale the gap is 15%.

With labour costs accounting for between 60 and 80% of costs it is clear that any cost advantage obtained by the private sector is at the expense of workers and their families in terms of both salary and conditions of employment.

This is also the case in the international experience. Stephen Nathan, cites the following findings of a 2005 review commissioned by the UK Prison Service Pay Review Body:

- In the private sector, starting pay for operational support grades (OSG) and prison custody officers (PCOs) was 7% and 11% less than their public sector counterparts;
- Average basic pay for OSGs was 11% less but PCOs earned 41% less than prison officers in the public sector;
- Average basic pay for private sector middle managers was 4% higher than public sector principal officers;
- Average basic pay for private prison directors and centre managers was 33% higher than public prison governors. The difference increased from 29% since 2004;

- Prison Service staff received an average of around seven more days holiday per year than the average for their private sector counterparts;
- All the private companies had sick pay schemes but with significantly less generous benefits to those in the Prison Service.³¹

In a comparison of costs in US prisons, Nelson observed the following:

Privatisation changes the way taxpayer dollars are spent on prison inmates: less is spent on employees having direct daily contact with prisoners; more is spent on prison-level administration, monitoring activities by state officials, corporate overhead and corporate profits.³²

Globally, the private corrections industry is marked by low levels of unionisation. For example GEO, the operator of Junee, boasts in its 2007 Annual Report that, of their 11037 employees internationally, only 1585 employees were covered by collective bargaining agreements, and only 561 US workers fell into this category³³ Doctor Crants, the Chief Executive of Corrections Corporation of America, has expressed the view that: "Efficient labor is precluded in public facilities...by unionized labor. Union contracts tend to increase wage costs and promote unjustified job security."³⁴

Employees at Parklea and Cessnock are likely to lose employee benefits and suffer a long-term reduction in salary if they transfer to a new private operator. The alternative is to relocate to another DCS facility or to take 'voluntary' redundancy. Each of these options clearly have negative consequences for these individuals and their families. They also have negative consequences for the communities in which these workers live – particularly in a regional community such as Cessnock. Spending power will either be reduced or lost entirely to the regions economy. For this reason, the PSA has argued that there should be an assessment of the proposed privatisation on affected communities.

Reducing salary and conditions is one labour cost containment strategy, the other is reduced staffing levels and underinvestment in staff development. There is both domestic and international evidence of these practices and the resultant risks to inmates and staff.

For example in Victoria, the introduction of private sector operators saw the decentralization of recruitment and training to the four private providers. As a result, the twelve week residential training program for new custodial staff was replaced by induction courses ranging from two to six weeks. The Kirby Report found that this resulted in 'the seemingly universal lack of confidence and credibility among key stakeholders'³⁵ and had a deleterious impact on resignation rates and morale. Even more disturbingly, during the first five years of private prison operations the number of deaths in custody and self mutilation rates were greater in private prisons than in their public sector counterparts.

At the Deer Park Metropolitan Women's Correctional Centre (which was subsequently taken back into the public sector) the staffing arrangements "did not appear to adequately meet the

³¹ This information relates to prisons and immigration detention centres in England and Wales in 2005 and was collected by consultants on behalf of the prison service for use in negotiations over public sector pay. This data was collected by Privately Managed Custodial Services, Prison Service Pay Review Body, MCG Consulting September 2005. Cited in Nathan S, *Private Prisons and Correctional Services in Europe: Some Recent Developments* - Paper presented to Working and Living Conditions in Prison Services in Europe -Prague, 11 December 2006

³² Nelson J, Op. Cit. pp3-4

³³ GEO Group, Inc. 2007 Annual Report p13

³⁴ Cited in Camp S, and Gaes G, *'Private Adult Prisons: What do we really know and why don't we know more?'* Office of Research and Evaluation US Federal Bureau of Prisons 1999, p11

³⁵ Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons October 2000 (Kirby Report) at p 49

Prison's need". Despite increased use of casuals, the lock down method was used frequently to fill staffing gaps and became "accepted management practice".³⁶

Paul Moyle³⁷ has also documented some of the dangers associated with understaffing and poor accountability that have been part of the experience of private provision of corrective services in Australia. In the case of *Jarvis vs. ACM*, adverse findings were made against the private contractor of the Arthur Gorrie Correctional Centre in Queensland. The employee at the centre of the case sustained a permanent partial disability as a result of the negligence of the employer. The judge in the case found that the employer had maintained unsafe systems of work that included understaffing. He also highlighted the dangers associated with the poor accountability tools in the contractual arrangements that allowed this circumstance to go undetected by the responsible authority QCSC

