

Submission
No 428

INQUIRY INTO THE PRIVATISATION OF PRISONS AND PRISON-RELATED SERVICES

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*Infrastructure Partnerships
Australia leads the national
infrastructure debate by
bringing together both the
public and private sectors
to promote partnerships in
infrastructure provision.*



Infrastructure Partnerships Australia

Submission to the NSW Upper House Inquiry on the Privatisation of Prisons and Prison-related Services

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Should you wish to discuss this Submission, please contact Infrastructure Partnerships Australia's Manager, Social Infrastructure & Utilities Policy, Mr Larry McGrath, on (02) 9240 2056.

1. Summary of Key Findings & Recommendations

Key Findings

- Throughout Australia, but particularly in NSW, there is greater scope for involving the private sector in the delivery of prison services and infrastructure.
- International and domestic research shows that private prisons generally deliver superior outcomes on cost and provide a quality of service at least as good as (and often better than) the public sector.
- While the private and public sectors both have the ability to deliver good and poorly performing prisons, the degree of control and accountability over the quality of service in the private sector is far greater, providing there is a rigorous and strong contractual service agreement supported by compelling sanctions for non-performance.
- Polling conducted in 2008 by Auspoll, on commission from Infrastructure Partnerships Australia, demonstrated that NSW residents believe the private sector is 'better at delivering services', with just one out of four residents believing the Government were better providers.

Recommendations

- The NSW Government expeditiously implement the plan to contract corrective services at Parklea and Cessnock prisons to the private sector.
- The NSW Government actively seek opportunities for greater private sector involvement in delivering prison services and infrastructure in the state, based on outcomes of value for money, efficiency, productivity and service quality.
- The Committee recognise the role of genuine partnerships between the public and private sector in delivering superior corrective outcomes.
- The NSW Government examine various models for greater private sector involvement in public services generally, with a view to reducing the financial burden on the State while increasing the quality of services delivered to taxpayers.
- The NSW Government strongly consider broadening the scope of any future prison PPP to include custodial services, enabling the private sector to deliver maximum efficiencies and service improvements.
- The NSW Department of Corrective Services continue to implement its *Way Forward* initiatives with a view to saving costs without compromising service quality.
- The Committee note the importance of informed debate and research by policy makers and the public sector about the transition and role of the private sector in the delivery of public services.

2. Introduction

(a) Infrastructure Partnerships Australia

Infrastructure Partnerships Australia (IPA) welcomes the opportunity to submit to the NSW Upper House Inquiry on the Privatisation of Prisons and Prison Related Services.

IPA is the nation's peak infrastructure body. Our mission is to advocate the best solutions to Australia's infrastructure challenges, equipping the nation with the assets and services we need to secure enduring and strong economic growth and, importantly, to meet national social objectives.

Infrastructure is about more than balance sheets and building sites. Infrastructure is the key to how we do business, how we meet the needs of a prosperous economy and growing population and how we sustain a cohesive and inclusive society.

Infrastructure is about the services that assets deliver to the economy, to taxpayers and to consumers. By bringing a service mentality to the planning, procurement and operation of infrastructure, policy makers and political leaders will be taking an important step toward delivering better infrastructure across the nation.

IPA seeks to ensure governments have the maximum choice of options to procure key infrastructure. We believe that the use of public or private finance should be assessed on a case-by-case basis. IPA also recognises the enhanced innovation and cost discipline that private sector project management and finance can deliver, especially with large and complex projects.

Our Membership is comprised of the most senior industry leaders across the spectrum of the infrastructure sector, including financiers, constructors, operators and advisors. A significant portion of our Membership is comprised of government agencies.

IPA draws together the public and private sectors in a genuine partnership to debate the policies and priority projects that will build Australia for the challenges ahead.

Should you wish to discuss this submission, please contact Infrastructure Partnerships Australia's Manager, Social Infrastructure & Utilities Policy, Mr Larry McGrath, on (02) 9240 2056.

