

GENERAL PURPOSE STANDING COMMITTEE No. 3

INQUIRY INTO THE PRIVATISATION OF PRISONS AND PRISON-RELATED SERVICES

At Sydney on Friday 27 March 2009

The Committee met at 9.00 a.m.

PRESENT

The Hon. A. R. Fazio (Chair)

The Hon. J. G. Ajaka

The Hon. G. J. Donnelly

The Hon. T. J. Khan

The Hon. Sylvia Hale

The Hon. R. A. Smith

The Hon. H. M. Westwood

CHAIR: Welcome to the third public hearing of the General Purpose Standing Committee No 3 inquiry into the privatisation of prisons and prison-related services. I thank the witnesses who have travelled from South Australia, Western Australia and the United Kingdom to assist the committee's inquiry. The committee is holding an additional public hearing next Wednesday. Witnesses at that hearing will include representatives from the Public Service Association and the Cessnock branch of the Prison Officers Vocational Branch. Before we commence, I will make some comments about procedural matters. In accordance with the Legislative Council guidelines for the broadcast of proceedings, only committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the committee. The guidelines for the broadcast of proceedings are available on the table by the door.

I remind everyone that any messages for committee members or witnesses must be delivered through the Chamber and support staff or the committee clerks. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. I remind everyone to please turn off your mobile phones, as they interfere with Hansard's recording of the proceedings. I welcome everyone in attendance today at this public hearing. I remind you to not attempt to participate in the hearing by way of comment or interjection during a witness's evidence. The committee will have no option but to clear the public gallery if the hearing is interrupted or disrupted. I now welcome our first witness from the International Commission of Jurists, the Hon Justice John Dowd.

JOHN ROBERT DOWD, President, International Commission of Jurists Australia of 804/185 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give, or documents you may wish to tender, should be heard or seen only by the committee, would you please indicate that fact and the committee will consider your request?

The Hon. JOHN DOWD: Thank you.

CHAIR: If you take questions on notice today, the committee would appreciate it if your responses to those questions were sent to the committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the committee commences questions do you want to make an opening statement?

The Hon. JOHN DOWD: In giving evidence today on behalf of the International Commission of Jurists Australia, of which I am the President, I am also giving evidence on behalf of the Community Justice Coalition, a coalition of interested human rights groups and justice groups within New South Wales as well as a large number of individuals, and I will be speaking because the International Commission of Jurists has adopted that submission to both. I am also Deputy President of the Mental Health Review Tribunal, which brings me in contact with the prison system, and I thought the committee might like to be aware of that. The primary submission that we make, and I want to make, is that we do not see this hearing, this process of privatisation as being primarily a matter of cost or, indeed, a matter of cost at all. It is not about net savings or comparative escape rates. We take it as a given that there would be no greater escape rates under privatisation than under the present system.

It is a matter of concern to us that we see that whilst this Parliament, through this committee, is examining the matter that, in fact, the privatisation process is occurring at the moment and that, of course, is a matter of some concern to us. There is at the moment an inquiry going on by the Department of Immigration, an immigration detention inquiry. I bring that to the attention of members of the committee because they may be interested in watching those proceedings and finding out matters from them because a lot of the issues that will arise in that committee will arise in this and there is an interest in both in the other. I have expressed views to the Department of Immigration in one of its forums about my concern about privatisation of detention centres for immigration purposes and otherwise.

The first thing I say is that our primary thrust is that the law incorporates human rights by way of treaty. We are parties to the Universal Declaration of Human Rights which is 60 years, three months and two weeks' old. We have seen in that period a serious erosion of human rights. One of the problems about human rights is that they affect every Australian, every non-Australian who is within Australia and are sometimes incorporated into law, such as in the Evidence Act, which incorporates issues such as the International Covenant on Civil and Political Rights for some interpretations. I think that law is incorporated in section 137 or section 138. But generally governments, that is, State and Federal, are bound by human rights. One of the points I made to the Immigration department is that there is no adequate training of Immigration department officers in human rights. There are lots of signs up saying "If you think you have been harmed, or complained about or discriminated" to people but the officers that administer it are not trained.

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

I just wanted to conclude by saying this: this inquiry is into the privatisation of prisons and other services. But we need to look at the context in which this inquiry is going on and what is happening now as a matter of practice and law. Most people, if they heard that prisoners were locked down for up to 20 hours a day in 2009 in an enlightened society like Australia, would be appalled. Most people throughout the world would be appalled to know that a significant percentage of people in the corrective services system are innocent; that is, they are unfit to plead and have not been tried; they have been found not guilty on the grounds of mental illness; there are those who have had their illness come out whilst they are in serving other matters; and a lot are, of course, in

the general prison system with mental illnesses, including an increasing number of personality disorders within that system.

For someone who is mentally ill or seriously affected, to be locked down for the larger part of the day is inhumane and totally unacceptable by any standards. It needs to be remembered that if we are looking at privatisation, we have to look at what we are doing now and we have to look at how we make it even better, if we can, if a prison system is privatised, or part of it. When I tell people that sometimes people get their evening meal at quarter past three in the afternoon and are locked down thereafter until some hour in the morning, this is inhumane treatment to anybody, let alone the mentally ill.

There are standards—and this was not in the submission—about the holding of people in detention set out in United Nations documents. I do not know what you have had of these, but, of course, there are standards for detention and these are set out in a publication, which you may have, "Minimum Standard Guidelines for Australian Prisons" published by the Australian Institute of Criminology in 1978. In addition to that, the United Nations has set out rules, such as those adopted by the General Assembly Resolution 45/111 of 14 December 1990. Those set out standards with which we do not now comply.

You may be aware of this, but I will give you the case, we do not have appropriate system of inspectors at prisons so that problem you have to deal with in privatising. We do not have appropriate prison visitors who are outside the control of Corrective Services. But what is worse, you have a system whereby the commissioner has a power, without review, to refuse a C2 classification. C2, you probably know, is preliminary to release allowing short periods of release and a person goes out into the community before final release, an important adjustment process. But it is now possible for the Serious Offenders Review Board to recommend someone be released, for the Parole Board to recommend someone be released when they have done their non-parole period and then an arbitrary, non-reviewable, no reason decision by the commissioner can stop that person getting a C2 classification and the person goes nowhere.

There is now under our system, in this enlightened State—and I am not being political in that—for someone to be kept in for some years on a non-reviewable potential whim. That is unacceptable, privatised or otherwise. The main point I want to make about that is if we have that sort of difficulty in the prison system now, mainly because we do not have enough prison officers, and there are talks about overtime, which of course are silly if you have enough prison officers—that has to be enforced. There is no contract that can force a contractee of a privatised prison to carry out those human rights. That is an obligation of the State Government and the people of New South Wales to ensure that those people have human rights available. This is non-delegable.

The primary issue otherwise is, of course, that the staff of a privatised prison are not career public service officers. Career public service officers have to deal with complaints. They have to have them on their record. They are very conscious of their duty to the State. In a privatised prison there is no way of ensuring that the officer that you put in charge of other human beings was not selling Toyotas last week. There is nothing wrong with Toyotas, I hasten to say, but there is no way that you can instil in them the career public service discipline, not that I am saying that prison officers are automatically bonzer people; there is the odd one who might be less friendly than others but, nevertheless, they have a career discipline to protect them.

I have been part of all parts of the justice system and we have an obligation to our citizens to ensure that those who go into prisons, who have families, almost all of whom come out—very few people serve the death sentence—then we have an obligation to see that they get the best treatment, preparation for return, to reduce the appalling recidivism rate, something in the 40s that we have in New South Wales. Thank you, Madam Chair.

The Hon. JOHN AJAKA: The submission states that the "CJC is concerned that the privatisation of prisons could have a negative impact on inmates and staff and could result in higher levels of assault." The Department of Corrective Services submission contains data from 2001-02 to 2007-08 that indicates that the rate of assaults on staff at Junee Correctional Centre is in fact lower than at publicly run prisons and that the rate of assault between inmates is comparable to similar publicly run prisons. Would you like to comment on the statistics, in light of the concerns raised in the submission?

The Hon. JOHN DOWD: The policies of recording assaults vary. What is an assault can be the most technically minimal matter and there can be a quite violent reaction. To assault someone you do not even have to touch them or come near them. Therefore, we have no way of knowing how good those statistics are. There is no freedom of information on a private contractor; there is no way of controlling how they run their statistics. And with the best will in the world without fabricating then we just do not know. However, what happens at a

small prison like Junee as compared to a metropolitan remand and reception centre, where people are coming in and out and a lot of people go through bail and a whole series of preliminary procedures, and a lot of people with psychological problems and mental health issues—to compare one against the other is an apples and pears exercise and does not really help. Junee is a small, relatively easily run prison from what I understand. I have not been there.

The Hon. JOHN AJAKA: What is the basis for the Community Justice Coalition claim that privatisation may decrease the ability of prisoners to form personal relationships with prison officers? Before you answer the question, could you explain what is meant by "personal relationships"? What is covered in that respect?

The Hon. JOHN DOWD: What happens in a prison, as in all institutions, is that people get to know people, Australians particularly. In a classless society, the relationship between a prison officer and particular prisoners becomes a personal matter. They help them out, "Are you all right?" It is all those interpersonal things that we Australians are used to. It is a bit like a nurse in a hospital, if you get in private nurses all the time, they are from different cultures and you do not get to know them to ask "How are you today, and how is the grandchild?" and all of that.

Relationships are built up across the lines of prisoner to corrective service officer, and, therefore, the greater the continuity the better it occurs. That happens when you have people who are there permanently, where they are not just coming in and out. So that continuity builds relationships, which is an important part of getting a prisoner ready for the society that we want him to go back into.

The Hon. JOHN AJAKA: Is that based on the assumption that in a private prison, prison officers will not be there for extended periods? Is there a revolving door concept with the employees as opposed to a public prison?

The Hon. JOHN DOWD: The patterns of public service as against private service means that we have continuity over a career with a lot of prison officers. They are more likely to be there for protracted periods, and have the interests of the prison service. It is inevitable in the private sector that there is turnover, and you lose corporate memory, you lose collective responsibility. When the Greiner Government broke down the senior public service process and brought in a lot of people, that meant that the career public servants disappeared and took with them their corporate memory and all the wise advice that comes from that. Indeed, before I retired as Attorney General my head of department was the last of the permanents, and he took with him in his head an awful lot of experience. He is not there to pass it on.

The Hon. TREVOR KHAN: I do not wish to quibble, but to talk essentially of the difference between the career path of prison officers and those in the private system, I take it that you are not able to point to any empirical evidence as to turnover rates at Junee or any other private institution in Australia?

The Hon. JOHN DOWD: No. It is the same as with the ASIO, where you bring in the spooks from outside. It tends not to be a career set there, some stay on, but in my 58 years in law I have seen the comparison of the private to the public sector. The public sector has long-term continuity and that is with prison officers.

The Hon. TREVOR KHAN: Regarding the public sector, you have identified that Corrective Services in New South Wales successfully achieves a rate of recidivism of over 40 per cent of prisoners. Is that correct?

The Hon. JOHN DOWD: I do not understand the word "successfully".

The Hon. TREVOR KHAN: Perhaps I am using the word in a cynical sense.

The Hon. JOHN DOWD: It is not only that. We have very inadequate—not in terms of the officers—probation and parole services. They are grossly underfunded. Most of them are very good at doing what they do, but they are hopelessly laden. We do not spend enough time preparing people for going out, to stop them from drifting back to the mates that they were with before they went in. So, it is not only failure within the prison system, it is a failure within the support systems and all of those other things that make for a higher level of successful rehabilitation.

The Hon. TREVOR KHAN: In that sense, do you agree with me that we have been fairly unsuccessful with regards to educational programs in our current prison system?

The Hon. JOHN DOWD: Yes. I cannot go across the board because I do not know, but as a Justice of the Supreme Court I had several applications before me for a prisoner to use a computer. A series of reasons were given as to why one should not, and I directed the Corrective Services to do something about it. It was safe, he could not access things, and all of that. They keep changing their reasons. He is now a graduate of a university and out in the community quite successfully. If you stop people improving their education by having a computer to do a university degree, then the culture is not in favour of education.

So, I do not know specifically, but what I have seen there is a tendency for jobs to be menial and repetitious and I think we could do a lot more in education in the prison system and involve the universities and TAFEs in trying to enlist people. I want people coming out with a skill, not just the same desperate situation that caused them to go in there.

The Hon. TREVOR KHAN: From your experience in the provision of mental health services, do you have an opinion as to how successful or otherwise the system has been in the prevention of those services?

The Hon. JOHN DOWD: The people that we deal with who deal with mental health are really very good. I have been through most of the mental health sections of most of the prisons. The level of care and the level of enthusiasm and the level of response is very good. It varies from one to another, but it is really very good at what they do. But, of course, they do it in a context of lockdowns, which is not helping. But generally I have been impressed with the culture in the mental health system.

The Hon. TREVOR KHAN: Apart from culture within the mental health system, and I am not being critical of the people who work in the system, I am talking about the provision of those services to prisoners. You have already identified that there is a large percentage of prisoners in the system who, to a greater or lesser degree, suffer from a variety of mental illnesses. Is that correct?

The Hon. JOHN DOWD: Yes.

The Hon. TREVOR KHAN: I suggest that a lot of those prisoners receive little or inadequate assessment and treatment for their mental illness.

The Hon. JOHN DOWD: I cannot say that for the ones who come before me; they are well cared for. But they are only the forensic ones, I do not see a large group of them. We have obligations to review those cases and we have relatively short hearings. I cannot complain about the quality of medical services provided to them and the level of medical services provided to them, from the people that we see.

The Hon. TREVOR KHAN: Do you have any experience with regards to the provision of medical services to prisoners at Junee, the only private prison in New South Wales?

The Hon. JOHN DOWD: No, I have not.

The Hon. TREVOR KHAN: Do you have any understanding as to how medical services are provided to prisoners at Junee?

The Hon. JOHN DOWD: No, I do not.

The Hon. TREVOR KHAN: Is there a reason that you can point to as to why a private institution would not be as capable as a public institution in providing, for instance, medical services to prisoners?

The Hon. JOHN DOWD: The law obliges companies to comply with economic rules, and the law obliges company directors and the administration to work for their shareholders. That is a statutory obligation; they do not have any choice. Therefore, when push comes to shove, the State does not have financial restrictions; a private company does. Therefore it is inevitable—because all managements have to make decisions that have cost benefits effects, that have effects on quality of service delivery, how long people are locked down, and whether they are classified differently—that the private sector must look at the dollars and not at human rights. There is no obligation, even if there is a contractual obligation on the company, to stop the private sector making the money that it is actually obliged to do even if it were not a part of the private system.

The Hon. TREVOR KHAN: I think you referred earlier in your statement to what you perceive as a breach of the human rights by the 20-hour lock-down approach. Is that right?

The Hon. JOHN DOWD: Yes, of course.

The Hon. TREVOR KHAN: We are talking about a 20-hour lockdown in the publicly owned jails in New South Wales, is that right?

The Hon. JOHN DOWD: At times; I am not saying all the time.

The Hon. TREVOR KHAN: And I am not suggesting it is either. If what you are saying is that the State is more capable of complying with human rights obligations, and we seem to have a practice of extended lockdowns—whether it be 20 hours or 18 hours, or whatever—over long periods of time in the jails, how can you reconcile the State's failure to comply with what you identified as a human rights obligation and at the same time reject that a private institution may be somewhat more capable of allowing the prisoners out of their cells more than four hours a day?

The Hon. JOHN DOWD: The question fairly states the problem. The thing is, it is totally unacceptable with a State with relatively unlimited resources to do it—and they must do it to save money or to please the Government, or to reduce the adverse publicity from prisons. That, I outline to the Committee, is simply appalling. But governments can be changed, and these sorts of inquiries help the public to be aware that the people who are in there are not just half-crazed cretins they want to lock away forever. Governments can be pressured to do something; the private sector—of course they may be better in some areas; I cannot say they would not be, because they are also run by human beings, but there is no control mechanism. We can throw out a government that treats prisoners appallingly and creates problems; that is the democratic way. But there is no democracy in private prisons. All I am saying is: Yes, of course, there is that dilemma that it may be better than some of the appalling things we do to people now, but nevertheless there is no accountability. All you have is a contract, and you penalise them some damages, some money, or you criticise them. Contracts cannot deliver human rights; governments can. They do not always.

Ms SYLVIA HALE: You have stressed that governments are bound to take human rights considerations into account whereas private companies do not have such an obligation. What human rights would you consider to be most at risk in any prison situation?

The Hon. JOHN DOWD: The fact that individuals are locked down for enormous lengths of time—particular innocent people such as those who are found to be not guilty on the grounds of mental illness—that they are locked down for enormous periods which must have a very serious effect, even on those who are perfectly sane. People are sent to prison as punishment and, it is trite to say, not for punishment. The circumstances in which they are kept are unacceptable by the international standards which I outlined earlier.

Ms SYLVIA HALE: Lockdowns that could come about through an absence of staff or a reluctance to employ sufficient staff?

The Hon. JOHN DOWD: Or just general practices. Locking people down at 3.15 in the afternoon with their evening meal is not acceptable in any society, let alone our enlightened society.

Ms SYLVIA HALE: Given that there is such a proportion of people within our prison system who are suffering from mental illness, what impact do you think having these extended lockdowns, or any protracted periods of lockdown, would have on the running of the jail or the stresses experienced by prison officers?

The Hon. JOHN DOWD: It is easier to run a prison locking the people down for long periods so you do not have to deal with them in the yard; it is more cost-effective to do it. That is not the standard that our sort of society should accept. We should give people the maximum normalisation we can to prepare them for when they get out. If you treat someone like a dog, they act like a dog.

Ms SYLVIA HALE: They would potentially become more dangerous places in which to work if you had a regime of extended lockdowns?

The Hon. JOHN DOWD: If you have a regime where you are teaching people to use sophisticated equipment and so on, it requires a lot more supervision. On my first visit to the Malabar Training Centre about 30 years ago there was a man printing, I think, TAB dockets. He said, "I am here for forgery, and if I had a machine like this they never would have caught me." It worried me a little that they were training him in the area that led to his

crime. But he did a nice job. But that requires expense. And that is no fault of the prison officers; that is a government refusing to accept the responsibility that if you put 10,000 people inside a system designed for about 7,000, inevitably there will be more problems. We have a situation where people are kept in police lock-up cells with no adequate showering and whatever. Every day that happens because of a reluctance to bring them back into the prison system and so on.

Ms SYLVIA HALE: You probably have not had a chance to read the other submissions that have been made to the inquiry.

The Hon. JOHN DOWD: I have seen a few.