Andrew cites the following US example of understaffing and the perverse incentives created by inadequate contract provisions:

In 2006, the state of Colorado found that Corrections Corporation of America (CCA) was running two prisons, Kit Carson and Crowley County, without the correct number of prison guards. It penalised CCA, even if only symbolically, by withholding US\$126,000 of its performance bonus. It had been found, contrary to their contract, that the staff-to-prisoner ratio was a fraction of the ratio operating in state prisons at the time. Far from being novel or new, this problem had been exposed earlier by the Colorado State Auditor who had found, when he investigated a prison riot at Crowley County in 2004, that there had been only 33 prison wardens guarding 1122 prisoners, approximately a seventh of the number of staff in an equivalent state-run prison.

The risible size of the penalty for CCA's failure in 2006 could only encourage astute investors to conclude that it makes good business sense to understaffed prisons, since it was obvious that employing correct numbers would certainly cost a great deal more than any fines which might be imposed.³⁸

Another important staffing issue is that of turnover rates. Whilst there is no publicly available data for private prisons in Australia, increased staff turn-over has been identified as a feature of privatized prisons in other international jurisdictions.

In the US, the private sector operator in Tennessee was reported to have an employee turnover rate more than double that of public facilities, with many staff members blaming this high turn-over on low wages and poor treatment by supervisors.³⁹ In an analysis of private and public prisons in Minnesota, Greene⁴⁰ reported that average correctional officer turnover reports for 1997 were 41 per cent in the private sector, compared to 15 per cent in the public sector.

In the UK, Nathan found that whilst many public sector prison officers had very long experience, 55% of private sector staff at levels equivalent to Operational Support Grade, officer and senior officer levels had less than two years service and only 20% more than five years.

³⁶ Ibid. p55

³⁷ Moyle P, *Unsafe Work Practices Lead to Findings of Negligence Against Private Prison Operator: Jarvis v Australasian Correctional Management Pty. Ltd* Murdoch University Electronic Journal of Law, Volume 5, Number 1 (March 1998)

³⁸ Andrew J, Op Cit. p236

³⁹ Bates E 'Over the next 5 years analysts expect the private share of the prison market to more than double' The Nation 5 January p11, cited in Nelson J, Op. Cit. p8

⁴⁰ Greene J, *Comparing Private and Public Prison Services and Programs in Minnesota: Findings from Prisoner interviews* Current Issues in Criminal Justice Vol.II, No.2, Sydney University Law School (1999), p38

7. THE WAY FORWARD

The package of workplace reforms that has come to be known as "The Way Forward" were first raised with the union in the planning stages for the new correctional centres at Kempsey, Dillwynia and Wellington.

The union agreed to a new consent award for Kempsey, Dillwynia and Wellington Correctional centres, resulting in significant changes to structures and payment of overtime. These include:

- a new simplified custodial rank structure;
- annualised salaries for ranks above Senior Correctional Officer;
- performance management for positions above Senior Correctional Officer; and
- a flat overtime rate."

In addition to modernizing the award, the 'Way Forward' also resulted in a leaner staff to inmate ratio. This was facilitated by the design of the new centres, which allowed for procedures to be conducted with fewer staff in a safe manner.

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

The then Minister for Corrective Services congratulated the PSA on its 'enlightened and constructive approach to workplace reform". Ironically, he also took the opportunity to contrast the approach of the Government "to support an effective and efficient public sector correctional system" with that of the Opposition "to support increased privatisation of the correctional system".⁴¹

The suggestion that negotiations with the union have stalled since the original agreement on the application of the Way Forward to Kempsey, Dillwynia and Wellington is false. Key points in continuing negotiations include:

- New consent awards made for deputy governors and governors [now Superintendents and Deputy Superintendents] in March 2005.⁴² This also involved a restructuring of the roles to facilitate clustering of facilities to allow for a General Manager to oversight a number of centres.
- In 2006 the PSA and the Department successfully negotiated to annualise salaries for Senior Assistant Superintendents and Assistant Superintendents, resulting in overtime costs being incurred at the lowest possible rate for these employment groups. 52 positions at the Senior Assistant Superintendent and Assistant Superintendent level deleted.
- In November 2007 Commissioner Woodham established a number of working groups to look at Departmental reform. These groups met only once and were then discontinued by the Department.
- On the 18 August 2008 the Commissioner advised the PSA of the decision to "market test" Parklea and Cessnock gaols. This was the first time that the unions had received any advice about privatization as a component of the Way Forward

⁴¹ NSW Legislative Council Hansard 5 May 2004 P8271

⁴² NSW Department of Corrective Services Annual Report 2004/05 p9

reform package and contradicted the assurances that had been given when the original agreement on the consent award for Kempsey Dillwynia and Wellington was reached.

- On the 19 August the PSA lodged a dispute which is currently before Justice Marks.
- On November 11 2008 Commissioner Ron Woodham advised the PSA General Secretary by phone that the department intended to proceed with privatisation.

The union remains willing to continue negotiations with the Department of Corrective Services in relation to work practices in public sector prisons, but rejects the use of threatened privatisation as a negotiating tactic on the part of the Department. The contempt the Commissioner displayed for the union and its members in his evidence to this inquiry has done little to encourage the kind of goodwill that is necessary for effective negotiations. Indeed the statements of the Departmental representatives indicate a complete breakdown in their capacity and/or willingness to effectively manage.

8. THE JUNEE EXPERIENCE

The most glaring feature of Junee Correctional Centre experience is the complete absence of evidence of the success or otherwise of this 16 year experiment.

To suggest that Junee has operated as some sort of benchmark, driving improvements and innovation in the public sector, is a complete nonsense. No public benchmarking is conducted - there are no rigorous cost comparisons, no independent assessments of performance against published KPI's, no publicly available information in relation to investment in programs or rates of recidivism.

As part of the initial privatisation proposal Corrective Services undertook a 4 year study into the impact of the privatisation on of a range of service delivery criteria. The final report of this research project concluded that:

[B]y the end of year four opportunities for innovation in inmate management and the provision of programs and services were limited. The only initiative introduced by ACM in this area which remained unique to Junee was the Integration program.⁴³

In the absence of detailed evidence to the contrary, it would appear that the only 'innovation' achieved at Junee is the provision of wages and conditions vastly inferior to its public sector competitor.

Under Section 242 of the Crimes (Administration of Sentences) Act 1999, the Department is required to appoint a person to 'monitor' the performance and contract compliance of the management of any privately operated Correctional Centre. This role is undertaken by a departmental employee.

The Monitor's report is the only published report on Junee's operation open to public scrutiny. Reports are exceedingly brief and provide very little insight into the actual performance of Junee. The Monitor uses a template checklist to conduct assessments but this checklist is not publicly available.

The management agreement against which the Monitor assesses performance is also a secret document. The Department provides no information on the minimum standards contained in the agreement, nor does it provide details of how penalties are calculated in the event of the operator failing to achieve 'base level performance'. The Annual Report only explains that:

Each financial year the PLF is calculated as a maximum payment of 2.5 percent of the Operational Service Level Fee and is paid annually in arrears.

Payment of the PLF is conditional and is linked to the level of attainment of agreed Key Performance Indicators (KPIs). Agreed KPIs have a specified base level performance and best practice performance.⁴⁴

The Monitor has consistently found breaches of the agreement and failure to meet KPI's, though we do not know the magnitude of these breaches. However 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".⁴⁵

⁴³ NSW Department of Corrective Service *Private Prisons in NSW: Junee a four year review* (1999) pg viii

⁴⁴ Department of Corrective Services Annual Report 2006/2007 Appendix 20 p119

⁴⁵ Ibid.