(b) Public Services – Privately Delivered

Since the construction of Busby's Bore in Sydney in the early 19th century, public services in New South Wales have been delivered directly by Government employees. Meanwhile, around the world a market for the private delivery of public services has developed. This evolution in the delivery of public services represents a sound opportunity for Australia's governments and taxpayers alike.

Public service delivery by the private sector can include local services (such as traffic and parking control, refuse collection and environmental solutions), State services (such as ancillary or core services in areas including justice, health and education) and Commonwealth services (IT for various agencies, property maintenance and garrison support for Defence). In recent years, particularly in the United Kingdom, there has been a trend to use the PPP model to augment public sector investment and extend its use from asset provision to incorporate a growing services component.

The evidence shows clear benefits to both consumers and taxpayers from the use of the private sector to deliver public services. Studies in the UK have typically found the cost savings from competitive tendering to be between 10-30% (including when a government team won the bid) with positive improvements in outcomes and service quality. Across all sectors of the economy, rigorous competition delivers sound outcomes and greater efficiencies, and the delivery of services is no different.

The Serco Institute in the UK recently conducted primary research inviting all contract managers across Serco's public sector business to answer survey questions on their experiences working in the private sector, as opposed to working under previous public sector administration. The results highlighted an extraordinary level of satisfaction with private sector operation. When asked, for example, to rate their level of agreement with the comment "*Under contract, scrutiny is much closer and performance is much more visible than is experienced in similar public sector situations*", only 2% disagreed¹.

Similarly, when asked their views on the statement: "*Managing my contract, accountability is much more personal than it was in the public sector – I feel that I am under the spotlight to deliver*", 84% either agreed or strongly agreed. More than half of the respondents to the survey maintain that the need to deliver a profit rarely, if ever, compromises their capacity to deliver high quality services².

The dissatisfaction that many public sector employees express when faced with private sector tendering of public services is at odds with the experience of those surveyed in the Serco report. There is a defined need for greater education of public sector employees about the career opportunities and benefits which can be presented by reform to the NSW services market.

As with all significant micro-economic reform, there will be unavoidable unease at greater private sector participation in the delivery of public services. However, independent polling commissioned by Infrastructure Partnerships Australia in the first quarter of 2008³ demonstrated that a majority of NSW residents believe that the private sector is superior at delivering services.

The independent opinion poll of 700 NSW residents posed the question: "*In general, who is better at managing organisations to deliver services efficiently – the government or the private sector?*"

¹ The Serco Institute (2006) *Good people, good systems: What public service managers say*.