Ms SYLVIA HALE: You commenced your remarks by saying that this inquiry should not be about net savings or cost. Yet I look at the submission of the Serco Institute, whose officers will give evidence later today, and the thrust of its submission is that private prisons are much more cost-saving ventures. The institute suggests that the principal avenues for cost saving are fewer staff per prisoner, lower average unit costs, less time in sick leave, less generous pensions and fringe benefits, and lower salaries. Why do you not think they are relevant considerations when it comes to the prison system?

The Hon. JOHN DOWD: Because the basis of the comparison is invalid. You get someone running the Long Bay complex or the MRRC. It is a very different proposition to running a Junee-type prison. You cannot compare one with the other—a small prison, as I have indicated, with relatively minor problems, with the enormous high turnover, high visiting, and mental health problems that you get at Long Bay. You are not comparing apples with apples, and therefore that is just an assertion.

Ms SYLVIA HALE: What do you think should be the principal considerations in running a jail? Do you think that the State is obligated to take into account solely cost considerations? Or are there other broader considerations that need to be borne in mind?

The Hon. JOHN DOWD: The primary focus of the prison system is to rehabilitate people and prepare them for outside to reduce their coming in. It does not take into account the enormous cost of police detecting and arresting and so on. We do not do a cost per capture and someone being put away, but the cost to the community in terms of break and enters and other crimes, drugs and all of that, is enormous when taken into account. The focus should be on preparing people for getting out, making it as easy as possible and assisting them through a proper probation and parole service. It is an opportunity to educate people and prepare them. So many prisoners are grossly undereducated. They tend to have lower intellectual development. They need a lot of work and there is not enough in the prison system to prepare them, in relatively short-term sentences, for getting out.

Ms SYLVIA HALE: So a marker of the ratio of prison officers to prisoners is not in itself an indicator that you are doing a good job?

The Hon. JOHN DOWD: Not of itself. One is inclined to infer that the rehabilitation services are not as good where there are lockdowns, for the obvious reason that lockdown prisoners require fewer officers. Therefore, a small number of officers would normally indicate that prisoners are not getting rehabilitation.

Ms SYLVIA HALE: You spoke about the poor conditions that many people face when they are on remand and have not been found guilty of any crime—

The Hon. JOHN DOWD: No, I spoke of probation and parole when they are out.

Ms SYLVIA HALE: Sorry, I thought you were talking about the remand centres and the fact that when people came in they often did not have access to shower facilities.

The Hon. TREVOR KHAN: That is when they are in the police cell complex.

The Hon. JOHN DOWD: And the police cells.

Ms SYLVIA HALE: The police cells, sorry.

The Hon. JOHN DOWD: It is just appalling that any human being is kept there without proper showers and all of that. They are not in the prison system. They are held over for a few days awaiting an adjournment or a remand. They are outside the statistics, I assume.

Ms SYLVIA HALE: Who looks after people when they are in those prison cells?

The Hon. JOHN DOWD: The police.

Ms SYLVIA HALE: It is the police, not the court officers?

The Hon. JOHN DOWD: It is not their function, no.

Ms SYLVIA HALE: One of the justifications for the inquiry into the value for money of the Junee centre was that it would provide a benchmark against which the public prison system could be judged or assessed. Do you think it is possible, or is it desirable in your view, to have a private component in the corrections system to serve that role or, as you said, are you always in a position of having to compare apples with oranges?

The Hon. JOHN DOWD: It only deals with a small section of it. The bulk of people do not get to the Junees. The bulk of the 10,000 are in the old prison system with too many people to a cell. It is crowded and the treatment and services available to them are inadequate. It may be part of it, but is that what we are about, just saving money? Government is a matter of priorities. If you choose not to spend money on prisons because there are no votes in it and spend it on the Opera House or something equally iconic it may be good for votes but that is not why you are in Government. People are in Government to ensure the prison system operates efficiently and, in a human rights context, to prepare those human beings, almost all of whom have families and have a lot of people affected. That 10,000 probably reflect to 100,000 people when you look at the parents, cousins, victims and children and all those who are affected by what happens to that person. That person should be your focus and saving a few million dollars by taking the easy end of the prison system and putting them at Junee and running a relatively easy prison is not worth the effort when you are casting aside the legal requirements of the human rights obligations that are placed on Government, not on the contractor.

Ms SYLVIA HALE: So what you are suggesting is that it is a false economy in some ways?

The Hon. JOHN DOWD: Yes. I wish I had said that.

The Hon. HELEN WESTWOOD: From what you have said to us this morning it sounds as though the quality of the prison officers, their training and professionalism is also an important part of addressing the issue of recidivism. In the submission we received from Serco that Sylvia has referred to, they talk about lower pay rates, less generous pension entitlements and so on. It seems to me those officers would view their position in that institution as just a job. Do you think that would have any concerns for the commission?

The Hon. JOHN DOWD: I think most people try to do their best in their job. In my years of public service I have had to deal with a lot of different disciplines and most of the corrective service officers that I deal with care about their jobs. Some of the people that I talk to now care very much about their careers. They have chosen that career because that is what they want to do and they want to enjoy it. Sometimes they are frustrated by the system when they put up ideas. Over the years I have been visiting prisons—I started 30 odd years ago when a fellow called McGeechan was head; I do not think anyone here would remember him—when I first started there was an esprit de corps that was good. There was the odd officer who was less than polite. I am not satisfied that because their pay is low they are necessarily going to say it is just a job and they will not care. I have not had that experience. I do not always enjoy being treated like "Who the hell are you?" as I go into the system, but you get used to that.

The Hon. HELEN WESTWOOD: Have you had the opportunity to visit privatised prisons as well?

The Hon. JOHN DOWD: No, I have not. I have overseas but I have not here.

The Hon. HELEN WESTWOOD: As Sylvia said, Serco is going to give evidence later today. One of the things they are going to talk about is their experience in the UK where they argue that prisoners have less time locked up because they have a private key to their cell. Do you have any knowledge of that system in the UK?

The Hon. JOHN DOWD: No, I cannot assist you with that.

The Hon. TREVOR KHAN: I understand they do not get the front door key!

The Hon. HELEN WESTWOOD: No, they do not, but they do have a key to their cell.

The Hon. GREG DONNELLY: Thank you, Justice Dowd, for making time to come along and give us your thoughts and reflections on this very important inquiry. I have a few questions but I am conscious of the time. I have three minutes, which hardly gives me enough time, so some of these questions may have to be put on notice. Some material has been presented to us—you are probably not familiar with this material—that refers to a privately run prison in Mount Gambier, South Australia. There is a bit of a blurb that goes with it. The company that operates this facility is called GSL. The blurb says, "GSL conducts the day-to-day running of the prison but because of legislative requirements the department maintains a general manager and two supervisory staff." I am wondering what your thoughts are on this "mixed model", if I can use that phrase. It is run by private enterprise. Obviously the corporation has to meet all the demands of what you described in terms of its corporate obligations to shareholders. Let us assume another model could be that there were more than just a general manager and supervisory staff and they were pushed down the hierarchy in the jail to a certain level and remained as public employees with perhaps have lower grades of staff as the private sector employees. Do you have any reflections on that sort of model?

The Hon. JOHN DOWD: In all organisations somebody gets to call the shots. In a private organisation it must ultimately be the general manager of that company; the chief executive officer must make the decisions. He may by grace and favour allow people to give the orders and to make decisions about incarceration, lock downs and whatever, but you still have to have a cost-effective exercise under the Corporations code. The "someone" calling the shots has to be the company. They cannot hand over the control of the running of the prison to people who are not directed by them. It may work on a grace and favour but, as a matter of law, it is the chief executive officer of the company that runs the prison.

The Hon. GREG DONNELLY: As to the contracts that may apply to the operation of privately run prisons, is it your view that such contracts are not capable of incorporating such detailed obligations as to require, shall we say, standards and human rights obligations to be properly honoured and respected? Notwithstanding your earlier point, but with respect to a private company?

The Hon. JOHN DOWD: Even if you stick it up as tightly as you can to try and cast those human rights obligations, they are not cast. It is simply a civil contract enforceable through damages, injunction, mandatory injunction and so on. You cannot get down to what the attitude of the prison officer is to the prisoner. You cannot deal with all those things because there is no mechanism for enforcement. A contract is as good as the enforcement. There is no mechanism for enforcement; it is damages, injunction, cancellation of the contract and so on. All your review mechanisms still do not control the day-to-day discipline. That is best controlled by service prison officers who have a career structure and obligations under the law in terms of human rights, as against a company where it is just one simple contract as a government contractor.

The Hon. GREG DONNELLY: I have made this analogy with other witnesses and I also am keen to get your response. Putting aside for moment the issue of who is going pay, if you look at the masses of privately run hospitals in New South Wales, and around Australia, there seems no doubt that generally speaking they are capable of delivering high-quality health care to the patients of those facilities. Equally so in respect of the public system—even though we read about their ongoing pressures every day—it too delivers high-quality health care to its patients. No-one ever seems to raise the issue that these private facilities have any fundamental problems associated with delivering their service. Indeed, some people even argue they are superior to the public system. Cannot that analogy flow through to something like a prison?

The Hon. JOHN DOWD: Two reasons. First, the operatives in both must be fully trained and fully professional enrolled nurses in both public and private. Therefore you have a base skill level and commitment level in both that is a safeguard. That is not in their in a prison system or in a private prison system—you cannot ensure the training. As I said to the Immigration department, where is the training in human rights? People need to know. Every so often we should sit down and read the Universal Declaration of Human Rights to see how much we have strayed from it. You cannot control that level. I found recently in a family matter with a private hospital that in that private hospital a family member got a different nurse every time from a different culture and a different language on every shift—there was no continuity at all. That was in a private hospital adjoining a public hospital where you had the same people coming in everyday. That was my continuity point. Hospitals

CORRECTED TRANSCRIPT

have that basic guarantee of a professional level of operator that is a safeguard against anything. Most of those people will not lower standards.

CHAIR: Thank you for your evidence and for sharing your corporate wisdom on the legal system. The Committee may have some questions on notice for you. If it does, the committee secretariat will get them to you as quickly as possible.

The Hon. JOHN DOWD: I will be away from a couple weeks after Monday next, if you can wait until then. I thank the Committee for its courtesy and its concern about the very important issue it is dealing with.

(The witnesses withdrew)

GREG WEIR, Director of Strategic Services and Deputy of the South Australian Department of Correctional Services, sworn and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, would you please indicate that fact? The Committee will then consider your request. If you take any questions on notice today would you be able to return them within 21 days of the day they are sent to you?

Mr WEIR: Yes.

CHAIR: Do you wish to make an opening statement?

Mr WEIR: I would not mind providing some opening comments in a background context. I will then briefly address some of your terms of reference and take questions. There are nine prisons in South Australia and all of those prisons are used to accommodate adults: 18 years and over. At the moment we have a prison population of around 1,960, with a total ongoing bed capacity of 2,012. Four prisons are located around the Adelaide metropolitan area and five prisons are located in regional facilities. Our only privately operated facility, Mount Gambier, is in one of those regional locations. We currently have three strategic contracts with private provider G4S Custodial Services Pty Ltd. One is for the management and operation of Mount Gambier prison, one is for prisoner movement and in-court management services, and one is for an electronic home detention monitoring system.

The Mount Gambier prison contract was originally formed in 1994. The prisoner movement and in-court management services contract was originally formed in 1996. The electronic home detention monitoring system contract was originally formed in 2000. Since those three contracts were originally formed, all three have remained with G4S—or GSL as it was previously known. Mount Gambier prison is the most recently constructed prison in South Australia. It was the first, and remains the only prison, to be privately operated in our State. It currently accommodates 159 low-to-medium security prisoners and there is some provision for short-term accommodation for remand prisoners appearing before local courts.

Prisoners undertake a range of therapeutic, educational and vocational programs. Our department, through the program standards group, endorses therapeutic programs to ensure that they remain consistent with our standards. The prison itself has a strong work and industry focus. G4S is responsible for the operation of the prison. As was mentioned previously, in order to meet legislative requirements, our department maintains two supervisory staff at Mount Gambier prison and we also nominate a general manager who has oversight of Mount Gambier prison. But the G4S prison director manages Mount Gambier prison daily. We retain ownership of the site's assets and we have done so from the very beginning since the prison was constructed in 1993-94.

There is a whole-of-State contract for the maintenance of those assets and related equipment. G4S then locally uses that contract to ensure that the assets are maintained in accordance with our standards. Let me give the Committee our contract history and some of the key dates around that. In 1994 the then Government publicly committed to improving the performance of prisons and reducing the overall cost. To achieve its objectives it decided to contract out to the private sector the operation of the newly constructed Mount Gambier prison. Procurement of that contract was completed through a competitive tender process, and in April 1995 the contract was awarded to G4S Securities, as it was known then, for an initial term of five years. Subsequent to that initial term the contract has been renewed on two further occasions for five years.

In 1999 Cabinet gave approval, after an assessment of performance and value for money, for the renewal of that contract for five years. Again, in July 2004 the then Cabinet also gave approval for the contract to be renewed with GSL for another five years. The current contract is scheduled to expire in December 2010. I will make a couple of points, picking up on some of the questions that I have been asked before. Over the years there has been a particular focus on ensuring that this prison is effectively integrated with our overall operations. To summarise, we have sought to treat this as an essential part of our system at the prison and then to manage the contract as well underneath that. From our perspective, from an operating philosophy it was critical—whether it be publicly or privately operated—that it be an effective part of our system and not simply managed as a contract.

We have sought to engage staff from G4S in our strategic and operational management. Obviously there are some occasions when there might be matters of probity relating to contract management and, naturally, those issues have to be managed. We have focused on ensuring an effective relationship. For example, the GSL prison

director at Mount Gambia is fully involved in our strategic and business planning and our performance reporting processes. In communication terms we also focus on effective communication and engagement, through the prison director, with G4S staff. As a department we approve the operating procedures under which the Mount Gambia prison operates to ensure that they are effectively integrated and that they represent what we think is appropriate in managing a prison. Custodial services and I, as the Crown's contract administrator and the person overseeing those contracts, then signs off on those operating procedures.

Those operating procedures are not necessarily word-for-word the same as our operating procedures, but they are very much consistent. We have allowed them to pursue their own document format but we expect the targets, the standards and the indicators to be consistent with those that we are pursuing as a department. There is a strong focus on performance monitoring—an issue that can be addressed in a moment. In effect, we expect this prison to be operationally effective, to be safe, to be secure, to be humane and to be a genuine part of our system. There is a strong focus on performance monitoring—not just through the contractual process but also through other mechanisms. Finally, there is quite a strong focus on relationship management. It is possible, whether it be a privately or publicly operated prison, not to manage it well if you do not focus on relationships.

I think the evidence shows that when you focus on a contract being totally professional and you focus on maintaining a sensible and professional relationship, you achieve better results. Let me summarise our public position as a department—something that has been put forward before in public. The evaluation of all data we have available as a department indicates that the existing contract has been operationally effective and has resulted in value-for-money outcomes. We gather statistics and evidence through performance monitoring processes, and we believe that they support the conclusion that Mount Gambia provides safe, secure and humane care, and it meets the needs of prisoners.

We also have information available from surveys conducted by both prisoners and staff on a confidential basis, and we have had independent confirmation of our conclusions through the independent visiting justices who are established under our legislation and who, in parallel, have an independent ability to scrutinise our operations as a department. Of course, the prisoners themselves also have access to the Ombudsman through toll-free hotlines, so there are other ways for us to monitor the performance of our facility. The advice of our department is that the prison has continued to play an effective role in our overall correctional system. I am able to make some basic comments against the Committee's terms of reference, if that would be useful.

CHAIR: That would be useful.

Mr WEIR: We could then go directly to any questions that you might have. If you require any information later I would be happy to provide it. Let me briefly address your terms of reference. With respect to the impact of privatisation on public safety and rates of escape, our department's advice is that no instances of escape, assault or breaches of good order are acceptable. Safety is paramount for the community, our staff and our prisoners. In general, Mount Gambia's performance has been in line with our other prisons, and targets for performance have been complied with. Hence, our advice to you is that the prison has been operationally effective and has provided value for money over the years.

Let me refer to some basic statistics. Since 1995 at Mount Gambia prison there have been four escapes—three from the secure perimeter and one from the hospital watch. Over that period there have been three deaths in custody, but all from apparent natural causes. We keep a tight watch, as we do at all prisons, on all incidents, whether they be type 1, type 2 or type 3 incidents, with type 1 being the most serious. Since 1995 there have been nine type 1 prisoner-on-staff assaults and 123 prisoner-on-prisoner assaults. As I mentioned before, no incident is acceptable in our system where the focus is on safety and good order. In general, the performance has been consistent with our other prisons and in line with the sorts of targets and indicators that we monitor across our system. In relation to the incidence of assaults on inmates and staff I have nothing exceptional to report there.

As I mentioned before, the rates of assaults, whether they are on inmates or staff, are broadly consistent with the outcomes that we receive across the rest of our system. With respect to disciplinary breaches I interpret that as being disciplinary breaches by prisoners, which I understood to be appropriate. I have noticed that the prisoners at Mount Gambia are subject to the same disciplinary processes as all other prisoners in all our prisons. Those disciplinary processes are outlined in our Correctional Services Act. Two of the DCS supervisory staff at Mount Gambia have a role in the oversight of the disciplinary process. Perhaps I could give you a bit of background on the question that was raised relating to the provision of staff at Mount Gambia prison and the role that they play in the operation model.

I also point out that visiting tribunals visit all our prisons, interview prisoners, and are able to participate in the disciplinary process. The general feedback I have received from them is that compared to many of our other prisons there is nothing exceptional in our disciplinary processes or outcomes down there. With respect to prisoner numbers, in your terms it is referred to as overcrowded. I note for us as a jurisdiction that we have continued to increase our capacity in line with the growth in prison numbers. In the past two years there were sudden spurts of growth of the order of 8 per cent to 10 per cent, but our longer-term growth is about 2.6 to 3 per cent, and we have increased the capacity across all our prisons, including Mount Gambia. We expect Mount Gambia prison to play its role in our system the same as we do of any other prison.

When we have sought to increase capacity we have found G4S to be willing to do so, and it has responded appropriately, as we would expect any of our prisons to respond. From the original capacity of 110 it has now been increased to 159. In our longer-term strategy for capacity management we are now considering options for further increase in the capacity at a range of prisons, including Mount Gambier. Currently we are working through a design process to increase the numbers at Mount Gambier by a further 116 to 275. As I mentioned before, our expectation is, based on its role and function, that Mount Gambier Prison continue to play its role in our system, the same as we would expect of any other prison.

