

Submission  
No 429

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

**Organisation:** Community Justice Coalition  
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The Director  
General Purpose Standing Committee No. 3  
New South Wales Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Director,

On behalf of the Community Justice Coalition I enclose submission to the privatisation of prisons and prison-related services inquiry.

I look forward to meeting the committee on 27 March 2009.

Yours faithfully,

The Hon. John Dowd AO QC

## SUBMISSION BY THE COMMUNITY JUSTICE COALITION (CJC) TO THE INQUIRY INTO THE PRIVATISATION OF PRISONS AND PRISON-RELATED SERVICES

1. The Community Justice Coalition (CJC) was established to work for the reform of the custodial sector of the NSW criminal justice system. The purpose of the Coalition is

to make the criminal justice system not just punitive but through greatly enhanced prisoner education and rehabilitation programmes, educative and restorative and to ensure better results for the money spent; to create a fairer, safer community.

2. The CJC believes that privately run prisons, jails or detention centers have no place in a democratic society. The CJC submits that profiting from the incarceration of human beings compromises public safety and corrupts justice. The CJC further submits that under this private regime equity, justice and humanity cannot be ensured. As Jane Andrew, Senior Lecturer at the University of Wollongong has argued;

“as the State has the power to deprive a person of their liberty, it is critical the administration of that sentence is subject to an appropriate standard of care, that human rights are observed and the actions of those vested with the control over the detainees should be closely scrutinised and monitored. The further this task moves away from the State the more difficult it is to monitor and the State has more opportunity to retreat from its responsibility to ensure such conditions.”<sup>1</sup>

3. Running a prison brings with it significant responsibilities. The foremost of these responsibilities is prisoner health, safety and dignity all of which are prioritised under the *UN Standard Minimum Rules for Treatment of Prisoners* to which Australia is a signatory and the *Standard Guidelines for Corrections in Australia 1996*. These responsibilities cannot be ensured under a privately run prison. A corporation has no contractual duty under human rights law to enforce these standards unlike the State.

4. The CJC cannot understand the rationale for the government to privatise prisons. The CJC notes that much of the argument for privatising prisons is based on cost. We submit however that the issue of costs is a furphy because if the government is really concerned about costs then all it has to do is re-evaluate the present cost of running a public prison and make it more cost effective.

5. Incarcerating criminals is one of the most fundamental government responsibilities. Granting this authority to non-governmental entities raises a number of troubling issues. This submission addresses these issues as well as the issues raised in the Terms of Reference.

### 6 The impact of privatisation on public safety and rates of escape

6.1 The CJC has no experience as to whether the privatisation of prisons in NSW will have an impact, positive or negative on public safety and rates of escape.

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<sup>1</sup> J. Andrew, “Prisons, the profit motive and other challenges to accountability”, in *Critical Perspectives on Accounting* 18 (2007) 877 at 882.

6.2 The CJC does however hold the view that in any situation where profit is a motivating factor, that general services may be compromised. In the context of the privatisation of prisons, the CJC is concerned that privatisation will result in fewer guards with less experience which may result in an increased rate of escape and higher rates of recidivism which will threaten public safety. The CJC submits that it is totally unacceptable that private contractors are able to align financial returns with escape rates.

6.3 The CJC submits that the privatisation of prisons will result in a higher rate of recidivism because there is no incentive for privately run prisons to provide rehabilitation or assist in the reintegration of prisoners into society. The lack of incentive stems from the fact that such programs and assistance affects profitability.

6.4 Public safety is a core function of government. The CJC submits that public safety, as a core function should never be delegated by contract.

6.5 The onus to ensure public safety is and should remain with the government.

## 7 The impact of privatisation on the incidence of assault on inmates and staff

7.1 The CJC has no experience as to whether the privatisation of prisons in NSW will have an impact on the incidence of assault on inmates or staff per se.

7.2 Having stated this, the CJC is however concerned that the privatisation of prisons could have a negative impact on inmates and staff and could result in higher levels of assault. The natural by-product of privatising a prison is that the agenda of running a prison moves from a general duty of care to one of profit. Corporations who run a business for profit will employ cost effective measures to increase profit such as employing as few staff as possible. There is no reason to suggest that a privately run prison will not adopt the same cost cutting measures.

7.3 The CJC submits that the employment of fewer prison officers will have a direct effect on inmates for a number of reasons. Firstly, employing fewer prison officers will mean that prisoners are more likely to be locked up rather than be let out of their cells. This means that prisoners will have fewer opportunities to participate in activities that promote their mental and physical health such as gardening, working in prison industries or spending time in the prison yard. Activities such as these require more prison officers to be employed. This is would thus not be a profitable option for the company. The consequences of less activities and time outside of the cell could provoke anger amongst prisoners and heightened levels of stress which may in turn lead to an increase in assaults on inmates and staff.

7.4 Secondly, privatisation of prisons may also decrease the ability of prisoners to form personal relationships with prison officers. Such personal relationships can assist in the prevention stress and frustration with the system. The CJC is concerned that the positive bonds that are often formed between prison officers and inmates under the public system will not be encouraged or permitted to be formed in a privately run prison. Without these positive relationships, prisoners may turn their frustration into violence.

7.5 Violence brings with it new charges against prisoners, additional sentences, and loss of good time, which all result in more time behind the bars and, of course, for the corporations - more profit.