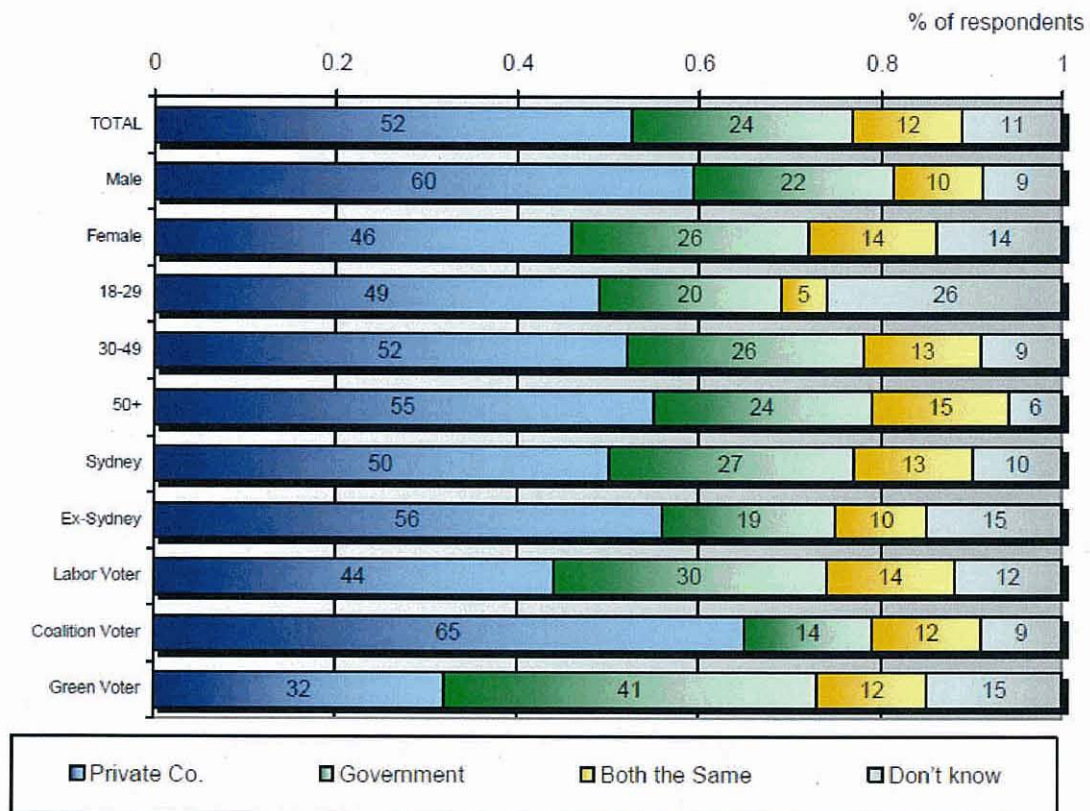
² Ibid

³ AusPoll [on commission from Infrastructure Partnerships Australia] (2008) *Community Attitudes to Electricity Reform in NSW*, Feb 2008.

The results showed that;

- When considering the efficient delivery of services overall, a majority (52%) of NSW residents believed private companies to be better than the government at managing organisations that deliver services efficiently.
- Just one out of four (24%) believed the government were better managers.
- Males (60%) and Coalition voters (65%) were the most likely to nominate the private sector.
- Green voters (41%) and Labor voters (30%) were the most likely to nominate the government
- Only among Green voters did a higher proportion nominate the government (41%) than the private sector (32%).

The results of the poll of 700 voters are represented below:



Source: AusPoll research for Infrastructure Partnerships Australia (February:2008)

This research was undertaken in the context of Infrastructure Partnerships Australia's 2008 research into community views of the then-plan to restructure the State electricity sector. The full report is available at www.infrastructure.org.au and from the NSW Parliamentary library.

3. Private Prisons in New South Wales

(a) Private Prisons in the Australian Context

The term 'private prison' refers to any correctional facility which is owned, operated or managed under contract to Government. No prison is completely private, in the sense of being free from governmental control, authority or revenue.

The first private prison in Australia was commissioned in Queensland in January 1990. Since then, almost every state in Australia has developed at least one private prison, and over time these facilities have become integral components of the Australian corrective system.

Private sector delivery of corrective services has been succinctly described by the Victorian Auditor General, who noted that:

Agreements with private contractors have enabled the Government to achieve one of its prison reform objectives of transferring significant financial risks to the private sector...[as well as] certain operating risks...[with] the onus on contractors to deliver services which meet the Government's standards⁴.

Different models have been used for Australia's private prisons. New South Wales outsourced the design, construction and management of Junee Correctional Centre. Earlier arrangements in Queensland and South Australia covered management only, while in Victoria, the Government has used a build, own, operate and transfer (BOOT) model⁵.

It is an important caveat that under correctional management contracts the private sector in Australia must meet standards prescribed by the government. As the NSW Corrective Services Commissioner recently noted, prison privatisation does not involve governments contracting out responsibility, but rather contracting in the delivery of services⁶.

Prison services can be effectively delivered by the private sector in four main ways:

1. Where the Government contracts a private sector company to provide ancillary services to a prison, such as food or medical care;
2. Where the Government contracts the private sector to finance, design and construct a new prison, and operate its ancillary services, with justice services provided by the public sector;
3. Where the Government owns the existing prison but contracts a private sector company to manage and operate the corrective services; and
4. Where the prison is privately owned, designed, constructed, financed and operated (including corrective services) but runs under government supervision and control.