With respect to prison classification levels, we have no comment on any effect that the contracting out of Mount Gambier Prison may or may not have had. The entire prison classification process is run by our Prison Assessment Unit, so it is independent of the private operation at Mount Gambier Prison. There are movements of prisoners within its regimes at Mount Gambier Prison. Again, that is decided through a case-planning process and our two supervisory staff at Mount Gambier participate in that process. So, the classification process within the perimeter of Mount Gambier Prison also has some clear oversight and we have no adverse issues to report on that.

With respect to rehabilitation programs, mental health support services and, I guess, recidivism rates, I will just refer to Mount Gambier Prison alone in that. I mentioned before that the cognitively-based programs or the criminogenic-focused programs are endorsed by our department's Program Standards Group. They do not follow necessarily the same curriculum, but our expectation is that they pursue the same outcomes and we go through a process of accreditation with them. We have not had any instances whereby we have provided feedback through our standards process that they have not taken it on board and adopted or adapted their programs as necessary.

We believe that Mount Gambier Prison has an excellent industries focus and there is a good work participation rate at Mount Gambier Prison. From recollection it is normally in the order of about 80 per cent, but it is a sentence population, not a remand population—that needs to be borne in mind. GSL at Mount Gambier is responsible for primary and secondary health care services, but psychiatric and hospital services are provided through the public health system of the Crown. But G4S provides a range of vocational education and training programs. We are a registered training organisation as a department, but they pursue their own vocational education and training programs. We are comfortable with that as long as they are being acquired from the proper RTO.

Finally, with respect to staff levels and employment conditions, whilst that is mainly a matter obviously for G4S, its staff and the relevant employee associations, we monitor closely employee relations at Mount Gambier Prison. The reality for us is that if there are good employee relations and good management staff—they place a focus on the quality of staff and on the training and on their fair management and treatment—then we are likely to get better outcomes as well, the same as we would through our own publicly operated system. So, obviously, any risk associated with staff management could flow on to us, whether it be publicly or privately operated. So, we also conduct staff surveys. We run them ourselves. We get feedback on that.

The most recent survey in the last three weeks I would advise to you as very positive in general. They have been going through an enterprise bargaining process at Mount Gambier and that can always be taken into account if you choose to normalise surveys, but in general over a prolonged period I would advise you that the staff surveys have been reasonably positive, albeit local workplaces still have some significant challenges.

The Hon. JOHN AJAKA: Would you see their staff as long term compared to a public facility, as Justice Dowd mentioned earlier?

Mr WEIR: My experience with Mount Gambier is that it has a relatively low staff turnover. I do know, obviously because it is a significant employer in the Mount Gambier area, that there is what we call a waiting

list to work for Mount Gambier Prison. They do seem to have a high degree of acceptance within the community, which I think assists when we are competing for people to work. There are, obviously, other work alternatives down there, but my experience is that they have a good reputation in the community, relatively low staff turnover—

The Hon. JOHN AJAKA: So the concept of a revolving door of staff—I think Justice Dowd used the analogy of a hospital where different nurses work each shift—in your experience does not apply at Mount Gambier?

Mr WEIR: No, it does not. And I think the surveys we get back from staff in the prison probably sustain the argument there. The general feedback from prisoners, and there is a pretty high response rate from prisoners, many of whom are down there for quite a prolonged period, is pretty positive with respect to their relationship with staff. It is difficult to compare with our other prisons because we do not survey our publicly operated prisons in the same way. To be frank, there is a higher level of scrutiny, obviously, on a privately operated facility, and there is good reason for that. We accept that. We do have a lot of data now over a number of years that tend to sustain our conclusions. It is or it appears to be an employer of choice in the Mount Gambier area.

The Hon. JOHN AJAKA: Over a public system?

Mr WEIR: There is no publicly operated prison down at Mount Gambier.

The Hon. JOHN AJAKA: Sorry, I meant as opposed to other public prisons within the State?

Mr WEIR: Well, some of our prisons have a very low turnover as well in other regional areas. Of course, now we are facing recruitment challenges from the mining industry in some areas like Port Augusta and Port Lincoln. That has dropped off a little bit at the moment, but it really does depend on who you are comparing against and how hard that competition is. We have always made clear to our own prisons and to G4S that they should be out there recruiting as best they can with a very strong focus on vocational education and training. In general, my advice would be that our experiences with G4S at Mount Gambier has put a strong focus on staff develop and training, and we would expect that. We keep a close eye on how they manage, I guess the workforce, because, as I mentioned, the risk flows on.

Hon. JOHN AJAKA: Please continue.

CHAIR: Because we do not have a written submission from you, if you could continue to refer to the terms of reference, that would be very helpful.

Ms SYLVIA HALE: Will we be able to ask questions?

CHAIR: Yes.

Mr WEIR: The next is item 2, the comparative economic costs of operating facilities. I heard a very good point made earlier that it is extremely difficult to compare different prisons, different roles and functions. I did note that in 1994 the decision was made to contract out Mount Gambier Prison. Apart from performance, one of the objectives being pursued by the then Government was reduced costs. But our advice is, and we benchmark the cost of our prisons pretty regularly, that Mount Gambier Prison remains very much a value for money outcome for us. But it is not just about price. Certainly our primary focus is on the quality of care, quality of supervision and the outcomes and indicators they are meant to pursue.

The current price for the contract—it is a relatively modest-sized prison compared to your jurisdiction and others— is \$6.6 million per annum. That price is based on the previous accommodation of 149 prisoners. We did mention before that there have been several decisions on contract renewal. Each time, Cabinet has been advised around the relative price performance of the prison. Our advice as a department has been that it is very difficult to compare different prisons. Obviously, high-security facilities will cost more because they have greater fixed costs for infrastructure and higher staffing levels. In general, if you compare Mount Gambier as a medium-security facility to others, we believe it is extremely price competitive.

If I could speak a little about accountability, I mentioned that before as being a particular focus, we have very much focused on it being an integrated part of our system. We have very much focused on standard operating procedures and local operating procedures not just reflecting our operational requirements, but the culture we are seeking to maintain in our entire correctional system and our prison system and community corrections.

There is a strategic planning committee that meets monthly that I chair that maintains oversight of the prison. In that meeting the starting point is operational effectiveness, and we work through any contractual-related matters. But the day to day it is meant to be an integrated part of our chain of command and our operating system. It has performed that role effectively and it is an appropriate part of our system overall.

I might mention also the staffing we have provided down there. As was noted, we have two DCS supervisors, in effect—in prison language, unit supervisors—who are down there predominately through the day shifts. I understand the original requirement for that was, when the first contracting out occurred back in 1994, that there were provisions in the Correctional Services Act as it was then written that required some powers to be exercised by people who were employees of the department.

The Hon. JOHN AJAKA: Two permanent employees work within the private facility?

Mr WEIR: That is right.

The Hon. JOHN AJAKA: Having certain jurisdiction.

Mr WEIR: They have some. What happens is that the GSL staff are declared as officers of the Crown. We go through a process whereby all GSL employees, once they have been through appropriate police checks and a process of recruitment, are appointed by Cabinet as employees of the Crown. In effect they can exercise all of the powers of a general duties correctional officer. There are some powers within our Correctional Services Act that are exclusively prescribed to be performed by employees. When that was considered by the Supreme Court in 1993-94, or around that time, the judgement was that they have to be employees of our department to exercise those powers.

The two staff we have at Mount Gambier prison, based on our estimates and indeed G4S, spent probably 75 per cent of their time on just the normal day-to-day operational business, and there might be 25 per cent of their time that needs to be dedicated to the powers that can be exercised only by employees of our department. There also are some powers that can be exercised only by a DCS correctional services general manager. Our general manager at Mobilong prison, which is several hundred kilometres away, is also nominated as the general manager of the Mount Gambier prison, which is specifically to exercise some powers required to be exercised.

Ms SYLVIA HALE: What are those powers?

Mr WEIR: Sometimes it is involved around disciplinary processes or movements, but in general he delegates those powers to the supervisors who are at the prison. For example, if a strip search is required to be conducted by an employee, those powers have been delegated by the general manager. I can put this as a personal opinion because while the original concept was probably put in place to comply with the requirements of the legislation, with the benefit of hindsight it has not been a bad outcome. It is actually led to probably better integration of their overall system, a better understanding among the different parties, improved accountability, or as good an accountability as you would expect. While it might not have been necessarily the full intent originally, certainly with the benefit of hindsight it has had some very good, positive outcomes.

Ms SYLVIA HALE: It seems to me that there is a very high involvement by the State Government in the conduct of the prison. You have 159 prisoners out of a total prison inmate population of 1,960, so it is just slightly less than 10 per cent. You have the whole costs of the state bureaucracy, as it were, still having to be met by the state. You have a very small prison. You have employees or government officials within the prison, and you have the state still continuing to meet hospital and psychiatric services. It seems to me that so many other significant costs are still being picked up by the government in relation to a facility that is very small and has low to medium security prisoners. What are the actual savings to the state in that system?

Mr WEIR: When Cabinet has made its decisions on the value for money assessable comparisons, we made sure that there have been any necessary adjustments so that it is, as I said before, an apples with apples comparison. But when you look at the total cost of the operation and I guess the services that are carved out in the industry, the carved out amount is a relatively small cost. I would not describe as a large component of the cost of the overall operation the two staff who are down there, if you look at the time they have apportioned to the private and public provider. But, quite simply, every time the contract has been renewed, our advice to government has been that it is a value-for-money operation. When you adjust it to include corporate overheads, which we then apply to all of our prisons, that comparison and conclusion remains valid.

The Hon. JOHN AJAKA: So you are saying it is—

CHAIR: Order!

The Hon. JOHN AJAKA: I just want to understand his answer, that is all, Chair.

CHAIR: He is saying that it is value for money, so that implies that it is cheaper. Do you have any more comments that you want to make against the terms of reference so that we may have a more orderly session of questions?

Mr WEIR: Madam Chair, there was an item around future plans to privatise prisons or prison services. Probably what I would just note at the moment is that the current contract is scheduled to expire in December 2010, so we will be going through the process of going to Cabinet to seek its views on the future of the contract, which is the normal process. I would also note that there is currently a PPP procurement being undertaken in the State of South Australia to establish several large new prisons at Mobilong—a 760-bed men's prison and a 150-bed women's prison. Those prisons will be publicly operated. There are some services within that PPP around perhaps interventions, such as psychology services or industries, where we have sought a bid from the private sector to make a decision on whether it would be value for money and appropriate for those services to be included in the PPP. But otherwise we have no plans at this stage for any further contracting out of the prisons.

Finally in relation to the term referring to the use and effectiveness of private security guards—Mount Gambier is privately operated, so perimeter security is managed by the private sector. We do not have any private sector operation of perimeter security after in our system. Item 6 refers to the experience of privatisation. I have pretty well covered that around the advice that it has been value for money, operationally effective, and performed its role in terms of the overall system. I guess I am comfortable to leave it at that as opening comments. In the absence of a written statement, hopefully that is of some use.

CHAIR: We will turn to questioning by Government members. We have only a limited amount of time for questions. I am foreshadowing, Mr Weir, that you may get a screed of questions from us on notice.

Mr WEIR: I will do my best.

CHAIR: Thank you.

The Hon. HELEN WESTWOOD: Do you have a definition of "value for money"? Is it value for money at 1 per cent less, 5 per cent, or 10 per cent? What is value for money?

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

The Hon. HELEN WESTWOOD: You said that the reasons for turning to privatisation were to improve performance and reduce costs. What were the areas in which service needed to be improved? What were you looking for in improved performance?

Mr WEIR: That decision was made by the government at that time in 1994. As a representative of the department, I cannot comment on what the then Liberal government was seeking to achieve as in outcomes. Its public statement was to improve performance and the cost of the overall system. All I can advise is that in terms of the Mount Gambier prison, since 1995 it has been value for money. When you look at the cost of all of our prisons, it has certainly been right at the lower end in terms of straight-out price. It is comparable certainly with our other low or medium security prisons.

The Hon. HELEN WESTWOOD: You also stated in your evidence that the performance is equal or comparable to other—

Mr WEIR: Comparable.

The Hon. HELEN WESTWOOD: It is just hard to understand where there has been improvement if that is one of the main aims. If it is comparable, one would have thought that it would be out there, if that was one of the government's main reasons for doing it.

Mr WEIR: There is a range of areas where Mount Gambier is perhaps at the top of our performance tree. Certainly the industry's area and the culture that operates in the prison is very noteworthy. We aim to have all our prisons performing at a superior level. We set targets for all our prisons. Mount Gambier has always been one of the high performers in virtually all of the targets that we expect of our prisons. Obviously I was trying to avoid extravagant language.

The Hon. GREG DONNELLY: Thank you for travelling from Adelaide to provide us with your very important evidence. As I understand it, Mount Gambier was the first privately owned prison established in South Australia. I take it from your evidence also the comment that the government of the day was conscious that it would be scrutinised very closely in terms of all the matters, some of which you touched on today—standards, practices, procedures and outcomes, et cetera. It seems to me that putting all of those into place in terms of standard operating procedures and a range of other matters, it is extremely complicated and complex.

You do not just go and buy one off the shelf. In other words you do not pay for a package to get all the things that you need to run a prison. They have to be developed and worked up. Were they all worked up and basically put into place before the prison opened, or has it been an evolving process to get all those things in place, if I may use that phrase, to run the jail at the standard that you say it is being run at currently?

Mr WEIR: It is a good question and it is a bit of both. We already had a range of standard operating procedures in place as a department that we expected the private operator to put in place, but like all of our prisons—

The Hon. GREG DONNELLY: Sorry to interrupt you but if you did not have a private prison at the time surely you would not have procedures in place for a private prison?

Mr WEIR: No, but we would have procedures or directions in place for all of our prisons. What happens is you might have standard operating procedures that you expect all prisons to adhere to, and then each prison will have local operating procedures, because many of them will depend on the design and layout of the facility, the programs that are provided and its role and functions in terms of security. So our prisons would all have different, for example, local operating procedures in general for high standard operating procedures they have to be consistent with. So as part of the commissioning process normally what happens is, whether it be publicly or privately operated, the operating procedures local to that prison are written as part of the commissioning process.

An example in the privately operated facility, the private provider, we formed a contract, there were specific results in that contract required, specific indicators that were going to form the basis of management, and then as part of the commissioning process operating procedures are written and then on an ongoing process the same as in the publicly operated prisons new operating procedures might be put in place or revised, and new local operating procedures might be put in place or revised. The same thing would be happening, for example, with the new PPP prisons as part of the commissioning process. Operating procedures will be written that are specific to that facility.

CHAIR: Before the crossbench members commence questions, I remind anyone who is recording the proceedings to obtain a copy of the broadcast guidelines that are available on the table beside the door.

The Hon. ROY SMITH: With respect to Mount Gambier, is that the most recently new prison?

Mr WEIR: It is the most recently constructed prison. There would be no other prisons constructed since Mount Gambier was in 1993-94.

The Hon. ROY SMITH: We have previously had some testimony to indicate that the cost of running a prison can link closely to its design and a more modern prison is likely to be cheaper to run. Would that be the case with Mount Gambier?

Mr WEIR: Certainly, Mount Gambier had a more modern design than some of the other prisons. So the design and layout does have very much an effect on the costs of operating a prison.

The Hon. ROY SMITH: So that could contribute to the cost effectiveness of the prison operations today?

Mr WEIR: Yes.

The Hon. ROY SMITH: You mentioned that a new prison is in the pipe works but that will be publicly operated.

Mr WEIR: That is right, it will be operated by the public sector.

The Hon. ROY SMITH: And since Mount Gambier was originally given the contract there has been no consideration given to privatising other portions of the prison system in South Australia?

Mr WEIR: I cannot comment on whether other governments may have given consideration to it, but we as a department have not actively explored any further contracting out of our prisons. When the prison was contracted out in 1994 there were subsequent to that other contracts put in place for prisoner movement and electronic monitoring, which was not conducted by us before anyway. We are simply buying technology from the marketplace.

The Hon. ROY SMITH: But the success of the privatisation of Mount Gambier has not been so successful that the Government is committed to a new private prison with this new one.

Mr WEIR: That is a matter for Cabinet.

The Hon. JOHN AJAKA: Can I take it that the Mount Gambier prison was purpose built to be on the plans a private prison; it was not already an existing facility that was in public hands that was subsequently turned over into private hands?

Mr WEIR: Good question. It was designed and built and at the time it was intended to be operated by the public sector. There was a change of government and a decision was made to increase the capacity of the prison within the perimeter proposed at the time and operation of the prison was put out to the marketplace.

The Hon. JOHN AJAKA: One of the areas of concern I have—and if you could help me on this I would be grateful—is that it is one thing to purpose build a brand-new prison with the intention of it being private, such as what we have in Junee, but it is another thing if you taking a very old existing prison that is currently in public hands that has some intrinsic problems within in because of the age, the way it was built, the moveability aspects around it, and suddenly putting that into private hands and trying to compare apples to oranges, as the previous witnesses said. Do you have any views on that?

Mr WEIR: I think it is fair to conclude that whether a prison be publicly or privately operated, as was mentioned before, the design can have a significant effect on the ongoing costs of operation. It is not just about staffing, obviously; it is about sometimes, in terms of roles and functions, the movement of prisoners, the management of the flow of prisoners through the system, energy costs. All of these things are factored in but, yes, there is no doubt the design itself has a significant effect, as does the culture of a prison, whether it be publicly or privately operated, on the staffing requirements.

The Hon. JOHN AJAKA: Do I take it that you believe that there needs to be an integration between the public system and a privately operated system from a department's perspective, either by having one, two or three personnel or having some of the systems or records integrated?

The Hon. GREG DONNELLY: Point of order: My point of order is just so Mr Weir is clear about this. Decisions over integration are normally policy matters will fall within the purview of the government of the day. I am just wondering whether or not that becomes an issue in terms of asking for his opinion about that position.

CHAIR: I think Mr Weir is probably at a suitably high level within the department to be mindful of those considerations when he is framing his answer.

Mr WEIR: Certainly.

The Hon. GREG DONNELLY: My point of order was to ensure that that is understood by everyone in the room.

Mr WEIR: I think I best start by saying that I have seen various models for the management and operation of prisons, both public and private, perform exceptionally well. In the case of Mount Gambier prison, at the time the circumstances required that model to be adopted, but if I step back and say what it takes to manage an effective system and to ensure a prison is effective, those factors are not related to being publicly or privately operated. They are about good management practices. So having clear roles and functions, clear accountability, a strong focus on a good culture, a strong focus on staff development and accountability, clear procedures and policies and monitoring and ensuring that the behaviours and the performance is focused on the outcomes the public wants are the key success factors for whether a prison be publicly or privately operated.