#### 8 The impact of privatisation on disciplinary breaches

8.1 The privatisation of prisons has a direct impact on disciplinary breaches.

8.2 The CJC submits that prison officers employed by a private company are generally not concerned about being disciplined as breaches are generally not placed "on the record" of a private prison officer. This is not the case with public servants. Prison officers disciplined by the state, do have breaches recorded and will be concerned about how many breaches appear on their record because if they were to seek employment in another capacity in the public service their records would be considered.

8.3 The CJC submits that there is thus more of an incentive for prison officers employed by the state to avoid disciplinary breaches. There is no similar incentive for prison officers employed privately to participate in conduct that will not result in disciplinary breaches. Employees of private prisons are less likely to make a lifetime career of working in prisons and thus will have no concern about complaints against them.

#### 9 The impact of privatisation on overcrowding

9.1 The CJC submits that privatisation will impact heavily on overcrowding in prisons.

9.2 Privatised prisons usually operate on the basis of numbers, that is, privately run prisons are paid by the government per prisoner per bed. The temptation thus exists to maximise profits by maximising the number of prisoners.

#### 10 The impact of privatisation on prisoner classification levels

10.1 The CJC is submits that privatisation will have negative impact on prisoner classification levels because they could be open to possible manipulation.

10.2 Privatisation of prisons may distort the administration of justice by exerting undue influence on parole hearings. Privately run prisons are generally paid per prisoner per day, such prisons thus have an incentive to extend inmate stays as long as possible, and so may be liable to reduce prisoner's chances for parole or good time off by exaggerating or fabricating disciplinary infractions.

10.3 Privatisation can also distort the administration of justice by allowing prison officers to seek reclassification of prisoners to a higher security level for the purposes of having more prisoners in lock down. As discussed above the profit motive in having prisoners in lock down means fewer staff. Thus there is a real risk that prisoners could be unjustly reclassified.

10.4 The CJC submits that the privatisation of a prison will produce a different classification regime that currently operates in the public system. The differences will invariably cause problems. The CJC submits that if the privatisation of prisons does take effect the same prisoner classification system is utilised in all prisons.

#### 11. The impact of privatisation on rehabilitation programmes, mental health support services and recidivism rates

11.1 The CJC submits that privatisation will have negative impact on rehabilitation programmes, mental health support services and recidivism rates.

11.2 Private prisons have no incentive to provide costly rehabilitative treatment and services and prison industries. This lack of incentive stems from two reasons. Firstly, rehabilitation programs and the like cost money and may increase the likelihood that inmates might actually make it on the outside and not return. That is not good for a corporation who makes money by having a prison full.

11.3 Secondly, unlike the government, private companies have no moral obligation to rehabilitate prisoners. Private companies have no interest in the health of society as a whole unlike the government who has a moral obligation to rehabilitate prisoners so that they are returned to the community and are no longer a danger to society.

#### 12. The impact of privatisation on staffing levels and employee conditions

12.1 The CJC submits that privatisation will have impact on staffing levels and employee conditions. Unlike government employed prison officers, compensation for employees in privately run prisons is tied to profitability, so employees have a personal stake in cutting corners on costs and writing reports that may keep their charges incarcerated longer. There is also the possibility that prison officers in a privately run prison will write reports recommending greater control over prisoners such as restricting the freedoms of prisoners. As discussed above restricting prisoners freedom results in the need for less staff and therefore greater profits.

#### 13 The comparative economic costs of operating public and private facilities and the impact of privatisation on publicly managed prisons.

13.1 There have been numerous academic studies discussing the costs of operating a privately run prison as compared to the costs of running a public prison.

13.2 The CJC however submits that the issue of costs is largely irrelevant in this debate. There will always be a costs justification supporting one approach rather than another. The most important considerations in the public/private debate are the moral and practical consequences of imposing one structure over another.

#### 14. Accountability mechanisms available in private prisons

14.1 The privatisation of prisons will raise questions such as who is legally responsible for the violation of a prisoner's rights and who is liable if a private prison employee is injured. Privatisation will also raise questions If a prisoner escapes and

injures a private citizen, is the state or the private operator held accountable? If a prisoner contracts HIV in a privately run prison who is liable?

14.2 The privatisation of prisons has a profound impact on the nature of accountability. In a privatised prison it can no longer be automatically assumed that the state will be held responsible for any wrongdoing to a prisoner. The state, unlike a private government has a duty to apply international human rights instruments including those instruments that have not been domesticated in law. There is no adequate contractual mechanism other than to create financial penalties to ensure that contractors abide by these instruments.

14.3 Further public prisons, like all public institutions, are open to public scrutiny. Privately run prisons are less open to public oversight and less transparent. This is largely the case with the privately run prisons that have been established to date. It is almost impossible to view an existing contract between a privately run prison and the government. This lack of transparency means that infringements of contracts are difficult to prove and even more difficult to correct.

14.4 Privatisation will not ensure that "Prison Visitors" with a statutory duty to protect prisoners against inappropriate conduct in prisons will be permitted. The CJC submits that prison visitors are essential to the transparency and accountability of a prison.

15. The CJC submits that comparisons with other privatised prisons such as Junee and artificial and invalid. Junee is not a large prison with a high turnover like the MRRC. Junee does not therefore have the administrative problems encountered in prisons with a large population and high turnover. The CJC is concerned that privatising larger prisons with a high turnover will not be successful.

16. The CJC submits that corporations are under a statutory to make money for the shareholders. States on the other hand, have a duty to comply with international human rights instruments, on a number of occasions as a matter of law.

17. The CJC does not support the privatisation of prisons or any prison related services for the reasons contained in this submission.

18. The CJC does not however oppose the contracting out of particular services such as accounting or I.T. services.