⁴ Victorian Auditor General (1999) *Victoria's prison system: Community protection and prisoner welfare*.

⁵ NSW Public Accounts Committee (2005) *Value for Money from NSW Correctional Centres*, Report No.13/53 (No.156) – September 2005

⁶ Woodham, R. (2009) Evidence given, *Inquiry on the Privatisation of Prisons and Prison-related Services*, 23/02/09.

Options 2 and 4 can be structured as Public Private Partnerships (PPPs). It is only options 3 and 4 which have been contentious; this is because they involve the delivery of core corrective services by the private sector.

Under a PPP model, since the private sector assumes responsibility for the operation of a project, a whole-of-life approach is adopted instead of a 'set and forget' attitude that may be present in traditionally procured assets. In short, this means that the maintenance, quality and reliability of the project are guaranteed across the economic life of the asset. The Federal Treasury Secretary Dr Ken Henry recently observed that the profound impact of this guarantee can be undervalued by government⁷.

It should be noted that prison 'privatisation' does not necessarily mean privatisation in the traditional sense. Privatisation usually refers to the process of transferring to a model where the private sector owns and controls a service which is usually provided by government, such as electricity or airlines. The private sector outsourcing of prison services which has been undertaken in Australia is more akin to franchising (as was done with Melbourne's train and tram services, for example) than privatisation. In this submission, to be consistent with much else that has been written on the subject, privatisation of prisons will refer to any private sector participation in delivery of the actual corrective services.

(b) Arguments and Issues Surrounding Private Prisons

The growth of the private sector market in delivering quality prison services has been marked by often heated debate. These debates cover the full spectrum of views: from those who argue that it is improper for any correctional institution to be run by the private sector at a profit, to arguments that the greater cost-efficiency and value-for-money that the private sector can provide means that every prison should be privatised.

Infrastructure Partnerships Australia contends that the Committee must divorce ideology from either end of the spectrum from its deliberations – instead maintaining a focus on the best outcome to deliver justice and protect taxpayers in NSW.

Cost

One relatively unchallenged tenet of private sector provision of correctional services is that the private sector is generally able to deliver the services at less cost than government. This is a result of private companies having greater control over operational activities and resourcing, streamlining the workforce and bringing innovation to the delivery of the service. This cost motive has been perhaps the greatest incentive for governments to look at contracting out prison services to the private sector.

⁷ Dr Ken Henry (2007) *Address to the International Project Managers Symposium*, Canberra, 9 February 2007.

In NSW, costs at Junee Prison are considerably lower per inmate than the state average⁸. Indeed, Junee is the most cost-effective facility built in recent years in Australia where single occupancy cells are required⁹. In Victoria, similar cost differences between privately operated and publicly owned and operated prisons have been documented. Around the world the results have been broadly the same, where the most rigorous studies of private prisons have found positive cost savings¹⁰.

Quality of Service and Accountability

Given that the private sector can, generally, deliver corrective services for less money, the most important question then relates to the quality of service provision. American prison expert Charles Logan summarises these quality issues concisely:

*Will privatisation increase the quality of imprisonment due to the innovations by private companies? Or will commercial companies cut corners to save costs and thereby lower quality? What are the advantages and disadvantages of government control versus competition as a quality control mechanism? Can the advantages of competition be obtained without involvement of the private sector? How can the contracting process be used to specify and clarify standards?*¹¹

Private prisons in Australia have generally performed well or very well, with the occasional exception. This mirrors the case in the public sector, where not all prisons perform the same. However, the private operation of public services does provide mechanisms to ensure quality service delivery and to minimise poor or non-performance – principally through the clear articulation of minimum service and quality conditions, supported by strong financial or contractual sanctions for non or part performance. The private delivery of public services also removes the inherent conflict of the public sector both delivering and monitoring the performance of service delivery.

In Australia, all private prisons have been required to operate under service contracts which stipulate performance criteria, standards and conditions of quality. The best prisons are undoubtedly found where the best accountability measures are in place. In NSW, accountability is controlled through the appointment of a full-time monitor reporting on service quality.