At the time obviously when the prison was contracted out there was a reasonable amount of controversy, I think it is fair to say, and conjecture and scrutiny applied to the process. So there were a number of mechanisms put in place to be absolutely sure from the risk management perspective that we got the best possible outcomes as a department. The management structure that has been put in place at Mount Gambier has worked for Mount Gambier. It has helped, I believe, address some risk factors. When we have seen some models not work as well as possible, whether it be public or private, it is when a prison is a fair distance from the head office, not effectively integrated and operating as part of the overall system. So anything that can improve communication, ensure a strong focus on accountability, whether it be public or private, I think is part of the recipe for success.

Ms SYLVIA HALE: When you said that Mount Gambier seemed to be comparable with low to medium security prisons run by the State, does that mean that when you take into account a range of factors it is neither demonstrably far better nor demonstrably far worse, on average, than the other prisons? I realise it might do better or worse on particular aspects but overall.

Mr WEIR: I am almost drawing the mathematician in me out. In terms of price, Mount Gambier prison, as I mentioned before, is at the lower end of the continuum for us. There are probably one or two other prisons that are in the same ball park with respect to price. They are also well-performing prisons and they are also in general in regional areas. We only have nine prisons. So apart from saying that Mount Gambier prison is good value for money and is operationally effective, I am not sure how much further I can go on that. We have given the advice to Cabinet several times now in quite great detail. They have accepted the arguments we have put around the balance between price if compared to other prisons but, more importantly, value for money in terms of the services we get. Irrespective of whether it is publicly or privately operated, I think a factor that has always been taken into account, too, is the regional economic benefit that has been derived from having a prison operating at Mount Gambier, the same as there is for other areas such as Port Lincoln.

Ms SYLVIA HALE: Does the regional economic benefit suggest that wages levels are lower in those areas? If there is more competition for jobs you are more likely to get stability in terms of retention of staff?

Mr WEIR: I partly covered that before. Mt Gambier prison appears to be an employer of choice in the Mt Gambier area. My recollection is Mt Gambier traditionally has one of the lower levels of unemployment in regional areas and there is a waiting list of people to work at Mt Gambier prison. I can only best draw on the survey that we regularly do. The feedback from the staff in general is very positive about working at Mt Gambier prison in terms of the environment and the way they manage the staff.

Ms SYLVIA HALE: Are the wages and conditions in Mt Gambier comparable with the wages and conditions applying to prison officers in the public system?

Mr WEIR: Would you believe that is the one number I did not look at before I came over? But I know the latest enterprise bargaining outcome for Mt Gambier prison and that was a 9.5 per cent outcome over two years. The first year was 5.0 per cent backdated to 1 July 2008. Now, of course, that is a matter for negotiation between staff through the enterprise bargaining process.

Ms SYLVIA HALE: Does that suggest they started off at a very low level?

Mr WEIR: No, I am simply providing you with the information.

Ms SYLVIA HALE: You do not know whether the pay levels are comparable?

CORRECTED TRANSCRIPT

Mr WEIR: I have not looked at how the numbers adjust because there is always a timing issue as well. From recollection, the last pay rise for the public sector was in October 2008 and that was approximately a 3.5 per cent increment. I am happy to get further information and provide that to the committee at a later date.

CHAIR: Which unions cover prison officers in the publicly run prisons and Mt Gambier?

Mr WEIR: The Public Service Association covers prison staff in South Australia, though some staff choose to be a member of what is known as an Officers' Legal Fund which is, in effect, a law firm. From recollection that does not have representation before the Industrial Relations Commission of South Australia or cannot and, from recollection Mt Gambier was the Miscellaneous Workers Union.

CHAIR: Thank you for attending, your evidence has been very informative. As I said, I think the committee secretariat will contact you with some further questions, which we would greatly appreciate you responding to.

Mr WEIR: I hope it was useful. I tried to choose my words carefully.

(The witness withdrew)

(Short adjournment)

FRANK MENNILLI, Assistant Commissioner of Police, Commander for the south-west metropolitan region, NSW Police Force, of 6 Fetherstone Street, Bankstown, sworn and examined:

CHAIR: If at any stage you consider that any of the evidence you are going to give, or any documents you might wish to tender, should only be seen by the committee, would you please advise the committee? The committee has resolved to ask witnesses to answer any questions that you might take on notice within 21 days of when the committee secretariat sends them to you. Do you want to make a brief opening statement?

Mr MENNILLI: I thank you for the opportunity to address the inquiry on behalf of the commissioner and police officers in the NSW Police Force. I am Assistant Commissioner Frank Mennilli. I am the regional commander for the south-west metropolitan region. As a member of the NSW Police Force Executive, I have the corporate responsibility of spokesperson for custody and corrections. As the corporate spokesperson for custody and corrections I liaise with the Department of Corrective Services relating to a range of prisoner-related issues, including the transfer of prisoners from Police to Corrective Services facilities, prisoner transport between Police, Corrective Services facilities and courts, the security of prisoners in courts and prisoner transport to medical and/or mental health facilities for Corrective Services facilities.

Pursuant to this inquiry the NSW Police Force has outlined a response to the three relevant areas of the terms of reference: the impact of privatisation on public safety and rates of escape and rehabilitation programs; further plans to privatise prisons and prison services in New South Wales, including court escort and security unit; and the experience of privatisation of prison services in other Australian and overseas jurisdictions. I believe that submission is before the committee.

Madam Chair, in terms of my address to this inquiry, I respectfully submit that the New South Wales Police Force in principle supports the privatisation of prisons and prisoner-related activities. Guiding our support is the need for the New South Wales Police Force to have access to reliable, efficient and timely custody and transportation services. The New South Wales Police Force needs to be free to free-up police resources currently engaged in those activities to attend to our core responsibilities; that being the protection and life and property through prevention and detection of crime, and not transporting and guarding prisoners.

As part of this address, I would respectfully like to elaborate on the implications through which police resources are depleted and directly impacted upon by resource limitations and budget savings within the Department of Corrective Services. This has resulted in the Department of Corrective Services' inability to meet its core responsibilities regarding prisoner security and transport. In the absence of any alternative, those responsibilities are falling on local police. In the submission before the Committee I have highlighted a number of examples confronting members of the New South Wales Police Force on a regular basis. Too often, New South Wales Police Force officers have to fulfil the roles of the Department of Corrective Services to ensure the safety and security of prisoners so that prisoners can attend court, be returned to jails, be guarded, medically assessed and receive medical treatment.

However, in terms of security and safety in courts, the predominant concern is for the victims of crime and their welfare relating to the court system and having matters resolved as quickly as possible. If police did not transport prisoners when Corrective Services is not available, it is those victims that often suffer as the court matters continue to extend over time. These issues are more prevalent in regional and rural New South Wales where police transport prisoners, thus removing police from their local community to undertake that function. This impacts on local response times and the availability of police. However, the problem is statewide, as police are often called away from policing duties to transport, guard and care for prisoners, impacting on police core service delivery.

One of the key issues facing the New South Wales Police Force officers is the practice of the Department of Corrective Services [DCS] facilities to only accept prisoners within the facility's catchment area. A recent example is when police were required to transport prisoners to the Parramatta cell complex. Police were advised that both DCS facilities at Parramatta and Surry Hills were full. Police made inquiries of the DCS Penrith facilities. The complex advised that it was not able to take the prisoner. At that time there were approximately 20 vacant beds and only one prisoner in custody. The prisoners remained in police custody, as Penrith would not take prisoners from outside the catchment area. Police had to call on additional resources to care for and retain custody of prisoners until the first available court sitting.

That is just one example of diverted police time, not only in trying to locate an available bed but to get the Department of Corrective Services to receive prisoners. In that case, officers could have transferred the prisoner to Penrith, only a short distance away, and return to core policing duties. This is a continuing and growing occurrence in the metropolitan area. As you may be aware, currently there exist Department of Corrective Services' cells in Parramatta, Penrith, Campbelltown and Surry Hills. Too often those premises are full and unable to take prisoners, requiring the police to retain them in police cells. In regional and rural New South Wales there are myriad examples where police are taking longer to respond to the needs of their local community, due to the time and resources involved in prisoner security and transport issues. Many examples of this have been outlined in the submission before the Committee.

In terms of privatisation, the Junee jail is working well. However, it needs an appropriate prisoner transport infrastructure. Within the facility the transporting of prisoners is reliant upon a skeleton transport service operated by Corrective Services. However, practically the majority of prisoners are transported to and from areas by police, constantly placing strain on the resources within the southern region, particularly in the Cootamundra Local Area Command. This command at times has every vehicle involved in prisoner transport. The current rostering practices for the Department of Corrective Services does not allow for full coverage of court facilities.

Within a number of courts the pick-up occurs prior to 4.00 p.m., when court generally finishes. This practice requires the police officers to maintain custody of prisoners, or return them to the appropriate custodial facility. Southern region will be further impacted with the completion of the new jail at Nowra. Once again, this has been constructed without a dedicated transport system, which will place further pressure on police resources within the southern region.

In the northern police region, there is a limited service where prisoners are dropped at the Tweed Heads court. Then it is incumbent on New South Wales Police Force officers to escort prisoners to Grafton jail. Similarly, a number of female escorts are conducted from the Mulawa Detention Centre to a court by New South Wales Police Force officers simply because the Department of Corrective Services cannot perform the service. If we as police were to stop conducting this tomorrow there would be severe implications for the courts and the prisoners involved, not to mention the impact on the victims of crime.

Madam Chair and honourable Committee members, in summary the New South Wales Police Force supports the concept of privatisation of prisons and prison-related services and would ask for ongoing input into this decision especially in terms of an efficient and effective resolution to the transportation, guarding, and medical assessment issues outlined in my address and the accompanying paper. The New South Wales Police Force would ask that any agreement or move towards privatisation address the security and transport issues so that the New South Wales Police Force can focus on providing a service that the community rightly demands from its police.

On behalf of the New South Wales Police Force I would also ask that any decision to privatise involve ongoing consultation with the New South Wales Police Force on the parameters that accompany that decision. We recommend contractual restrictions as outlined in our paper in terms of the ability to subcontract, security checking and the required legislative reform. We further recommend due consideration be given to the ongoing ability of the New South Wales Police Force within Department of Corrective Services facilities to collect and conduct intelligence operations irrespective of whether they are owned and managed by the Department of Corrective Services or a privately contracted agent. Madam Chair, I thank you for the opportunity to address the inquiry and allow the New South Wales Police Force to place its submissions before you.

CHAIR: Thank you. Before we proceed, so that we can ask you questions based on your submission, would someone like to move that we publish submission No. 442? It has been moved by the Hon. John Ajaka. Are all members in favour? I declare the motion carried.

The Hon. TREVOR KHAN: Deputy Commissioner, do I take it that your submission essentially is that to date Corrective Services has done a pretty ordinary job in prisoner transfer and the like?

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: That is, in essence one public service entity and another public service entity have been able to mutually get their act together in terms of who is responsible for moving prisoners around New South Wales?

Mr MENNILLI: I think it is a matter not only of who is responsible, but actually having the ability to transport those persons.

The Hon. TREVOR KHAN: I am not being critical of anything you say. I practised for two decades in country courts so I saw what you describe virtually every day in practice. Let us assume that I am absolutely ad idem with what you say. My concern, however, is this, and I will ask you to comment: what you describe is an inadequate provision of transfer in security services by Corrective Services and you assume it will be better when it is privatised because suddenly Corrective Services will fund all these additional bodies to run around the countryside picking up people, some of whom have not been convicted of anything yet, which the department has not done for decades. Why do you say they are suddenly going to do that which they have failed to do for all this time?

Mr MENNILLI: That is why I hope we would have some involvement in any contractual agreement and it would be made quite specific within the contract, whichever organisation it may be, that they meet those requirements.

The Hon. TREVOR KHAN: If Corrective Services is going to save money out of this exercise, and that seems to be a factor, it would appear that they will have to spend a heck of a sight more money on relieving your officers from doing the job they are currently doing, as far as the Department of Corrective Services is concerned, for nix.

Mr MENNILLI: From my perspective I just want the job done by the person who is supposed to do the job and not the police.

The Hon. TREVOR KHAN: Right. Let us assume we agree that that is an appropriate outcome. I suggest that is not an issue of whether it is privatised enough or not, it is an issue of Corrective Services committing enough financial resources to the job of moving prisoners themselves.

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: It is an issue at perhaps a Cabinet level of the Minister for Police and the Minister for corrective services finally talking to each other and working out whose responsibility the movement of prisoners is.

Mr MENNILLI: In my mind it is quite clear whose responsibility it is. It is Corrective Services' responsibility and they should perform that role.

The Hon. TREVOR KHAN: Right. Again we are ad idem. Let us move to the next thing. I want to deal with what happens in court. Often people are brought into custody and have not been convicted of anything but have been charged.

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: They are brought before a court. That is the normal procedure, you hope.

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: If they remain in custody as, at that stage, an innocent person, they are brought before a court and a degree of security has to be provided to protect not only members of the public but also members of the judiciary and the court staff. Is that not right?

Mr MENNILLI: Are you talking about bail-refused persons?

The Hon. TREVOR KHAN: Bail-refused persons, yes. Is that right?

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: Do I take it that one of the issues we are talking about with escort services and the like is that if all this is privatised, the escort services and the keeping of these people, the potential is that we

will have some bloke in a grey uniform with something akin to a bouncer's emblem on his jacket being responsible for ensuring the security of people in court—

The Hon. GREG DONNELLY: Point of order: I think the issue of a bouncer's emblem needs to be clarified.

The Hon. TREVOR KHAN: What I want to put is this: A person who is not—

CHAIR: Order! I will rule on the point of order. It is up to members to frame questions in the way they want and if Mr Khan chooses to frame questions in more colourful language than some others, it may just be a bit more entertaining for us all.

The Hon. TREVOR KHAN: You understand what I am putting? We are essentially going to have some civvy ensuring the responsibility of people in court, including judicial officers, members of the court staff and members of the public, without necessarily knowing whether that person is trained or capable of doing it.

Mr MENNILLI: That would not be the case. As I said in my address, I believe we would have some involvement within these parameters where these people will be scrutinised to ensure that properly trained people will be performing the role.

The Hon. TREVOR KHAN: It is a situation where you could have people who have not been convicted of any offence but have been refused bail being in the control of private contractors.

Mr MENNILLI: I think that is irrelevant. If you have a person who has been charged with a criminal offence and bail has been refused it is someone's responsibility to have that person in custody, and it should not be the New South Wales Police.

The Hon. TREVOR KHAN: We could get Nitty Joe from down the road to do it. That is not appropriate, is it? The person is in the custody of the State.

Mr MENNILLI: If he meets the criteria to perform that role, he can.

The Hon. TREVOR KHAN: Do I take it that the fundamental part of your submission—I am not being rude—is "This shouldn't be our responsibility because we should be out catching crims"?

Mr MENNILLI: If I may elaborate a little further in relation to the implications and what the functions are, we currently have a structure in place where there are a number of DCS cells—Surry Hills, Parramatta, Penrith and Campbelltown—in the metropolitan area. Essentially these facilities are there for bail-refused prisoners to be taken there and into the custody of Corrective Services to place these people before the court. Similarly, when a person goes before a court and bail is refused and that person is remanded in custody, they go back into that area. There are a myriad issues with that where DCS is refusing to accept prisoners when it is their responsibility. They have no beds available. In some cases the Surry Hills complex is virtually used as a pseudo jail because of the numbers there and there are persons actually serving a jail term.

From that perspective, when we have a person who has been refused bail and is to be remanded in custody, then whether it be Corrective Services or someone that is contracted to perform that role is totally irrelevant as long as they perform the role so that the police officer can be back out on the street. In relation to the courts, and you mentioned your experience in rural areas, whether the person is bail-refused or has been transported from a jail, we attend the location. Because of time restrictions or whatever, you will find the prison van will arrive and on a number of occasions leave prior to the court closing at 4.00 p.m. In most cases we all know that if they have not processed them before 4.15 p.m. or 4.30 p.m. the transport van will have gone. Then it is incumbent on the New South Wales Police Force to transport that prisoner back to a jail. That can be a round trip of anything up to eight or nine hours.

The Hon. TREVOR KHAN: What is the basis for your conclusion that if you had a private contractor the van would not leave at 3 o'clock in the afternoon? If you cannot convince Corrective Services to do the right thing by the police and by the community of New South Wales, what would suddenly make it better? You can accept that in relation to the jail system this Committee has been doing the reverse on the question of why a private contractor cannot do it any better. I am asking you: Why do you say that a private contractor will do any better than Corrective Services in moving people out of lockups?

Mr MENNILLI: I would hope that a private contractor, whose contract stipulates that that is its function, would be able to achieve that. That is what I am relying upon.

The Hon. TREVOR KHAN: You have spoken about what I will call the 24-hour Corrective Services facilities in Sydney. You have a facility at Moree that performs a similar function, does it not? Corrective Services blokes staff it, they can hold prisoners there for 24 hours and they can then move them on to Tamworth, Dubbo or whatever. Is that right?

Mr MENNILLI: Yes.

The Hon. TREVOR KHAN: Do you envisage that a facility at Moree that deals almost exclusively with 90 to 95 per cent of Aboriginal persons who have been refused bail is an appropriate facility to be privatised?

Mr MENNILLI: Yes. Any facility that currently impacts on policing and policing resources, whether or not it is through the DCSLs, should be privatised and these people should be appropriately trained and employed to perform those functions.

The Hon. TREVOR KHAN: This might go outside your area, but let us take your position logically to its conclusion. I take it that large sections of the NSW Police Force could now be privatised?

Mr MENNILLI: I do not agree with that, no.

The Hon. TREVOR KHAN: If it gets blokes out on the street we could look at all the corporate functions that are currently being performed by uniformed officers and privatise those.

Mr MENNILLI: We have general support within policing at the moment of some 5,000.

The Hon. TREVOR KHAN: I know that, but we could go a lot further.

Mr MENNILLI: If it would result in putting more police out on the streets, yes.

The Hon. TREVOR KHAN: We could develop cart blanche simply by privatising large parts of the police service and Corrective Services as that would achieve one further objective in the exercise?

Mr MENNILLI: Your comment slants somewhat towards being flippant. I believe that the New South Wales police—

The Hon. TREVOR KHAN: I have always been accused of that.

Mr MENNILLI: The New South Wales Police Force is doing an outstanding job. I doubt whether anybody else could perform that role. All we are asking is that we be allowed to perform the role that the community expects.

The Hon. TREVOR KHAN: Do the Commissioner of Police and the Commissioner of Corrective Services hold regular meetings to work out the obvious dysfunctional aspects between the two departments?

Mr MENNILLI: Again, I am not au fait with all those functions but in my role I have had a number of meetings with the Commissioner of Corrective Services and his executive. I have also dealt with the Department of Juvenile Justice, purely on the issues of the transport of prisoners and the management of prisoners.

The Hon. TREVOR KHAN: Because you are holding some of the meetings do you find Ron Woodham an obliging and facilitating character?