The NSW experience of private sector management has been one of limited transparency and poor accountability. This is not unique to NSW and June, as Harding states:

In Australia access to information related to prison privatisation has been kept from public scrutiny under the guise of 'commercial confidentiality', stalling many attempts to investigate the operations of both state and private prisons.⁴⁶

This secrecy means that inadequate contract provisions often only come to light as a result of a serious incident, and even then the capacity of Government to improve the performance of the private sector provider may be constrained by the contract provisions. Andrews provides the example of the contract for management of Port Phillip prison in Victoria:

[I]n May 2003, a pistol, ammunition, drugs, mobile phones and a digital camera were found in prison cells during a lock-down in the Port Phillip prison, operated by Group 4. When the government did not step in and confront Group 4 about the deficiencies in its management, preferring instead to deflect objections to the private contractor, there was considerable public criticism. The minister responsible, Andre Haermeyer, in response to community concerns about the imbalance of power in the contracts between the government and Victoria's two private prison operators, said that 'we have contractual obligations and it is only when there is a serious and repeated material default against the contract that we can actually step in'. Asked whether a loaded gun constituted such a breach, he replied 'well, no, it isn't, under the contract, no'.⁴⁷

The problems associated with contract secrecy and the inflexibility of contract terms is also illustrated by the example of the ACM contract for Woomera detention Centre:

The centre had been initially designed to house 400 people, but within weeks of opening nearly 1000 people had been sent to Woomera. There were not enough toilets and people were housed in temporary buildings without adequate cooling – in a facility which was located in one of the most barren and hottest parts of Australia. In addition, there were only two nurses to assess the conditions of the refugees, three officers to process the new arrivals, no interpreters and no clear procedures as to how the centre was to be managed and the welfare of those held was to be assured. Despite these gross inadequacies, by April 2000 Woomera had 1500 detainees with still only three washing machines and five toilets. Even though it is estimated that from late 1999 to 2003 Woomera had cost the Australian government more than A\$170 million in contract payments to ACM, the contract has never been made public, thereby allowing for the possibility that it may well have been perfectly acceptable, at least in technical contractual terms, to run a detention centre on this basis.⁴⁸

Andrews also raises the issue of the problems with contract performance and the ability of private providers to meet the technical requirements of the contract while not actually contributing to improved performance:

Rather than contracts ensuring that private contractors perform well, at a minimum according to the terms of the contract...there is a large incentive to ensure that the private contractor merely *appears* to be performing well. Information about the quality of the services has often been limited to that which is easily counted, such as the number of escape attempts, positive drug tests, or 'incidents'.⁴⁹

Further, she argues, poorly designed payment structures provide an incentive to 'cover up' serious incidents to avoid financial penalties. She cites the example of Kilmarnock, where:

[T]he performance incentives perversely resulted in no incentive to report incidents. 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 found 'hooch' – home-brew produced by the prisoners – they threw it away rather than report it.

⁴⁶ Andrew J, Op. Cit. p224

⁴⁷ Andrew J, Op. Cit. p253, quoting from Private Prison Report International, *Report No 55, May 2003*, www.ppsiru.org/justice/PPR155.1.htm

⁴⁸ Ibid. p239

⁴⁹ Andrew J, Op Cit quoting Armytage, P (2000) *Correctional Services Commissioner's Report on Metropolitan Women's Correctional Centre's Compliance with its Contractual Obligations and Prison Service Agreement*, Melbourne, Victorian Government Printer

Prison guards also turned a blind eye to contraband such as mobile phones and drugs to avoid the prison being fined when reported. More seriously, priority tasks such as suicide watches were not conducted properly, with documents recording the watches often falsified. By not reporting offences and helping to minimise fines, staff hoped that this would lead to a pay rise.⁵⁰

Harding has outlined ten tenets of accountability that should be applied to private sector provision of corrective services:

1. The distinction between the allocation and the administration of punishment must be strictly maintained, with the private sector's role being confined to the administration;
2. Penal policy must not be driven by those who stand to make a profit out of it;
3. The activities of the private sector and their relations with government must be open and publicly accessible;
4. What is expected of the private sector must be clearly specified;
5. A dual system must not be allowed to evolve in which there is a run down and demoralised public sector and a vibrant private sector;
6. Independent research and evaluation, with untrammelled publication rights, must be built into private sector arrangements (accountability involves knowing whether we are on the right track);
7. Custodial regimes, programs and personnel must be culturally appropriate (the state should therefore retain an appropriate degree of control over staffing);
8. There must be control over the probity of the private contractors
9. There must be financial accountability (ie ensuring that the agreed services are supplied and that this is done to the contracted quality);
10. The state must in the last resort be able to reclaim private prisons (both as a legal matter and as a practical matter).⁵¹

Clearly current arrangements in NSW fall well short on a number of these criteria and the PSA has little confidence that the proposed expansion of privatisation will perform any better.