Evidence has shown that a carefully crafted service contract is the key to ensuring ongoing quality control under the private sector. As Gary Sturgess, a former Director General of the NSW Cabinet Office and now Executive Director of the UK-based Serco Institute, noted recently, '*one of the inescapable truths of competitive tendering and contracting is that you get what you ask for*'.¹² When undertaking private tendering, there is a need to ensure that the contractual measures are in place to ensure that a specified quality of service is adhered to. It is also crucial that

⁸ Woodham, R. (2009) Evidence given, *Inquiry on the Privatisation of Prisons and Prison-related Services*, 23/02/09.

⁹ Champion, R. and W. Curnow (1994) *Corrections contract management in New South Wales: the Junee experience*, Australian Institute of Criminology.

¹⁰ Volokh, A (2002) *A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, Harvard Law Review.

¹¹ Logan, C. (1990) *Private Prisons: Cons and Pros*, Oxford University Press, p39

¹² Sturgess, G. (2008) *Using Competition and Contracting to Improve Prison Performance*, Speech to the International Corrections and Prisons Association Conference, Prague, 26 October 2008.

government has clearly defined expectations of what the private sector is required to deliver, and that these are effectively communicated from the outset.

A relevant example of accountability in service delivery is the Acacia Prison in Western Australia. When it was first contracted to the private sector, there were problems in the service quality and the decision was made to market-test the prison. Another operator bid for the contract and, at the latest inspection in 2008, the WA Inspector of Custodial Services noted that:

*the Inspector's view that privatisation of prisons...can be beneficial as long as they are made properly accountable, by independent inspection and otherwise, can now at this third inspection be seen to be fully vindicated.*¹³

Unlike the public provision of prisons, when underperformance became apparent, the contract allowed the prison be retendered to a new operator, delivering vastly improved prison management and outcomes. The contractual provisions allowing the government to re-tender in the case of underperformance forces the operator to meet rigorous performance guidelines - and imposes financial or contractual penalties if they fail to do so. No such accountability is in place with the public sector in NSW. As the NSW Commissioner of Corrective Services has noted:

*If a private operator had to run their prisons the same way as some of the public prisons have been operating in the past, they would almost certainly have been put out for re-tender*¹⁴.

This comment indicates that service quality problems are not primarily in the private prisons, but rather in those operated by the public sector. Prison privatisation in the UK has been associated with a improvements in the quality of life of prisoners, such as allowing prisoners more hours out of cell, and has helped the government to deliver its 'decency agenda'. Indeed, as a recent Harvard Law Review article noted, "no rigorous study found that quality at private prisons [is] lower than quality at public prisons on average, and most find [that] private prisons [outscore] public prisons on most quality indicators."¹⁵

Competition

One of the simplest methods to improve efficiency, save money and increase the value of services is to introduce competition within an industry.¹⁶ The corrective services industry is no exception. However, introducing competition does not necessarily mean privatising all prisons. Often, it is the entry or consolidation of the private sector into the market which encourages better performance in public sector operations, principally by providing a benchmark for performance across all prisons within a jurisdiction.

¹³ Harding, R (2008) *Privatisation comes full circle in Western Australia: improved performance at Acacia*, Media Release from the Office of the Inspector of Custodial Services

¹⁴ Woodham, R. (2009) Evidence given, *Inquiry on the Privatisation of Prisons and Prison-related Services*, 23/02/09.

¹⁵ Volokh, A (2002) *A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, Harvard Law Review.

¹⁶ MTC Institute (2007) *Contracting Prison Operations: A Plan to Improve Performance*

Blumstein, Cohen and Seth note that it is the existence of private prisons which can positively affect public prisons:

Privatization is not and need not be an all-or-nothing proposition. While entire sectors in some countries have been privatized (e.g., privatization of state-owned airlines or telecommunications), in many a mix of government-owned and privately-owned (and/or privately-operated) enterprises coexist, functioning side by side. Prisons are a significant example of such a public/private mix... The existence of prisoners under a state's jurisdiction that are held in privately owned or operated facilities can have a beneficial effect on the rate of growth in expenditures on publicly held prisoners¹⁷.