Mr MENNILLI: I have had no problems in dealing with him.

The Hon. TREVOR KHAN: You said that you had no problems in dealing with him. Do I take it, therefore, that you have been able to progress issues such as prisoner transport?

Mr MENNILLI: We have tried to discuss and negotiate positions. Unfortunately, in my position it occurs mostly over the weekends or in the middle of night. I get phone calls or emails from members of staff who are

complaining as they are not able to lodge a prisoner or all their resources are tied up. I then try to obtain answers and I try to eliminate the problem. Unfortunately, it is an ongoing battle.

The Hon. ROY SMITH: Deputy Commissioner, I can understand that it would be a logistical problem having transport people waiting around to determine whether or not someone has or has not been granted bail. At the end of the day you do not know how many people need to be transported—it is hard to determine those numbers—or how many people will be arrested and remain overnight in police cells or court cells. Is it a big problem for you to try to estimate the numbers?

Mr MENNILLI: It is, purely on the basis that we should not be performing that function. We should be able to arrest a person. If his bail is refused he would then be lodged in a particular location and it then should be the responsibility of Corrective Services, or any other person to deal with him.

The Hon. ROY SMITH: Correct me if I am wrong, but I have been told that the police used to perform this function. The custody of people in court cells or DCS cells used to be a police function, and transporting used to be a police function.

Mr MENNILLI: Again, from my recollection, I do not believe that we have ever had to function within the DCS cells, for example, at Surry Hills and Parramatta. Thirty years ago I believe we had some involvement in their transportation.

The Hon. ROY SMITH: The point I am making is that it is problematic. The police would not want the job because people have to sit around waiting in the expectation that there might or might not be a need to transport or look after some prisoners. You gave an example of police not wanting to take prisoners. Even though they had the beds they did not have the staff to look after them. I imagine that a private enterprise would have the same sorts of problems in getting value for money out of the system. In a lot of these instances the police are there in the first place. Would it not be easier if the police, with a commensurate increase in staff, took responsibility for them so that they knew immediately how many people would be in court that day, how many people had been arrested and how many would remain in the cells? Should the police not look after them rather than DCS or a private company?

Mr MENNILLI: I do not think that is appropriate. However, that is only a small part of it. We are going to the jails, picking up prisoners from the jails, taking them to the court, guarding them, and taking them back to the jails. Let me give you as an example a prisoner who is serving a jail term who had to attend court in relation to a domestic matter. Because the matter was not a criminal matter, Corrective Services would not transport that prisoner. In order to get that person to court we had to take two officers and a motor vehicle off the road to pick up that person from the jail, take him to the court, have the matter heard, and then return him to the jail. If we did not do that it would have inconvenienced the estranged wife of the individual, the court and everyone else.

These situations occur on too many occasions and it then comes back to the police. We have had situations where the Chief Magistrate was contemplating taking out a warrant for contempt of court in relation to the transport of prisoners from the jail to a courthouse because a local magistrate was complaining that he was not getting prisoners there on time because of the constant inability of Corrective Services to get them there. In order to assist, the police again stepped in. It has reached the stage where we are doing that too often.

The Hon. ROY SMITH: Would you say that these problems exist because Corrective Services staff are not performing their job? Are they not driving fast enough, or is it a management issue? Is management not rostering on staff or is it not responding to these shortages?

Mr MENNILLI: I am not au fait with the Corrective Services management structure. From the contact that I have had, and as a result of the matters that have been brought before me, I think some of the difficulties have been caused by the rigour relating to some of its policies and the inflexibility of some individuals.

Ms SYLVIA HALE: If the Department of Corrective Services is not employing sufficient people in the court escort services is it either failing to provide those services in a number of instances or requiring staff to work large amounts of overtime? Are those are the only two options that the DCS has—either not to provide or to require staff to work a lot of overtime?

Mr MENNILLI: I do not think I could answer that question on its behalf. I do not know the exact reasons why, but that is why I support in principle its privatisation because it is obvious, in the time that I have dealt with it, that for whatever reason it cannot perform the role. It could not get worse.

Ms SYLVIA HALE: One of the complaints that has consistently been made by the Commissioner of Corrective Services relates to excessive overtime loads, or excessive overtime being worked. From what you are saying it seems that the department does not have sufficient personnel. Therefore, in effect, the outcome is either not to provide the service or to require large amounts of overtime to be worked.

Mr MENNILLI: I think also as I mentioned, the rigour in their policies and systems, which also has an implication.

Ms SYLVIA HALE: I understand that originally the police in fact were responsible for providing many of the services that DCS provides through the prison escort service; there was quite severe public questioning as to why there were not more police on the beat and as a result those services were taken from the police and handed to the Department of Corrective Services. Is that your understanding of the origins?

Mr MENNILLI: No it is not. From my understanding, I would say we had a very limited capacity where we would assist in the transportation, but it was always the function of Corrective Services to ensure that prisoners were transported to and from the jails to the court and the management of those individuals.

Ms SYLVIA HALE: So what you see is the DCS over time transferring more of those responsibilities to the police department and away from itself?

Mr MENNILLI: I think so. It has been more through a matter of as time progressed it got harder and harder for certain tasks to be performed, and it just kept coming back to the police to perform those roles regardless. Otherwise the community would suffer.

Ms SYLVIA HALE: Are you aware that the Police Association has written, in fact contacted I think every member of this Committee—

The Hon. TREVOR KHAN: Not me.

The Hon. GREG DONNELLY: Not me.

The Hon. TREVOR KHAN: Not me. They think I am flippant.

CHAIR: Order!

Ms SYLVIA HALE: That speaks for itself, the very nature of the interjection.

The Hon. GREG DONNELLY: Point of order: it is not a flippant remark. I have not received either by letter or by e-mail any correspondence from the Police Association. I would like that on the record. So, it is not a flippant remark by myself or, indeed, other people around this table.

Ms SYLVIA HALE: Madam Chair, may I later, for the benefit of Committee members when I have had a chance to go to my office, obtain a copy of a letter and then circulate it all Committee members?

CHAIR: That would be very kind of you. Thank you.

Ms SYLVIA HALE: Assuming that my understanding was correct, are you aware that the Police Association has stated that it is against the privatisation of prisons and prison transport services?

Mr MENNILLI: Yes, and can I add, I was made aware of their views, but at the same time they were the first one to ring me up to complain when police resources are taken up with transporting prisoners. Only in the last week I had another matter that has been addressed through the association over police resources being tied up over prisoner transport. Their view is that it is not the role of police, Corrective Services should do it, but they do not have an answer to another opportunity to move forward to try to resolve the issues.

Ms SYLVIA HALE: But the question is not, therefore because they are not doing the job, we should privatise it. Surely the question is that the Department of Corrective Services must be given more resources to do the job?

Mr MENNILLI: From my perspective and that of the New South Wales Police Force, it is irrelevant whether it is Corrective Services or a public entity, as long as they perform that function and it is not incumbent on New South Wales police to carry the load.

Ms SYLVIA HALE: I believe Corrective Services is regularly required to transport inmates to police stations for questioning on further charges. This can sometimes involve up to three correctional officers. Why do the police not attend the jails and interview the inmates there?

Mr MENNILLI: That is not a regular occurrence. It happens at different locations for a variety of reasons, which I would not be able to give in an open forum.

The Hon. TREVOR KHAN: Why not just ensure that the prisoner really gets into strife? Do that.

CHAIR: Order!

Ms SYLVIA HALE: You talk about wanting involvement in the contractual arrangements with any private contractor. Can you tell me if the police have been consulted about any of these proposals to privatise either Parklea or Cessnock or have they ever been involved in the formulations of the contracts and the key performance indicators for June?

Mr MENNILLI: Not to my knowledge.

Ms SYLVIA HALE: So you regard yourself as having a key interest in what happens in Corrective Services, yet have been excluded from any involvement in significant issues?

Mr MENNILLI: Yes, and as I mentioned in my address, similarly with the Nowra jail, from my understanding it is being built without a transport service. That is going to fall back on us again. That is why I am saying we need to be involved in that aspect.

Ms SYLVIA HALE: So what we are seeing is a sort of silo mentality rather than a Commissioner of Corrective Services who is prepared to take a holistic view of what should be done?

Mr MENNILLI: I can only speak for New South Wales police.

Ms SYLVIA HALE: Again, you are a silo unto yourselves.

The Hon. HELEN WESTWOOD: Deputy Commissioner, you mentioned the inflexibility by some individuals as one of the reasons DCS is not providing the service you believe it should. When you say "individuals", are you talking about management? Who are you talking about?

Mr MENNILLI: Whoever is running those facilities. Most times it occurs in the middle of the night or late in the day. The situation with Penrith, that I referred to, was that there were plenty of vacant beds, it is the closest location, but because someone came up with a structure that says this person should go to Parramatta, they refused to accept it. There is just no common sense.

The Hon. HELEN WESTWOOD: In your submission you say there is a lack of clarity of responsibilities for prisoners under various circumstances and that in the absence of that responsibility is forced to local police. I am just not clear how privatising that service will give you and the DCS clarity about whose responsibility it is?

Mr MENNILLI: If I can preface that by saying when I first was given this portfolio there were a number of inquiries at that time, so much so that it went to the Crown Solicitor for advice in relation to roles and responsibilities. If I can reiterate the matter I mentioned where you have a prisoner serving a jail term and is required to attend court on a simple matter over a domestic violence situation. Because it was not a criminal matter, they refused to transport him to court. But he is still a prisoner under the care of Corrective Services. To have that matter progress in court, the New South Wales Police Force had to transport him, guard him at court, be responsible for him and then return him. That is why I say any transport movement or guarding—certainly it

would be a fairly elaborate MOU to be put in place—would articulate all those things and functions so that whoever has the contract, whoever performs the role, must meet all these criteria.

The Hon. HELEN WESTWOOD: Have you communicated that to the government of the day? Obviously it is a long-term problem. Has that been communicated to government that it needs to be addressed whether it is by way of legislation or regulation?

Mr MENNILLI: I know you are only looking at the privatisation of Corrective Services but Corrective Services and Juvenile Justice and the placement and transport of juveniles is a complete nightmare for New South Wales police, if I can put it in those terms. There have been constant representations. Can I just say I was surprised when I saw the representation from the Police Association .

The Hon. TREVOR KHAN: And public representation—very public.

Mr MENNILLI: Yes. I have almost daily representation from police officers and the Police Association complaining about police officers having to perform the role, particularly when we are transporting people over long distances. So, it is an ongoing issue. So, there is a fair bit of correspondence that has been put in place.

The Hon. HELEN WESTWOOD: What has been the feedback from that?

Mr MENNILLI: Very little.

The Hon. HELEN WESTWOOD: You say that New South Wales police should be consulted in the development of a privatised model. Have you been?

Mr MENNILLI: No.

The Hon. GREG DONNELLY: Thank you for attending today. Unlike the Greens who are pathologically hostile against the New South Wales Police Force—

Ms Sylvia Hale: Point of order!

The Hon. GREG DONNELLY: We do not see you as operating in a silo in New South Wales. We appreciate the great work and service that the New South Wales Police Force provides to the citizens of New South Wales.

Ms SYLVIA HALE: Madam Chair, I am delighted that Mr Donnelly provides a constant source of amusement.

The Hon. GREG DONNELLY: It is a very serious point that I am making. It is not a source of amusement.

CHAIR: Please continue.

The Hon. GREG DONNELLY: Deputy Commissioner, my question goes to the question of your knowledge of privatised court escort operations in other jurisdictions in Australia or overseas. Do you have any knowledge or understanding about that? If you do, would you care to comment on that?

Mr MENNILLI: My knowledge is limited to the inquiries that I have made and documentation I have read. Last year I attended a conference in Western Australia at which there was a presentation made by a company that currently is involved in the privatisation of transport of prisoners. I found from the presentation that the structure that they had in place and the vehicle that they had was far superior to anything we have in place at the moment.

Last weekend I held discussions in relation to the South Australian police who have certain privatisation in the watch-house and in other areas. They have found that it works quite well. It takes responsibility away from the police. Based on what I suppose you would say is limited knowledge of what has happened, I find that there is nothing to say that it will not work, and work effectively in New South Wales.

The Hon. GREG DONNELLY: One of the ongoing themes of concern is that any movement from private to the public in terms of dealing with matters—for example, the running of jails and the transporting of prisoners—is such that it is not possible to control and oversee that to a standard which is at least equivalent or better than that provided by the public sector currently in terms of standards, benchmarks, quality control and those types of

arrangements, including practices and procedures and operational matters. A number of the opponents of the issue constantly argue that. Would you care to comment on that?

Mr MENNILLI: It would be extremely difficult for me to be able to make a judgement comment on it. I can only say about what I have seen in the literature I have read. I have had an opportunity to inspect the vehicles that were used for the transportation. I think it was LCS that was one of the companies. They were very superior vehicles. Their systems were very, very good. It is like anything else: it is whatever the contractual agreement is, and what are the expectations or requirements. My view is it can only get better. It cannot get any worse.

The Hon. GREG DONNELLY: Just from listening to you answering questions asked by other members of the Committee, I gather that the view you have formed—and perhaps I can go further and say from the frustration—that is reflected in some of your answers to questions over the interface between the police and the official transferring of prisoners is something that has built up over a period, or is it something that is recent? I gather it has built up over a period, but I would just like to clarify that.

Mr MENNILLI: I can only give evidence from my perspective over the last couple of years that I have had this portfolio. I would say that it has always been there, but I do not think it has been there to the extent of what it currently is, purely because I believe we are very effective in what we are doing. We are arresting a number of persons, but with that comes a lot more work having to be done with the transportation of these people.

CHAIR: Thank you very much for giving your evidence today and for livening up our hearing. If we have any questions that the Committee might like to put on notice, are you happy to deal with those?

Mr MENNILLI: I am quite happy to assist.

Ms SYLVIA HALE: Before the Deputy Commissioner leaves, I seek permission to table a copy of the correspondence from the New South Wales Police Association and also to provide him with a copy.

The Hon. GREG DONNELLY: "Him" being the Deputy Commissioner.

Ms SYLVIA HALE: I referred to him by that title. I move:

That the document be tabled.

Motion agreed to.

Document tabled.

CHAIR: Thank you very much attending.

Mr MENNILLI: Thank you.

The Hon. GREG DONNELLY: I am not being difficult, but is this a media release? What is it? It is not a letter.

Ms SYLVIA HALE: It is a circular, No. 8.

The Hon. GREG DONNELLY: It is a circular by the Police Association to the Premier.

Ms SYLVIA HALE: Yes.

(THE WITNESS WITHDREW)

GARY LEON STURGESS, Executive Director, Serco Institute, 22 Hand Court, London, United Kingdom, sworn and examined:

CHAIR: The Committee welcomes Mr Sturgess, who has provided us with submission No. 407. If at any stage during proceedings there is any evidence or documents you wish to give that you would like the Committee only to access, let us know and we will consider your request. The Committee requests that any questions taken on notice be replied to within 21 days from the date on which the secretariat gets those to you. Is that okay?

Mr STURGESS: Yes.

CHAIR: Would you like to make a brief opening statement?

Mr STURGESS: If I could, thank you.

CHAIR: Please proceed.

Mr STURGESS: I firstly should say that I speak for the Serco Institute, and not for the Serco Group or Serco Asia-Pacific. The institute is funded by Serco but is not part of its business operations. We study the operation of competitive tendering and contracting for public services around the world. In doing so we have studied prison contracting, but I do not know the details of Serco's prisons operations. Of course I will be happy to take any questions on notice about any specifics and pass them on.

Our submission is directed not to the privatisation of prisons, but the introduction of competition and contracting. The punishment of offenders is a core function of governments and there can be no question of the State divesting itself of responsibility. When prison contracting works well, the prison service and the management companies work in close partnership to deliver government's ends. Moreover, the research tells us that in most cases it is competition that delivers the benefits, not the involvement of the private sector as such. When an in-house team wins a tender in competition with the private sector, they are capable of delivering the same benefits.

There is strong evidence from the United Kingdom that if competition and contracting are done well, they are capable, over time, of delivering savings of up to 30 per cent without any adverse implications for the quality of service. While the research here in Australia has not been as robust, what evidence we have from New South Wales, Victoria and Western Australia broadly confirms savings of that order of magnitude. The report of the New South Wales Public Accounts Committee in 2005 into the Way Forward prisons showed that there could be huge gains made in the management of sick leave and overtime just through the threat of competition.

However, what is striking about the United Kingdom market, which I have studied most closely over the past nine years, is the way in which it was used by the Labour government to drive through what came to be called its decency agenda. The first privately managed prison in the United Kingdom was not opened to competition with the expectation of saving money. That came as an unexpected bonus. Rather, competition and contracting were used to bring about a revolution in prison management, drawing heavily on innovations that had been pioneered in the United States Federal Bureau of Prisons in trying to normalise the custodial environment.

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

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

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

“Many prisoners were sceptical about private prisons at first ... But the message began to spread that they were preferable to State-run prisons. A conversation with a prison auxiliary helped me understand why. He had transferred prisoners to a private prison. 'You should see the difference,' he said. 'As soon as the cons get out of the van they are greeted with a "Good Morning, Mr Smith, would you like to come this way?" They're reminded

that they're people first and prisoners second. Their whole demeanour changes. They're polite in return to the staff, *and* to each other.' I had to admit I had never been to a prison like that.

From the very first privately managed prison, the contractors introduced softer uniforms, just blazers rather than a military style uniform. The prison officers wore name tags. They called prisoners by their first names. They elected not to carry batons. They ate their meals alongside the prisoners. And on the day the Wolds opened one-third of the prison officers were female. The average in the prison service at that point in time was around 3 per cent.

The final comment I would make by way of introduction is to argue that competition and contracting should be actively used to pursue innovation and resettlement and rehabilitation. I am often asked what difference contracting has made to recidivism rates and the answer is that we do not know because, with the exception of Florida in the United States, it has not been studied, but probably very little because the contracts were not written with that in mind. A number of senior executives in the prison management companies in the United Kingdom—and I deal with many of them—believe that this should be the next innovation frontier in prison contracting. Some tentative steps have been made with resettlement, ensuring that prisoners are released into a stable job and settled accommodation, but they have been tentative. So we are not close to being able to shift outcome responsibility to the management companies for recidivism—we do not understand quite enough about the connections—but we could certainly start moving in that direction by building in performance conditions relating to resettlement targets.

The Hon. JOHN AJAKA: Are you indicating that if one starts at the top end of the scale, that you build a prison and then you tender out for that entire prison to see whether the public corrective services or a private enterprise wins the tender and deals with the tender, or are you talking about taking the other extreme, if I can say it that way, with all the existing prisons and we are suddenly tendering for the supply of food, the supply of escort services or the supply of perimeter security?