⁵⁰ Ibid. p237

⁵¹ Roth L, (2004) Op Cit quoting from Harding *Private Prisons and Public Accountability* Open University Press (1997), p27-31

9. OTHER PROPOSED PRIVATISATION

Court Escort Service

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.

We also hold serious concerns regarding the quality of a privatized service, particularly in light of the following serious incidents in other States:

- On Australia Day 2008 an Aboriginal man died in custody while being transported by Global Solutions Limited who is contracted to the Western Australian Department of Corrective Services. The man was arrested in the remote town of Warburton and then driven 570 km to the court house in Laverton. He was remanded in custody and then transported to the nearest gaol 352 Km away. Police say the man died the next day after collapsing in the back of a security van on the second leg of a 915km journey to jail in Kalgoorlie-Boulder. According to the police the contractors only noticed he had collapsed as they neared their destination⁵²
- An inmate of Villawood detention centre collapsed on arrival at a Sydney hospital after being transported by GSL and died 24 hours later. NSW human rights advocates expressed serious concerns about the quality of medical care and monitoring in Villawood, a facility run by GSL following this incident.
- In September 2004 five immigration detainees were transferred hundreds of kilometres by road from the Maribyrnong Detention Centre in Melbourne to the Baxter Centre at Port Augusta in South Australia. An independent inquiry concluded that GSL officers accompanying the detainees on the first leg of the journey treated them in an inhumane and humiliating fashion. Force was used on those who resisted entering the van and the report criticises officers for failing to provide detainees with adequate medical treatment for any injuries they had received, causing them unnecessary pain and distress. The detainees were also denied food and water during a long journey in hot and cramped conditions. They were also unable to access toilets, forcing them to urinate in their compartments. The report stated that despite the detainees' obvious distress, their appeals for assistance were ignored by the GSL officers.⁵³
- In June 2007, the Inspector of Custodial Services in WA, Richard Harding, wrote to GSL, questioning whether the company had the "capacity to cope with the logistical challenge of running a transport service across such huge distances as are involved in Western Australia", and whether GSL would "attempt to cherrypick the most profitable parts" of the transport contract.⁵⁴
- In New Zealand, after contracting out prisoner escorts to Danish contractors First Security in 2008, the government deemed it too dangerous for the contractors to transport high security inmates so prison guards were called in to do the job. Despite this the government is still required to pay the contractor forcing taxpayers to effectively pay twice for the service.⁵⁵

⁵² *Drink driver dies in custody* Paige Taylor The Australian January 28, 2008

⁵³ ABC Online, AM - Saturday, 30 July, 2005 08:08:56 Reporter: Nick Grimm

⁵⁴ <http://www.custodialinspector.wa.gov.au>

⁵⁵ 'Paying twice' for jail transport', Emily Watt - The Dominion Post, Tuesday, 27 January 2009

Perimeter Security

In a similar approach to the one that is being proposed by the department of corrective services for Parklea and Cessnock – namely that where you have an allegedly non cooperative work force you privatize the service. Perimeter security was privatized after a dispute with the PSA/POVB over the boom gate at Long Bay Correctional centre.

The PSA has a serious concern over the effect of this move on community and employee safety. Under arrangements now in place perimeter security is the responsibility of private contractors who engage employees with substantially less training than that which applies to Correctional officers. Standards have been demonstrably reduced as the recent escape from Long bay of Alex Mihail in November last year indicates.⁵⁶

Lax standards pose a further risk to the security of inmates and Correctional Officers especially if contra band can more easily make its way into the facility. As a result of changes following contracting out of perimeter security many of the perimeter areas are not staffed at night when it is suspected most contraband is secreted into the facility for collection by trusted inmates who perform work outside of correctional facilities during the day.

There is also the more fundamental question of whether it is appropriate for contractors to be able to use deadly force in the a case of an escape or attempted escape particularly in the light of these employees having less training than departmental officers.

10. CONCLUSION

The PSA submits that the case for privatisation on either cost or quality has not been made out. Negotiations with the union on reforms have not stalled, but as we have demonstrated above, have continued from the inception of the 'Way Forward' reform program up until the present. The union remains willing to continue the discussion on finding ways to improve the efficiency and effectiveness of the Department without compromising the safety of workers, inmates and the community.

⁵⁶ ABC Online *Prison break: Guards 'let inmate escape'* Posted Thu Nov 27, 2008 10:01am AEDT