Not all corrective services functions in NSW may be suited to private delivery, either because they are not of a commercial scale or because the public sector may be best placed to manage the risk and deliver the service in question. Quality improvements and efficiencies can come about from partial privatisation of a jurisdiction's correctional assets. By contracting out a significant portion of correctional services to the private sector, indirect flow-on benefits for both cost and quality have been shown to occur.

In Australia generally, and NSW particularly, a greater role for the private sector in the delivery of correctional services is necessary to maximise efficiencies and quality improvements and deliver NSW taxpayers a competitive, humane and cost-effective justice system.

Innovation

It is often remarked that the private sector breeds innovation, but the reasons why private sector companies are better innovators than the public sector are less often explained. One example to highlight private sector innovation comes from the UK where private prisons have greater autonomy than their public counterparts.

In the UK, at a private prison known as Ashfield, the healthcare team won the Public Servants of the Year Award (Health), for successfully introducing a no smoking policy in the prison, the first in the UK to do so. The prison director, who had formerly been a prison governor in the public sector, remarked that such innovation would have been impossible in a public jail, as it would have required approval at a regional, if not at a national level, and the demand for uniformity and systemic conservatism would have been met with overwhelming resistance.¹⁸

Innovation is an important benefit of private sector prison operation and has helped private companies deliver positive outcomes in prison management. The freedom from bureaucratic red tape and entrenched restrictive work practices can empower prison and contract managers to examine creative new techniques of improving services for prisoners and staff while simultaneously reducing costs.

¹⁷ Blumstein, J; Cohen, M and S. Seth (2007) *Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons*

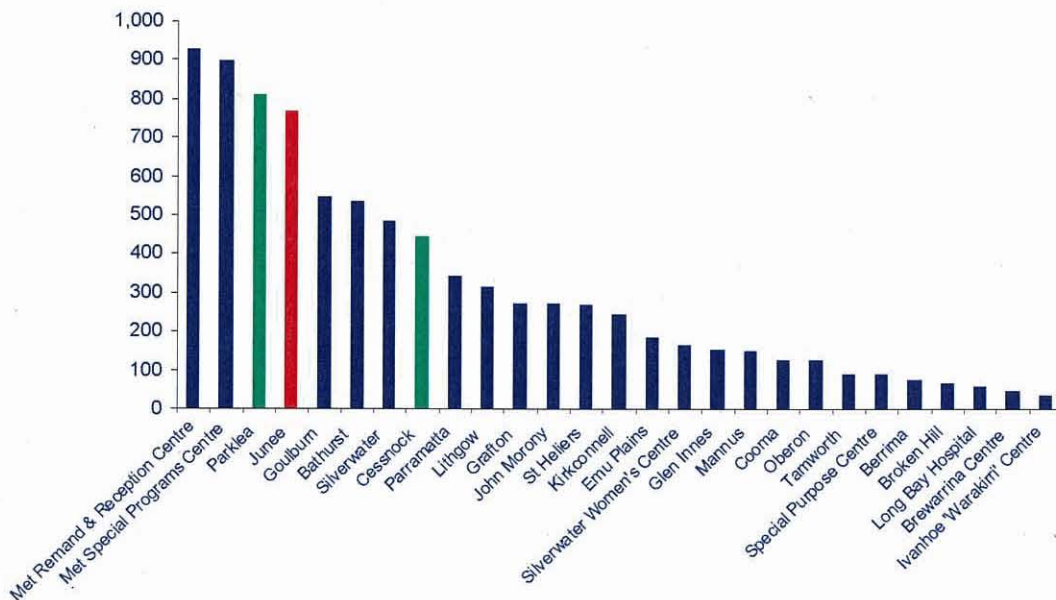
¹⁸ Sturgess, G. (2008) *Using Competition and Contracting to Improve Prison Performance*, Speech to the International Corrections and Prisons Association Conference, Prague, 26 October 2008.