Mr STURGESS: In the United Kingdom prison contracting involves the delivery of all the services within the prison. There are two models. There were originally four publicly built prisons which were newly built, but publicly built, which were put to the market, and the private sector competed for those. Two of those on subsequent rebid were won by the public sector, so four of them were delivered by contract and two of those were later won by the public sector, by the prison service, in competition. There then has been a succession of PPP prisons, which have been completely designed, built and operated by private companies. All of the new prisons in the United Kingdom are done as PPPs—

The Hon. JOHN AJAKA: From scratch, if I can use that expression.

Mr STURGESS: —from scratch.

The Hon. JOHN AJAKA: Looking at the situation of, say, Cessnock or Parklea, your view would be that one puts the entire process out for tender, or your view is that one starts to look at certain aspects or certain facilities within the prison as to whether they should be tendered?

Mr STURGESS: Ultimately it is a decision for Government which route it wants to go down. Australia has some prisons, in Victoria, of course, which are support, some of the support services only. Serco operates a prison in Germany which is support services only—well, everything except the custodial services. So there are some countries around the world that use that model. If what you are hoping to do is to bring about a change in regime, what I have just referred to, revolutionising hours out of cell—

The Hon. JOHN AJAKA: As opposed to money.

Mr STURGESS: —and purposeful activity, then you need to look at the entire service. If you want to change the way in which custodial services are delivered you need to think about the lot. They are very different kinds of contracts. One is basically some support services; the other is looking at changing the very way the service is delivered.

The Hon. JOHN AJAKA: We have heard from previous witnesses that you cannot compare apples to oranges where you take, for example, a facility such as Junee and you try to compare the savings to a facility such as Cessnock. You indicated earlier that in the United Kingdom there were savings of around 30 per cent which

came as a complete surprise and a bonus. Can you explain to me how the savings are calculated? What is being compared to get to a figure of 30 per cent?

Mr STURGESS: Probably the best study—our research has looked at studies around the world—in my view were some studies that were done on the first four prisons in the UK. These were the publicly built, privately operated ones. For four years the Home Office commissioned studies of those four prisons and selected public sector comparators. They picked prisons in the public system that were as similar in role, scale and function as the four contractor prisons, and as the role of the contract prisons altered slightly over that time they changed the comparators because they wanted to keep them as comparable as possible. By looking at the underlying costs in great detail—they brought in an accounting firm to help construct the model and then the department operated the comparators thereafter—the differences at that point were in the order of 13 per cent to 15 per cent.

What subsequently happened with PFI/PPP, was the Government then, when it constructed the public sector comparator against which to measure the private sector bids, assumed that the public prisons would be built under the traditional model but operated by a contractor. So they banked the savings. They assumed, okay, those savings have already been made. Now what price difference can you offer compared to what we estimate it would cost us to build and operate a public prison? And the costs then fell by a further 38 per cent.. Some of those were construction costs as well. When you try to work out what was the operating component of that over several prisons it works out at somewhere in the order of 30 per cent. So the numbers are reasonably good. Unfortunately many of the comparators that have been done around the world, the comparisons are not as strong as that. That was a particularly robust study.

The Hon. TREVOR KHAN: We have heard from various witnesses, and certainly received a lot of submissions, that in essence say that a private institution is incapable, because of the profit motive, of delivering comparable outcomes in terms of what I would describe as human rights outcomes for prisoners. Would you like to comment on the sort of contractual terms that can be built into a contract that ensure such things as reduced lockdown periods, quality food, reasonable education outcomes and the like?

Mr STURGESS: In the United Kingdom that is done through I guess two principle devices. One is the contractual performance measures, the conditions that are laid down in the contract. In terms of hours out of cell or hours of purposeful activity, they are specified in the contract as a performance measure, with either a monetary penalty attached to it or a point penalty which will then later be translated into a monetary penalty. Failure to meet those conditions results in an accumulation of financial deductions. So there was a direct financial implication from that. There are Government monitors on site supervising the way in which the prison is being conducted and the way in which that system of penalties is being administered. Government is scrutinising very closely. That is the quantitative side of it and what you have done is to translate a human rights, or a decency outcome into a financial equivalent.

The second side of this which I think in the United Kingdom has been enormously important is that they have an Inspector of Prisons, a Prisons Inspectorate. The Prisons Inspectorate has equal access to private prisons as it does to publicly managed prisons, conducts both announced and unannounced inspections and the inspection regime is qualitative, not quantitative. While they have a system, a sort of formula or procedure that they follow, it is not looking at the key performance indicators, it is looking at a set of practices and procedures they have developed that they would assess a good performing prison against.

The reports are released publicly and are followed by the media and if there are significantly adverse comments they will be reported in the media. A great deal of attention is paid to those reports. Because they have been reported in the media, chief executives tend to notice them very quickly because they count. So it is the combination of quantitative and qualitative measures that are holding companies up against these qualitative standards.

The Hon. TREVOR KHAN: Earlier today the committee heard the suggestion that because of the career nature of the job as a prison officer in the public system that they are capable of, in a sense, a rapport and commitment to their job which somebody employed in the private sector really is incapable of replicating. I think that is probably a fair assessment of what was put. You gave a description of a private jail where, almost in essence, the prison officer is in a smoking jacket and slippers for the arrival of a prisoner. How is what you describe consistent with what another witness would say in terms of the approach of the public prisoner officer against the private navy?

Mr STURGESS: They are not navvies. They are qualified and certified officers. The Government has certification requirements so people have got to be trained and certified. The answer is to say it is not the United Kingdom experience. I am not familiar with all of the privately managed prisons in this country but those that I have seen, it is not the experience here. I will stick with the United Kingdom where I have done the most work, but a succession of reports by independent academic observers, a succession of reports by the Inspector of Prisons and indeed by some critics of prisons have acknowledged the huge contribution that the private prison managers made to the so-called decency agenda; to the way in which prisoners were treated, the way in which they were brought into drug rehabilitation programs, resettlement programs were built for them and so on. There is a considerable literature on this.

If you read the reports of the Inspector of Prisons for England and Wales these are comparable establishments that are delivering similar quality services. There is no suggestion of a navvy. There have been huge innovations in some of the privately managed prisons that have contributed to the development of the profession. I can think of some publicly managed prisons where that professional ethos that you talk about was simply not present.

The Hon. TREVOR KHAN: If the private institutions have achieved these outcomes what was it that produced that result? Is it luck? Is it a contractual term?

Mr STURGESS: I have done quite a bit of work on this by interviewing both public officials and private operators who were involved in the early history of that industry in the United Kingdom. It was a combination of things, I think. It was firstly because government took the opportunity—in writing a contract and specifying what you want in that contract, a government gets a chance to decide afresh "How do I want this prison to be run?" None of the old ways of doing things remain. You have got a chance to decide completely afresh "How do I want this to operate?" What happened in the United Kingdom was that government said "We don't want that many hours out of cells. We want that many hours out of cells. If you do not deliver that we will financially penalise you." That was one of the reasons why it happened.

The early contracts in the United Kingdom were being put to market in the aftermath of the Woolf Report which was conducted by a senior member of the judiciary in the aftermath of the Strangeways riots, a prison at Manchester. The Woolf Report focussed very heavily on human rights issues and the treatment of prisoners and the conditions that had led to that riot. The attitude both within the prison service as they commissioned these prisons and amongst the custodial professionals that the companies consulted as they designed the solutions to put to government was very heavily influenced by Woolf. It was understood that what government wanted to see were solutions that addressed the decency agenda. So that culture was built very early into the culture of prison contracting in the United Kingdom.

In the United Kingdom there was a group of very high-quality prison governors who had been thinking for some years about how they would really like to run a prison if they had a fresh start and who were a bit frustrated because there was no real opportunity for a fresh start. They crossed over and took over as prison directors in the contract prisons and brought with them some very innovative ideas and a deep commitment to this sort of an agenda. I think finally there are not any frontline workers anywhere in the public services, whether that is in contractors' or in public employment, who go to work worrying about the boss's profit. Frontline workers are worried about doing a good job for the people with whom they interact. That culture operates and can operate just as successfully in a contract prison as it can in a public prison.

Ms SYLVIA HALE: You referred to the importance of changing culture. Do you realise that the Bathurst prison riots, and the subsequent Nagle commission of inquiry resulted in a considerable change in the culture amongst prison officers in this State and that there are very few officers from that period still serving? I suppose the notable exception is the Commissioner for Corrective Services. Do you agree that the quality and standard of education of prison officers is significantly higher than it has been in the past?

Mr STURGESS: I would certainly hope that over those intervening years there has been an ongoing improvement.

Ms SYLVIA HALE: Could the changes you suggest—you nominated softer uniforms, the way in which prisoners are addressed, the introduction of female officers, no batons being used—equally be introduced into the public system? Do you agree that the failure to introduce them reflects more on the calibre of the upper echelons of the Department of Corrective Services than on the fact that it is a public institution?

Mr STURGESS: It has nothing inherently to do with it being public institution.

Ms SYLVIA HALE: Or inherently with the private institution?

Mr STURGESS: No.

Ms SYLVIA HALE: I agree that an independent oversight of the operations of our prisons, whether they be public or private, is absolutely critical. It would be a cause of concern to you that the State Government has abolished the role of the Inspectorate General of Prisons in this State?

Mr STURGESS: I would not want to comment on government policy. That is a decision for the elected representatives of the people of this State.

Ms SYLVIA HALE: Sure.

Mr STURGESS: But, I would say that in Scotland, England and Wales and in Western Australia, Serco works with an inspection regime. We work comfortably with that regime and in my observation the existence of an independent inspectorate contributed to public confidence in the private management of prisons in the United Kingdom. The fact that there was an independent inspector who could go in and report on and expose, if necessary, what was going on in there was enormously important to public confidence.

Ms SYLVIA HALE: Yes. Would you agree also that that inspector would be equally important to public confidence, to have a qualitative not simply quantitative inspections of public prisons as well as private?

Mr STURGESS: I think qualitative inspection is important to any regime. As you say, it certainly assists with public prisons as well.

Ms SYLVIA HALE: I do not want to distort or misrepresent your submission, but when you look at it there is not so much a concern with the quality of the culture of prisons in it. What strikes me on reading your submission is the huge focus on the cost saving aspects. For example, you talk about "having fewer staff per prisoner, low average unit costs", "contract prisons pay lower salaries than others". And talking about unit costs you say it was "significantly less generous pensions and fringe benefits". You mentioned reductions in sick leave and overtime and the fact that for most of the employees at the new prisons, in many cases, there were no transfers of existing staff. You talked about, for the most part, "whereas the prison service negotiated national pay rates"—which would apply across the State—"the private contractors set their terms in reference to conditions in local markets".

If you were in a regional area with very depressed wages and few job opportunities, that could be exploited in terms of the pay rates offered and people might have relatively few options other than to accept them. I fail to understand is what seems to me to be the attractive element for the private companies that run prisons is the opportunity to attack and destroy wages and conditions of prison officers.

Mr STURGESS: To go back to your original question. I point out that there was no term of reference that addressed quality. So I addressed the issue of quality without a term of reference to respond to. I have volunteered that suggestion in the consciousness that I was adding it without a term of reference to refer to. I apologise.

Ms SYLVIA HALE: No, that is very admirable of you.

Mr STURGESS: I apologise if I focused unduly on the terms of reference that were put in front of me. I tried to write, as we try with the Institute, and to report as accurately as I could on what the evidence tells us about the sources of the efficiency savings in the UK. The best of the available research says, as you indicated, that it comes overwhelmingly from labour costs. The reason for that is that this is a service and a public service is just like any other kind of service; the costs are overwhelmingly represented by people. That is what services are about, they are people doing things for other people. So if there are efficiencies here, if there are productivity savings, they are going to be manifest in some way in labour costs.

The research that was done on this, a decade ago, is the best we have in the UK, with those first four prisons. I would hasten to add, what those first four prisons did not have was any design efficiencies in the building. So the PPP prisons have brought in some design efficiencies in the building. But I will park that for the moment—the research indicated that about half of the savings came from productivity improvements using fewer inputs to

deliver more outputs. That is what a productivity saving is. The other came from lower unit costs, which is per average worker. Prison officers in the contract sector are being paid less. That is simply what the evidence shows.

What you alluded to were some of the reasons why, we are told by the government body concerned, that happened. The first one is that in the UK a national wage rate is overwhelmingly influenced by the cost of living in London. So there is a huge distorting factor in the UK. I do not know that government has deliberately located prisons in low-wage or low-employment areas; they are located in regional areas, which seems to be not unusual for governments to do. One of the consequences of that has been that in recruiting in an essentially rural or regional area, the costs are not the same as they are in London. That has been a significant factor.

The Hon. TREVOR KHAN: That provides employment in those areas?

Mr STURGESS: It does, absolutely. In addition to that, the structure of the workforce—and these were greenfield sites, that is the important difference here—nobody was being transferred from the public sector to the contract prisons. I will park that for the moment, because that is a very important distinction to make. I will come back to that in a second. The companies recruited a very different kind of workforce.

In the UK the public sector prison workforce is essentially composed of males - it is not as dominated by males as it used to be, although they still have the numbers. I say that because I do not want to sound presumptuous in my description of them. Essentially, 50-plus males, who are at the top of their band, have been in the service for a very long time and are at the top of their pay band, with very low turnover rates, much lower than the public sector average.

By contrast, the contract prisons have recruited 25 to 35-year-olds who have a much higher turnover rate, and they are on their way to somewhere else. It is a baker's assistant who would like to apply to the police service. These are younger people and more mobile, and not going to the top of their band. It is simply just a very different kind of a workforce, which, according to the government body, is one of the reasons why the costs are lower.

Ms SYLVIA HALE: You say there is a younger, more mobile workforce and obviously paid less. Do you not think that one of the important things, if you are going to have a really good prison service, is to have a career path? You could only have that through a large prison service rather than through isolated, individual prisons run by private contractors, do you agree?

Mr STURGESS: The answer to that is probably complex. Yes, you need some people who are going to do that. The oldest contract prison in the UK has been operating for 15 years and it has functioned without riots, without huge escapes, without breakdown in law and order within the prison. It has functioned very well for 15 years and that is probably a reasonable time to say that if this model was fundamentally flawed we would have seen evidence of that by now. We have not seen that. The Wolds remains as one of the best prisons in Britain. Obviously there will be an element of professionalism with people who are going to the very top of their career, but it would appear that it is not necessary for every prison officer to be a person who has remained in it for many years.

I come back to your question of transfer. Under European law, and the UK Government is bound by that, where public workers transfer with a contract to a private contractor, by law their terms and conditions are protected and their union coverage is protected. So a very large number of Serco's employees are former public servants who transferred under the TUPE law, as it is known, that is the Transfer of Undertakings (Protection of Employment) Regulation. They continue to be covered by the union. The kind of condition that exists here where you have a transfer of workers is the sort of condition that companies who work in the European environment are very familiar with.

Ms SYLVIA HALE: Would you favour similar rights in this State?

CHAIR: Order! It is time for Government members' questions.

The Hon. HELEN WESTWOOD: Earlier today Justice Dowd gave evidence and he referred to the United Nations standard for detention. Does Serco use those standards or apply those standards both in tendering for contracts and preparation of contracts?

Mr STURGESS: Was he referring to OPCAT [Optional Protocol to the Convention Against Torture]?

The Hon. HELEN WESTWOOD: He did not say. He just referred to there being—he talked about the Australian standard for prisons.

CHAIR: Order! It was a 1978 document he was referring to.

Mr STURGESS: Okay, an old one. I should say that this is probably all going to be replaced shortly because the Optional Protocol about cruel and unusual treatment, which the Federal Government is consulting with the States about at the moment, will probably be over-ridden by OPCAT and lead to inspection regimes and so on anyway. Serco responds, as indeed do all of the companies in the industry, to what Government asks of us. Any responsible company would not respond to a request from a Government that was asking it to deliver inappropriate services. Serco has a policy, for example, of not delivering prisons in any jurisdiction that has the death penalty. I have looked at the OPCAT regime, which is being negotiated at the moment within Australia, and I have not seen anything about that regime that would cause difficulties for the kinds of prisons that Serco operates. The answer is I cannot imagine that it would be a problem.

The Hon. HELEN WESTWOOD: Justice Dowd also made the point to us this morning that prisoners go to jail as punishment, not for punishment, which I must say is not the view put by a couple of media personalities in this State. You have talked about the more humane treatment of prisoners and the way they are addressed by officers. Can you tell us how that approach has been received by the public in the UK?

Mr STURGESS: I suppose there is the old saying that there are no votes in prisons, as long as nothing is going horribly wrong. The objective of a more humane regime and the revolution in prisoner regime that was introduced when contracting was brought in was to try—an academic in the UK called Alison Liebling, at Cambridge, talks about the depth of incarceration, and her conclusion, based on interviews with prisoners, is that prisoners in privately managed prisons feel less deeply incarcerated than they do in the publicly managed prisons in the UK. She has done interviews with a number of prisoners in both sectors. What does that mean? The reforms that were introduced in the early 1990s, borrowed from the United States where they had been introduced in the 1970s by the Federal Bureau of Prisons, were about trying to normalise the prison environment. It was about open association spaces rather than the sort of narrow landings model. It was about softer furnishings and brighter colours and having prison officers working in amongst the prisoners rather than sitting outside looking in through bars, and working with them to resolve issues and help them through their structured day in real time.

All of that was about trying to make it easier for prisoners to make the transition back into the community once they left, whereas if they are put into a more heavily institutionalised environment the transition will be more difficult. Equally, if you are seeking to have them out of cell more hours and they are not just sitting around talking with each other, then combined with that there are more hours of purposeful activity. That will be a drug rehabilitation program or an education program or work or whatever it is. The objective is to give them the skills and capabilities to survive in the outside world, hopefully to hold down a job and therefore to avoid reoffending. There cannot be anyone—surely the most conservative law and order advocate has to support the proposition that ideally we should be seeking to break the cycle of reoffending so that people are not coming back in immediately. The reforms in the UK have been directed towards trying to do that, to begin the process of skilling these people in order to hopefully succeed in the outside environment so they do not come back.

The Hon. HELEN WESTWOOD: In the UK do you have individual media outlets running campaigns against particular prisons or the approach—

Mr STURGESS: No. One of the differences there is that because it is a national system the gap between the politicians and the individual prison is much greater. If there is a problem it will still be an issue in the local media, but it tends not to be quite—there is not that same sensitivity to high-profile media figures. It does not quite work in the same way.

The Hon. GREG DONNELLY: Thanks for coming along today, Mr Sturgess. As you probably appreciate one of the challenges for Committee members in going through all the evidence, both oral and written, is working out the weight to be put on submissions and the comments made in evidence. Obviously that falls to us individually and when we put the report together. In relation to the submission you have presented on behalf of the Serco Institute, it is important to make sure we all understand a couple of matters so that people do not draw

the wrong conclusions or the wrong ideas. Could you explain the role and function of the Serco Institute and its connection with Serco the corporation?