(c) The Case for Private Prisons in New South Wales

Only eight years after the first private prison opened in Australia, Professor Richard Harding noted that ‘*prison privatisation is the most significant development in penal policy in the second half of the 20th century*’¹⁹. While most states now have private prisons, and these prisons have delivered superior outcomes in terms of efficiency, value for money and service provision, no states or territories have yet implemented a major expansion program of corrections reform.

As at June 30, 2008, there are 20,227 full-time prisoners in Australia, more than half of whom are located in New South Wales. Figure 1 shows each prison in NSW arranged by prison population. In New South Wales, prison privatisation has to date been limited solely to Junee. This is despite superior outcomes at privately operated correctional facilities around the world²⁰, and the demonstrated ability of the private sector to build, finance, design and operate prisons in nearly every state in Australia.

Figure 1: Location of Full-Time Prisoners in NSW, 2008



Source: ABS (2008) 4517.0 - Prisoners in Australia, 2008

The contract for Junee Prison was awarded to the private sector in 1991, making Junee the first correctional facility in Australia to be designed, constructed and managed by the private sector under a single contractual arrangement. The prison was opened in 1993 as a male correctional facility for medium security inmates.

¹⁹ Harding, R. (1998) *Private Prisons in Australia: The Second Phase*, Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice.

²⁰ Harvard Law Review (2002) *Developments in the Law: The Law of Prisons: III. A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*

The NSW Corrective Services Commissioner spoke at the first public hearing of the Inquiry, noting that:

The private provider can adopt work practices, technology and staffing structures that enable them to achieve effectiveness without compromising the effectiveness of the safety of correctional services.

The NSW prisons sector is greatly hindered by inordinate overtime and sick leave costs. In 2008 the Auditor General found that 'overtime costs exceeded budget by \$19.4 million (\$23.0 million)'.²¹ The Department of Corrective Services' *Way Forward* initiative has attempted to remedy some of these problems, and new practices such as centralised rostering could measurably improve the situation. Nevertheless, there is much improvement to be made to bring down the cost per inmate per day of other prisons to the level achieved at Junee (see Table 1). In part, this is why the Government has acted to market-test Parklea and Cessnock prisons and to tender them to the private sector.

Table 1: Absorbed costs per inmate per day in Junee, Cessnock and Parklea Prisons²²

	Junee	Cessnock	Parklea
Minimum Security cost per inmate per day	\$112	\$170	\$169

As the global economic crisis creates greater pressure on government budgets, now is a prudent time to re-examine ways to achieve greater efficiencies in the public sector without compromising service quality.

Having one prison under private sector operation, which has been the case for some time, does not constitute the level of private sector involvement needed to increase performance in publicly operated assets through competition. It is therefore imperative that NSW continues with its plans to contract operations at Parklea and Cessnock jails to the private sector, both to improve their quality and cost-efficiency, and that of other prisons in the State.