Mr STURGESS: Yes. We are fully funded by Serco. It was established about 13 years ago, more as an in-house think tank to help the company understand the market. When I was asked to lead it I was asked to set it up as an externally facing think tank. All of our research is published externally and we work closely with governments, industry associations, think tanks and academics in seeking to develop the agenda. Our brief is to try to understand the conditions under which competition and contracting work. We understand—

The Hon. GREG DONNELLY: Sorry to interrupt you. Is that specifically in regard to the operation of jails?

Mr STURGESS: No, public services more broadly. Serco covers a very wide range of public services and we likewise cover a very wide range. One of the benefits of that is you get to compare models in different sectors so that you can compare and contrast. The objective is to try to understand what works. Serco has been delivering core public services for government for 45 years. The company would like there to be a market in another 45 years and if contracting for public services is not done well and if it does not meet governments' and the public's requirements of public services, then there will not be a market. So our brief is to try to understand firstly why something works and how it works and therefore how government and companies can make it work better so that it gives government what government wants.

The Hon. TREVOR KHAN: By leave, would the Chair allow Mr Donnelly to have a bit more time, subject to other Committee members? I like the answers.

CHAIR: Order! Would you like one last question?

The Hon. GREG DONNELLY: Yes. Never knock back an opportunity! Can I take you to the executive summary and in particular the first paragraph? I want to go through it because it goes to understanding the evidence. It says on page 3, "The available evidence suggests that for the most part it is competition rather than privatisation that delivers value for money benefits in prison contracting. Unfortunately most of the studies on prison contracting have sought to compare private versus public rather than competitive versus non-competitive." That first paragraph immediately takes us to a paradigm of assuming that the model of competition is what is best in relation to outcomes or the provision of public service. My question to you is: Why should Committee members and others around the table necessarily accept the presumption in your first paragraph?

Mr STURGESS: I guess that I have come at it slightly differently. I am saying that where we see evidence of private involvement in public services delivering benefits—financial or otherwise—it was probably not that the private sector probably was involved as much as the fact that the private sector was brought in through a competitive mechanism. Whether or not government chooses to have competition is up to government. I was trying to make the point that there is no magic in the private sector per se. Private sector monopolies have all the same problems that any other kind of monopoly has; they tend to act in their own interests. Indeed, research tells us that there is no magic about the private sector.

There appear to be some places where maybe private sector involvement, because of the availability of capital, might make a difference. Overwhelmingly, what makes the difference is that people have to develop a solution, knowing that other people who are competing with them want to develop a better solution. That seems to be what makes the difference. As I agreed with Ms Sylvia Hale, where the public sector wins in a fair competition it is quite capable of delivering the same kinds of productivity and service improvements.

The Hon. GREG DONNELLY: Without splitting hairs, I put it to you that the challenge for us is not just thinking about it in the paradigm of the competitive versus the non-competitive model, but a more efficient model than that which is currently operating at the moment. Much of the evidence that has come from the advocates proposing change is that there are some inherent inefficiencies with respect to the way in which some jails in this State are being operated. I am not splitting hairs; rather I am trying to draw out the best perspective that we should be bringing to this whole inquiry. Competitiveness immediately suggests a market model—that the market somehow is involved and there is competition.

It is not a case of a public sector model competing against another public sector model. The public sector model is assumed to be the best model. The real issues that confront us are efficiency questions, which may be manifest in claims about too much overtime being paid, or sick leave being rorted. No matter what the claims

may be—I will not argue one way or the other about those things—those are the claims that are being put forward. I see that through different eyes. The efficiency matters are not necessarily the same as competitive matters versus non-competitive matters. Would you care to comment?

Mr STURGESS: It is a matter of government policy how it wants to pursue efficiency. It is not clear to me that what is being discussed in the State at moment is about cost savings. That is not obvious to me. It appears to me that the department's concern seems to be about managerial control. I am just relying on what I am reading in the press and in the transcripts. It appears to me that that is the question. I think the efficiency questions are simply symbolic of the underlying question that it looks like the director of the prison service believes he is not in control of his prisons. I think that is the case. I do not know whether it is about efficiency.

What policy government chooses to use to address that question is a matter for government. The proposition has been put and I am responding to it. The way it was put in the heading in the terms of reference was that it was about privatisation. I was simply making the point, if I could gently suggest this, that I do not know whether privatisation per se is the solution. I think competition and contracting, if done well, could be the solution. I was simply responding to the proposition put to me by the Committee.

CHAIR: Thank you, Mr Sturgess, for appearing before the Committee today. If Committee members want to put some questions on notice would that be all right with you?

Mr STURGESS: Absolutely. I am happy for them to do so.

CHAIR: Thank you for your interesting and informative session.

ROBIN BANKS, Chief Executive Officer, Public Interest and Advocacy Centre, Level 9, 299 Elizabeth Street, Sydney and

PETER GEORGE DODD, Solicitor, Health Policy and Advocacy, Public Interest Advocacy Centre, Level 9, 299 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Thank you both for your attendance today and for submission No. 106. If at any stage during these proceedings there is any evidence that you wish to give or documents that you wish to tender that you want only the Committee to see, let us know and we will consider your request. The Committee has resolved to ask for any questions taken on notice to be answered within 21 days from the date that they are sent to you by the secretariat. Would either or both of you like to make an opening statement?

Ms BANKS: I will begin and then hand over to my colleague. For a long time the Public Interest Advocacy Centre [PIAC] has been interested in the effective management and administration of correctional centres, for both adults and children, not only in New South Wales but nationally. PIAC is a non-profit organisation that works on public interest issues, using both legal strategies and also policy, law reform, educational and capacity building strategies to achieve public interest outcomes. In relation to the issue of the privatisation of prisons, PIAC is concerned that anything to do with prisons should be guided by a set of core principles.

We believe that the principles that need to be achieved in effective administration of the correctional system are: the achievement of substantive equality; the promotion, protection and fulfilment of human rights consistent with Australia's international obligations; equitable and accessible standards of health care, rehabilitation and, in particular, the benefits of rehabilitation for the whole of society through the prevention of future crime; and public accountability. In saying that, PIAC does not come to this hearing with the view that the current correctional system in New South Wales fulfils those principles, unfortunately.

Indeed, we would say that New South Wales has a long way to go to achieve what we think are critical aspects of administration. In fact, we would probably say that we need almost a 180-degree turn in the way in which prisons are administered, to put more focus on those principles and, in particular, on rehabilitation as the core of the correctional system. We say that those principles rather than efficiency should be central. Hopefully, efficiencies will exist in a well-administered system. As we have noted in our submission, if we were looking for efficiencies and if you believed that privatisation and competition always brought efficiencies, we would probably privatise all the criminal justice system, including the courts.

I do not think anybody would accept that the privatisation of our administration of justice at the court level should ever occur. We say that the correctional system is part of that criminal justice system. You would have to be very hesitant to move towards giving efficiency the paramount consideration.

Mr DODD: Following on from what my colleague said, I think PIAC has continuing concerns that the human rights of prisoners are not sufficiently protected in a legislative sense in New South Wales. So, we have particular concerns if there was increased privatisation of the New South Wales prison system. We would be saying that if there is any privatisation, there certainly should be increased legislative protection for New South Wales prisoners. Our submission particularly highlights the concern that the increased privatisation of prisons would have the potential of breaching ILO Convention No. 29. We are concerned that there is obviously a contradiction between the profit motive of privatised prisons and the principles embodied in that convention. We are concerned that that may be an irreconcilable contradiction. We would suggest that to have privatised prisons in New South Wales may not be possible and have Australia and New South Wales follow that convention.

PIAC also has concerns about the potential of diminished accountability under a privatised prison system because of the commercial-in-confidence provisions; a private culture that would apply because of the lack of legislative rights for prisoners, as I have already indicated. This does lead to a potential of corruption. There is no suggestion that we have got the level of corruption in Australia or in New South Wales that has been suggested by the evidence I feel the Committee has heard, the anecdotal evidence in the United States, but still there is considerable evidence that the submission reflects the prison industrial complex in the United States. Those corporations, which inevitably will be running any New South Wales privatised prison, are the same corporations that operate in the United States. We have a great fear that they will bring the same culture to Australia.

CHAIR: We will now go to questions. We will start with Government members.

The Hon. GREG DONNELLY: If I could start where you finished, Mr Dodd, about the United States prison industrial complex and importing its less savoury features to Australia. Why do you believe that would happen?

Mr DODD: When you start reading the literature in this area, sure it is anecdotal, the stories that happen in the United States and in the United Kingdom, it comes up too often. There are too many accounts of corruption, there are too many examples where accountability has fallen down. I think we have just got to be so cautious about further privatising prisons in Australia and New South Wales.

Ms BANKS: I also think at the moment in New South Wales there is limited public scrutiny of our correctional system. It is public scrutiny I think that helps to prevent the potential corrupting influences. We do not have sufficient now, I do not think. The models that exist in the US certainly have the potential to have the same sort of influence here. They are based on a for-profit approach. They would be seeking, as I understand it, to maintain commercial confidentiality. That really does limit scrutiny and any limit on scrutiny on something of such public interest as effective correctional systems I think we should be very cautious about.

I think the evidence is that even in Victoria with the women's prison that has gone back into State control, profit will be the motive. In Victoria with the Deer Park Women's Prison there was insufficient money to be made out of that prison for the private sector to continue. There are two ways to deal with that. One is to cut corners, and there is evidence that certainly happens in prisons that have been privatised at least overseas; and the other is for the State to have to resume control. It seems to me that that is a pretty important thing; to know that if you are going to provide the kinds of services and supports that are needed, particularly for prisoners who have special needs, profit is a very difficult factor to put into that mix and still have an effective system.

The Hon. GREG DONNELLY: The reason, I guess in a sense, I challenged your proposition was that we heard evidence this morning from a representative from South Australia who gave testimony in regard to the privatised prison at Mount Gambier. I do not wish to paraphrase him, but his evidence is that things seem to be working quite well there. He gave us a whole lot of evidence that you can read in the *Hansard* next week, which, if we took on face value, means that there does not seem to be a problem with that prison. He talked about key performance indicators being met, relationships being good between prison officers and prisoners, training of prisoners and educational opportunities being provided satisfactorily et cetera. That testimony on face value at least really undermines the broad statement that is underpinned by anecdotal examples. Can you see our difficult situation?

Mr DODD: But the difficulty we have in New South Wales is that we do not have the full detail about the contract, say, for Junee. So, how do we know that they are meeting standards? How do we know that, unless it is completely open? If it is completely open, then how are you going to get people to take up prison contracts? That is the problem. Someone can come in here and assert that it is working well and people were asserting that in Victoria. Subsequently, the State had to take over.

The Hon. GREG DONNELLY: I understand the Victorian model; it is obviously different in that it is a prison that went back into public control directly. But the thing about the South Australian example at Mount Gambier is that there is a permanent presence in the prison of publicly employed staff. In this particular case there are only two full-time staff, as we understand, employed on site and one further person employed off-site who are on the public payroll, if I can put it that way. You could imagine that you could employ a greater number of public employees inside a prison for other roles, but that is not the base level of being a prison officer. What would you say about a model like that?

Ms BANKS: Certainly I think the more the Government remains engaged with the delivery of the service, the more the public can call the system to account. As citizens, as members of the public, we do have a greater right to call the Government to account than we do private enterprise. So it certainly would be a better outcome. I guess the other difference between the situation in the US and what we see certainly in New South Wales at least is that the privatisation of prisons in the US has become much more dominant. Once you put more reliance on corporations you lose the capacity of the State to take back control in situations where things are not going well because you have lost that sort of skill set. I do think that what you see in the US is a heavy reliance; they cannot do anything else anymore, they just could not take it back and manage it. The other thing is the evidence we have in our submission from the Ombudsman's report in relation to the level of complaints about Junee being significantly higher than the prisons managed by the State. That certainly raises a question about the effectiveness of private prisons from the perspective of prisoners at least.

CHAIR: We will now go to the Opposition for questions.

The Hon. JOHN AJAKA: You mentioned earlier that you have concerns about human rights, breaches of conventions, corruption et cetera. Do you have any actual evidence in New South Wales or within Australia where that has occurred in private prisons compared to public prisons?

Mr DODD: Not corruption, but if you are talking about the evidence from the study that Mr Moyle did in Queensland, where evidence was basically of slave or low-value labour rather than training prisoners, that is of real concern. That is somewhere where the profit motive has totally overtaken the rehabilitation aim. Of course I do not think there is any direct corruption.

The Hon. JOHN AJAKA: Have you compared Junee to any other public prisons in New South Wales in regard to the areas of human rights, breach of convention, or corruption?

Ms BANKS: It is very difficult to do that. Public accountability in New South Wales still is shamefully poor, and we can do a lot better. We should be doing a lot better. It is very hard for the public to know what is going on in both the public and the private sector.

The Hon. JOHN AJAKA: Is it more an issue of accountability as opposed to an issue of privatisation versus public administration?

Ms BANKS: To a great extent the two go hand in hand because it is much easier to maintain accountability when you do not have private corporations. Capacity of the state and private citizens to call to account private contractors is much more limited than is the capacity of private citizens to call to account the government. We cannot throw out private prisons once every four years. They are not elected whereas you are. If we think you fail in accountability, we can do something about that if we are concerned about it.

The Hon. TREVOR KHAN: We are an upper House Committee, so it is eight years, actually.

Ms BANKS: Oh, I see! Thank you, Mr Khan.

The Hon. JOHN AJAKA: That leads me to my next question. Earlier you mentioned the American example. The reality is that in New South Wales we have parliamentary oversight committees, for example, the Independent Commission Against Corruption [ICAC]. If you start talking about corruption or corruption incentive, we have systems in place in relation to those concerns you raise, do we not?

Ms BANKS: We have some, yes.

Mr DODD: They have systems in the United States, but unfortunately there were conflicts of interests. Some of the stories that you hear were about people who were consultants to the prisons system and were also working for the private prison companies. We are certainly talking about potential, but it will be too late if we enter into a system without proper accountability and we find there is corruption.

The Hon. TREVOR KHAN: If you look at State Rail and the enquiries that have been undertaken by ICAC recently, what you have described as the American problem with private prisons is precisely what we have seen exposed over and over again in State Rail; that is to say, publicly-run institutions that are just so badly run and corrupted that they are failures. Is that not right?

Ms BANKS: I think that probably its right, and I think it is probably a fairly stark lesson that if we cannot manage it with the public sector, how do we really seriously think we are going to manage it with private corporations?

The Hon. TREVOR KHAN: There are perhaps two responses to that. Firstly, you heard Mr Sturgess give evidence. You were sitting at the back of the room.

Ms BANKS: Yes.

The Hon. TREVOR KHAN: Can I suggest to you that his evidence was, at least from my perspective—and I cannot speak to the other members—quite compelling in terms of the British experience, as opposed to the American experience. It would seem that it has been successful in achieving better results for prisoners.

Ms BANKS: I do not think that we heard sufficient of his evidence. We came in part-way through. I do not seek to guess.

Mr DODD: It is a question of how you measure that.

The Hon. TREVOR KHAN: I invite you to read his submission.

Ms BANKS: I am very happy to do that.

Ms SYLVIA HALE: In following up on this whole issue of accountability, I notice on page 15 of your submission that you refer to the Victorian Act's "Standard Guidelines for Corrections Enforceability" that is found in section 47 of the Corrections Act 1986 (Victoria). Would you like to give us some more information about that Act?

Mr DODD: I do not have the exact provisions of that Act, but the Victorian Act actually sets out the rights of prisoners. There is a section which sets out prisoners' rights. Something we should be thinking about in New South Wales at least is having the same sort of protections. Of course, they also have a Charter of Rights in Victoria, which dovetails with that.

Ms BANKS: Certainly one of the issues about privatised arrangements in any area is what rights do non-parties to the contractual arrangement have to assert things that are part of the contract? If the contract, for instance, requires private prisons to conduct prisons in ways that are human rights compliant, that does not give prisoners through the normal course of events any rights against that correctional centre and against the private entity conducting it. You have to ensure that they have rights in some other way that they can assert effectively, if they believe those rights are breached.

Ms SYLVIA HALE: If there were to be any action for breach of contract, the only parties that could initiate that would either be the government or the contractor.

Ms BANKS: They have to be parties to the contract.

Mr DODD: That is right.

Ms SYLVIA HALE: You could say that both parties could well have an interest in not pursuing breaches because of the potential embarrassment or the cost implications.

Ms BANKS: Yes, indeed, whereas the people most affected, the prisoners and potentially the community more broadly, have no right of action in relation to any contractual obligations. In fact, we may not even know what the contract says unless the government were to disclose the terms of those contracts.

Ms SYLVIA HALE: That seems to be the issue that totally bedevils this Committee—the inability to get access to the figures, or to know that the figures that are provided, for example, by Junee, how they have been arrived at, and whether they have been independently audited.

The Hon. TREVOR KHAN: Or by Corrective Services.

Ms SYLVIA HALE: I agree. It is a complete veil of secrecy over both institutions, which certainly seems to me to work against the public interest.

Ms BANKS: Indeed.

Ms SYLVIA HALE: You express concern in your submission that Justice Health does not have access to Junee. Also it would appear that the educational and vocational programs that are offered in Junee come from independent providers, as it were, rather than through the provider that deals with the state system.

Mr DODD: Yes.

Ms SYLVIA HALE: Why do you think that is not desirable?

Mr DODD: There are clearly economy of scale issues for a start. Again I refer to the Moyles study in Queensland; there is that temptation to cut corners. There is a temptation, if there is a profit motive, not to train people properly and not to have adequate facilities for prisoners in a whole range of areas. I must say that the Public Interest Advocacy Centre [PIAC], judging by its submission, is particularly concerned that if there are privatised prisons in New South Wales, Justice Health is the body that provides health care.

Ms SYLVIA HALE: Why?

Mr DODD: Because clearly they have the expertise. It is also an accountability issue. They have accountability mechanisms. The Health Care Complaints Commission can deal with complaints more easily. Clearly they have developed that expertise in the area of health and corrections. They can deliver it, and they do deliver it, well. Obviously they are not perfect, but they have this level of expertise. The concern is that if the Junee model is adopted, there is less accountability and a potential for a decrease in standards.

CHAIR: That concludes our time for questions. If Committee members have questions they wish to place on notice with your organisation, would you be happy to deal with those?

Ms BANKS: Certainly.

CHAIR: Thank you very much for your attendance today.