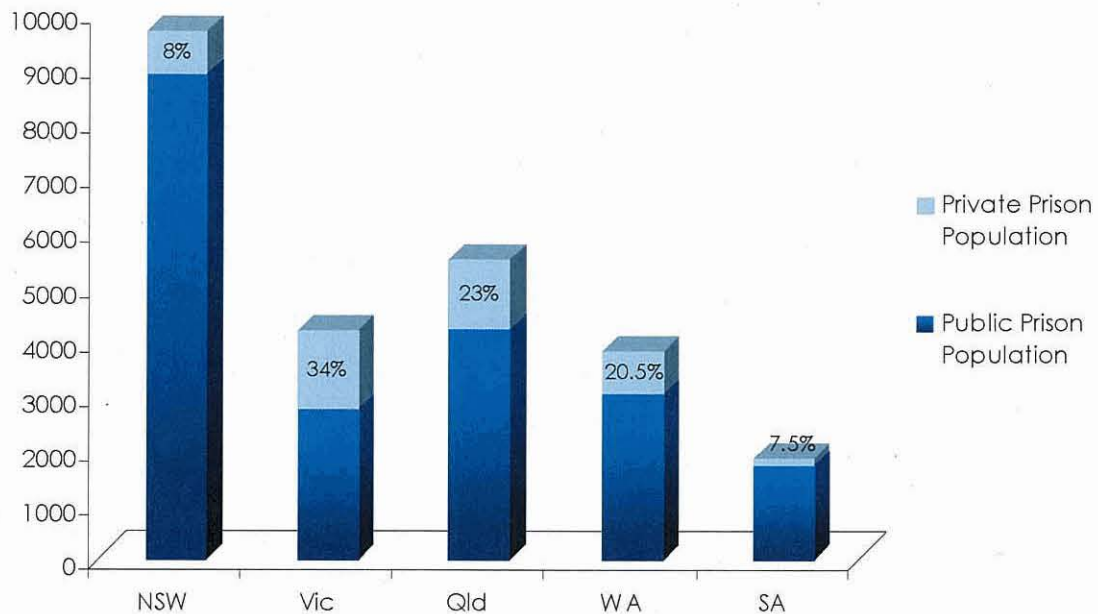
Figure 2 shows the numbers of prisoners in both public and private correctional facilities around Australia. South Australia has the lowest percentage of prisoners in private facilities, while New South Wales has the second-lowest. There is clearly greater potential for the use of private prisons in NSW, particularly to ease the strain on the existing facilities caused by a growing inmate population, while delivering better managed, more humane and cost effective facilities.

As with any private sector involvement in public services, the key to ensuring ongoing success is to engineer a genuine partnership from the outset between the public and private sectors. Fostering this kind of partnership requires thorough and ongoing communication between all parties involved; a failure to specify core outcomes and responsibilities will greatly increase the chances of a poor outcome.

²¹ NSW Auditor-General (2008) *Report to Parliament 2008 Volume Five – Department of Corrective Services*.

²² Woodham, R. (2009) Evidence given, *Inquiry on the Privatisation of Prisons and Prison-related Services*, 23/02/09.

Figure 2: Public and Private Prison Population in Five States



Source: Griffith, G. and Edwards, T. (2009) *Privatisation of prisons update*, NSW Parliamentary Library Research Service, March 2009 E-Brief No 3/09

The evidence presented in this submission shows that, on balance, private prisons have positive impacts across the justice sector, particularly through cost-efficiency, productivity and service quality improvements compared to public operation. There is a strong argument for greater private sector provision of corrective services in Australia, but particularly in NSW where the current level of involvement is limited.

There is ample evidence to support the NSW Government continuing with its program of prison reform, specifically with regard to private sector delivery of correctional services at Parklea and Cessnock prisons and others as appropriate.

4. Conclusions

Infrastructure Partnerships Australia contends that there is a compelling case to increase private sector participation in the provision of justice services in NSW. A greater role for the private sector – if carefully managed and contracted – will deliver sound improvements in cost and service quality, benefiting the inmate population, taxpayers and the existing workforce.

Since Junee Prison was privatised in the 1990s, a greater body of evidence now shows that the private sector can build and run corrective services more efficiently and at less cost to government.

Research from Australia and overseas has also shown that contract managers transferred from the public to the private sector are overwhelmingly satisfied with the move. In the case of Parklea and Cessnock, existing workers have been given government guarantees that their jobs will remain in the new private operations – or alternatively, redeployed to other facilities which will remain in public hands.

Policy makers across Australia have at times been overly cautious about increasing private participation in corrections.

This submission shows that private prisons in Australia and abroad have actually delivered superior results both on cost *and* quality benchmarks – delivering a win-win scenario.

Many of the arguments for and against private prisons are ideological, and are rooted in deep-seated concerns about the profit motive. However, in many sectors of society, including transport, health and corrections, the private sector has been shown to meet the standards prescribed by governments.

The key challenge is not the issue of privatising prisons itself, but rather ensuring service contracts balance flexibility with stipulated quality benchmarks, and that these are adequately assessed and adhered to. The private sector undoubtedly has a greater role to play in the delivery of corrective services in New South Wales.