(The witnesses withdrew)

RODNEY MOORE, Chaplaincy Coordinator—Corrective Services New South Wales, Civil Chaplaincies Advisory Committee New South Wales, 32 Brunswick Street, East Maitland, New South Wales 2323, sworn and examined:

CHAIR: If there is any evidence or documents you wish to give that you only want the Committee to see, let us know and we will bear that in mind. If you take any questions on notice today or if the Committee members place any further questions on notice, will be able to get them back to us in 21 days?

Reverend MOORE: Yes, that will be fine.

CHAIR: Would you like to make an opening statement?

Reverend MOORE: Yes. The first thing I would say that the Civil Chaplains Advisory Committee does not have a particular policy position on private or government-run prisons in New South Wales. I would have to say though that most of the sentiment amongst the committee and the concern of the chaplains working throughout the system is more about the quality of services and programs and rehabilitation delivered to inmates, whether the centres are run privately or by government. We have a large concern about the large number of inmates incarcerated in New South Wales and the rate that that is growing. We have a large concern about the amount of prisons being built in New South Wales, and we have a large concern and passion about trying to get more funds and more resources thrown into the criminal justice system to be able to increase the rehabilitation rate and changing of lives of offenders and their families within the State, to make this a safer State for all of us to live in and to make it a more positive outcome for those people's lives as well who are caught up in the criminal justice system.

We believe that this opportunity of the senate committee looking into the issue of privatisation versus government-run institutions, for us, is a great opportunity to maybe say to this Committee and to the Government that the bigger issue above that from our point of view is about reducing offending, about lowering the number of people incarcerated and about increasing the opportunities for rehabilitation in the wider community, again to make this State a safer place and to have better outcomes for the people who live here. I include prisoners in that. They are the client group, in a funny sense. I do not hear in the debate much about the clients or much interest in the welfare of the clients at the bottom of the discussion when I think that is the main part of the discussion. So whether we privatise jails or whether we keep them in government hands, down the future we would be interested in asking the quality questions rather than about the financial and logistical questions, even though they are very important obviously.

CHAIR: One reason we were keen to have your organisation come and give evidence today is because you directly interact with the clients, with the prisoners, both in Junee and in the government-operated jails. That was one of the reasons we have had difficulty getting a viewpoint from people who truly represent the interests of prisoners. Can you tell us the difference in the role that chaplains provide between the publicly run prisons and Junee? We have heard evidence that because they no longer have specific welfare officers at Junee—all the custodial officers are multitasking—that has put a greater burden on the role of the chaplains.

Reverend MOORE: We have 34 full-time chaplains working throughout the system at the moment. I would have to congratulate correctional services for that effort. We are the best sourced chaplaincy within Australia in any jurisdiction, and have a great support by Government here in New South Wales to provide chaplaincy to the jails. In rehabilitation terms that is a milestone to be proud of. We have about 40 other part-time chaplains and some of them are interfaith chaplains from the Muslim, Buddhist and Jewish communities who visit those particulate groups within the jails as well. All our chaplains at time, by the nature of the role of pastoral care and spiritual help to inmates in an ecumenical and interfaith way is the way we operate in the jails rather than pushing a particular religious or proselytising barrow. We are there for all inmates and staff in all centres equally, and we operate and work as part of the staff as far as contributing to case management and supporting those processes of therapeutic help in the jails with psychologists and welfare and drug and alcohol workers and others.

But by the nature of our work, all the chaplains find—I was a chaplain at Cessnock, and Maitland jail before it closed, for nearly 10 years before I came into this role seven years ago as a coordinator. By the nature of the work and the human encounter with the amount of issues and woundedness in inmates' lives and issues to be addressed and family problems and family issues, you will always be caught up. You cannot divorce welfare work from pastoral work. So inevitably all the chaplains do some welfare work. In most jails they try to work with the welfare officers and the rest of the professional team to work together as a team rather than in isolation

or compete with inmates' needs, and that is a waste of resources when people double up anyway. Our experience at Junee was that, yes, they do not have welfare workers. We have had one full-time chaplain employed at Junee since the institution opened.

We have a notional agreement with correctional services that over a period of time we will work together between them and the Civil Chaplains Advisory Committee to have one full-time chaplain for every 200 inmates in custody throughout the system. We are about halfway there in that partnership of working towards the funding for that. But at Junee, with about 750 to 800 inmates, that means that the real ratio should be at least three full-time chaplains. That has been addressed because in the first contract we did not have that sort of notional agreement. There was only one chaplain figured into the original contract. Over the last many years with the department pushing for that with the private contractor, we have tried to increase the number to two or three chaplains but because it was not in the contract the company was reluctant from time to time to add that to their funding unless the department could find the funds directly for that. That has not happened until now. With the renegotiation and letting of the contract with GEO as from 1 April we wrote into the new specifications three full-time chaplains for Junee and that has become part of the contract.

We are in the process at the moment of tendering out expressions of interest with various member church organisations to employ another two full-time chaplains within the next month or so to start at Junee. The only issue I would say about that is that chaplains there will still probably from time to time pick up some welfare work with their clients. It is hard to talk to somebody who has a need and say, "I can't help you because I am a chaplain, but I still want your confidence and be in a relationship with you." You have to buy the whole box and dice. But it is true to say I think the experience at Junee has been that because there are no specific welfare officers with training and expertise the company has expected custodial officers to fill that role—one, I would say, that has not always been totally successful. I think it has been reasonably successful.

But I also think that it is also, in my mind and the chaplain's mind, a little unrealistic in terms that those prison officers do not have a professional trained background in welfare work. Most welfare workers have years of training in social work and other things to be able to do that role properly. So inevitably we do more welfare at Junee by default than we probably do in other centres but we do it in all centres.

Ms SYLVIA HALE: Can you distinguish for me what chaplains do and what welfare workers do usually in, say, the public prison where they have welfare workers?

Reverend MOORE: There is a defined line. The chaplains are more interested in pastoral care. It is about mentoring people. It is about building a relationship with inmates of trust and confidence in a non-threatening and non-judgemental way. It is about listening to people's stories. It is about getting to know their family issues and their children. It is about encouraging and being a friend and a mentor to those people to pursue changes in their life, to enter into the programs in the jail that are offered in rehabilitation programs, to help inmates get ready to want to change their life by inspiring them to want to change, and wherever possible, obviously without proselytising, to explore spirituality with inmates and give them opportunities to explore their humanness, their dreams and their spirituality if they want to practice it in whatever form or whatever shape.

Ms SYLVIA HALE: What would a welfare officer do? If you were going to say there is a sharp division between the two, what would the welfare officer do?

Reverend MOORE: Welfare officers would do more pragmatic and practical things, like organise banking, housing, contacts with Department of Housing, children's issues with Department of Community Services and the more formal things. When there is a death in custody or other things we would work together where we would do the mentoring and support emotionally for inmates that had experienced death in custody or their friends or families, where the welfare officer would come along and offer practical and financial support and organise the funeral arrangements, and the more practical paperwork type of things.

Ms SYLVIA HALE: Apart from the individual's personal growth, a welfare officer is really quite critical to both the family of the prisoner not suffering unduly or excessively, and also to the inmate when they return to the community eventually being integrated into that community in an appropriate way?

Reverend MOORE: Yes and no. The integration back into the community would be about making contacts with various agencies and support groups for the inmate to interact with once they got back into the community. The difference there too is often the welfare staff in jails and custodial staff in both systems have no brief to bridge into the community to follow up clients, inmates and their families whereas chaplains are almost

contractors to the system even though we sit in the management part of the case management side of the department. We have a freedom and a confidence to bridge the fence, get involved and follow up inmates with half-way house support, work with them continually if they want friendship and support, visit their families and so on into the community which welfare staff and even custodial officers cannot do.

Ms SYLVIA HALE: Under the new contract that has been negotiated has the company been required to provide any welfare officers? You talked about three chaplains but what about welfare officers?

Reverend MOORE: No, I do not. But I do know that in the new contract tender documents in both Parklea and Cessnock we have upped the number of chaplains there to the ratio of 1 to 200. We have increased chaplaincy but I am not aware of the arrangement with welfare and case management.

The Hon. TREVOR KHAN: The essential point that you make in terms of the increase in numbers is you were able to convince Corrective Services that Junee should employ more chaplains and that was built into the contract arrangements?

Reverend MOORE: Yes.

The Hon. TREVOR KHAN: Taking that to its logical next point, if Corrective Services thought it was appropriate to have welfare officers at Junee then that equally could have been built into the contract in the circumstances?

Reverend MOORE: Yes.

The Hon. TREVOR KHAN: At least from your experience the provision of such services as you provide was a component that Corrective Services could build into a contract for the benefit of the prisoners?

Reverend MOORE: Correct.

The Hon. TREVOR KHAN: How many chaplains are employed in the New South Wales system?

Reverend MOORE: At the moment we have about 80. At the moment there are about 35 full-time on staff, but it changes, but that is not in every jail. There are about 36 jails in New South Wales, as you know, 26 of which have a full-time chaplain or several full-time chaplains, the bigger jails. The 10 small prison camps we fill sessionals there to offer them some support but do not have a full-time position at this stage.

The Hon. TREVOR KHAN: The simple maths would be if you are going to have 1 to 200 then you are going to need 50?

Reverend MOORE: That is right, 50 full-time by the end of the day.

The Hon. TREVOR KHAN: You are not there yet?

Reverend MOORE: No, we have been working in partnership. We have gone from one full-time subsidy in this agreement about 20 years ago and we have grown to where we are today. That represents about \$2.5 million by Corrective Services, paid through the various religious member organisations, for the provision of chaplaincy services. From our point of view it is a pretty large commitment compared to other chaplaincy commitments in other governments around the country.

The Hon. TREVOR KHAN: From my experience I know that years ago the chaplaincy service, amongst other services including welfare officers, would be to often perform the role of getting on the phone to people like me—I was a solicitor—and say "You are needed up at the jail to see "X"." Is that what you used to do years ago, amongst other things?

Reverend MOORE: Yes, I think that was initially the sort of beginnings of it but over the years it has become far more sophisticated than that. Chaplains too are running programs. They are supporting programs run by staff. Chaplains have imported agencies like Kiro's, Prison Fellowship, other groups and some interfaith groups to run programs in jails with their folk as well.

The Hon. TREVOR KHAN: I am not being critical and I am sure the role is very effective but in terms of that catch and carry function that you used to do, the more sophisticated phone systems that operate in the jails allow the prisoners themselves to put money into an account and ring up and organise the lawyer to come up as well?

Reverend MOORE: That is true. I think that has been a good move.

The Hon. TREVOR KHAN: I am not doubting that.

Reverend MOORE: In terms of putting personal responsibility on an inmate, even having to make their own phone calls and arrange their life from time to time, is a good exercise for the future.

The Hon. TREVOR KHAN: The only problem is the reversed phone call charges, some people say. Because of the phone systems that now operate a lot of those very minor functions that used to involve you and welfare officers are now cast back onto the prisoner to perform?

Reverend MOORE: True.

The Hon. HELEN WESTWOOD: How are you funded?

Reverend MOORE: We are funded through a subsidy system—that comes out of the Nagle royal commission, not the funding, but the push to say that chaplains should never be employees of the State, I suppose for all sorts of reasons so that we can have, pardon the language, a whistleblower function or a bit of independence and so that the inmates too know that they can share things with us in confidence because we are not required to keep such detailed records about them and so on. When we are granted a position by the commissioner the department gives a subsidy to the Civil Chaplaincy Advisory Committee and it then asks for expressions of interest to take up that position at a particular jail with the funding from its member organisations. There is a process that awards that subsidy to one of those organisations. Then the money for the subsidy is paid to the winning organisation and they become the actual employer of the chaplain rather than the department. All the department does is send the funding to the employing church or organisation and they employ the chaplain. There is a memorandum of understanding between both parties and a performance of service which it is my role to oversee both parties' interest to make sure the delivery of that subsidy, and the work is professional and well trained for and well delivered.

The Hon. HELEN WESTWOOD: Does the subsidy cover the whole cost of that full-time position?

Reverend MOORE: No, it is a partnership and that is why originally it was called a subsidy where most of the bigger mainstream Christian churches usually pay their chaplains and equal amount of money, if you like, or a salary package, equal with what they would pay their parish clergy or Minister in the normal community. I know certainly in the Anglican and Uniting churches and some of the bigger churches that is usually a fair bit of money above the subsidy. The subsidy at the moment is about \$64,000 as an example. I know for an Anglican church in most dioceses it probably costs them another \$20,000 to \$25,000 to top up the subsidy.

The Hon. GREG DONNELLY: I refer to the very practical relationship between those visiting the jail in the context of a private versus a public prison. Obviously your organisation can speak with some authority about that because it has a chaplain—about to go to three chaplains—operating in Junee jail and it has chaplains operating in other publicly run jails. Will you comment on the matters of right of entry, to use that phrase, and access relationship with the prison administration? Are there any significant differences that you can nominate or any particular issues that we should be alerted to in terms of differences?

Reverend MOORE: No, I have not experienced that. Chaplains in both systems are treated on staff with respect. Most of the chaplains have a formal arrangement into case management and access to put case files notes and other things about their interactions with clients or prisoners. Most chaplains in most jails would attend management meetings. While they are not voting members on these committees because they are not employees, they are welcome to have a say and in some of the human rights issues that come up from time to time by management in the running of those both jails. Most chaplains in most jails would attend management meetings. Although they are not voting members on those committees because they are not employees, they are welcome to have a say in some of the human rights issues that come up from time to time by management in the running of both jails. There is not much difference at all. The experience in Junee has been the same as the experience in the public system.

CORRECTED TRANSCRIPT

CHAIR: Reverend Moore, thank you for coming today. You have clarified the differences between the welfare services in Junee and elsewhere in the prison system. You have given people a better appreciation of the role of chaplains in general.

(The witness withdrew)

(Luncheon adjournment)

GERRY SCHIPP, Deputy Commissioner, Corporate Services, Department of Corrective Services,

RON WOODHAM, Commissioner, Department of Corrective Services, and

IAN RUSSELL McLEAN, Deputy Commissioner, Offender Management and Operations, Department of Corrective Services, on former oath, and

LUKE GRANT, Assistant Commissioner, Offender Services and Programs, Department of Corrective Services, on former affirmation:

CHAIR: I welcome Commissioner Woodham and senior staff from the department. I remind you that you are covered by the former oath or affirmation you took at the previous hearing. If at any stage you consider that evidence you are going to give, or documents or other material you wish to tender or table should be seen only by the Committee, please let us know and we will take that into account. The Committee has resolved that any questions taken on notice be answered within 21 days. Commissioner, would you like to make an opening statement?

Mr WOODHAM: Yes. I would like to inform the Committee of the support mechanisms we have in place for staff affected by the Way Forward contracting out issue, particularly at Cessnock. We have two of our Human Resource Division Staff Health Services psychologists available to staff and their families from Monday to Friday. On a weekend psychologists are available from the Employee Assistance Program. I know that a number of staff have made confidential contact with these services. In this regard I will be tabling a report to the inquiry about the health services provided to the staff at Cessnock and Parklea correctional centres.

Staff at the human resources (HR) division have had a HR shopfront opening every week at Cessnock for staff to approach and discuss their options. I again repeat the three main options are, one, transfer to another location within the department, two, apply to work with the incoming provider with salary maintenance for 12 months, and three, voluntary redundancy. I have given an assurance and so has the Minister to all staff that no-one need lose their job if they wish to remain with the department. In this regard I will also be tabling a report to the inquiry on the HR advisory services provided to staff at Cessnock and Parklea correctional centres. The report includes staff preferences information received to date.

Additionally, I have written to every staff member informing them that if they wish, they can contact me directly. I must say a number of staff have contacted me directly as some staff have requested voluntary redundancy and others to transfer earlier rather than later, and we have approved a number of these requests. By the end of next week approximately 48 staff will be moved on at Cessnock. The department has a HR hotline telephone number for staff at Parklea and Cessnock to allow them to speak directly to staff and personnel staff on telephone number 8346-1555, and also an email contact address.

However, unfortunately, some negative aspects of the Cessnock culture still exist. A few days ago the General Manager of Cessnock Correctional Centre, Ms Lorraine Bridge, addressed staff only to be confronted with a tirade of abuse. I will not repeat that abuse in this room, however, I will hand up a summary of some of the abuse for the information of Committee members. Since giving my evidence here a couple of weeks ago demands have been made by staff at Cessnock and Parklea that I should apologise for what I said here in relation to examples I gave of what comes to mind when I think of Parklea and Cessnock. I must say that my legal advice is that that could border on contempt of Parliament, but I do not want to pursue anything.

Under oath I stated accurately to this Committee what took place, or what was thought to have taken place. In reference to the two prisoners escaping from the maximum-security section of Parklea, I wish to table today video footage of this escape. For 14 minutes these prisoners were attempting to hook onto and climb the wall. All this was going live to a control room where two officers were on duty to watch the monitoring screens. The jail did not know an escape had happened until police phoned in to say that a woman had been pushed out of a car, and that two people had stolen the car and sped off. I table a report into this incident.

I table a report on the escape of two prisoners who drove a truck through the front gates of Parklea and escaped. I also table a report on officers accessing games on departmental computers while on duty in the maximum security section of the Parklea Correctional Centre. I ask the Committee to suppress details of the staff members named in these reports.

The Hon. TREVOR KHAN: Absolutely.

Mr WOODHAM: Unfortunately Cessnock has a history, dating back many years, of intimidation and harassment. The threat to break legs at a meeting did happen, as staff apologised to management for this behaviour following that meeting. The incident of the harassment of a roster clerk who tried to implement change at Cessnock did happen. I table a report from this officer. Again I ask that staff details be suppressed. I repeat once again that Cessnock has a very long history of harassment and intimidation.

In regard to the decision to contract out the operations of Cessnock and Parklea correctional centres I confirm that those two centres will continue to operate in the longer term and that another 250 inmate beds will be established at Cessnock. That is expected to be operable at the end of 2011. As Commissioner of Corrective Services I am responsible for both private and publicly operated correctional centres in New South Wales. Today I will also hand over to you documents showing examples of the manipulation of overtime.

Having said that, I would like to say again that I still hold the greater majority of staff in the department, including Cessnock and Parklea, in the highest regard. They at times have to manage highly volatile and dangerous situations, and do an excellent job. Thank you.

CHAIR: We will receive those documents you wish to table from you now, if that is okay.

Documents tabled.

The Hon. ROY SMITH: Commissioner, as you highlighted, obviously there are a number of people who are upset by some of the comments that you made in your original testimony in relation to some of the activities of staff over an extended period of time, particularly at Cessnock and Parklea. The suggestion is that these sorts of practices have been going on for an extended period, there has to be a significant management issue. The problem cannot just be laid at the feet of the employees or the staff, or even the union. If it has gone on as long as you suggest—a culture of intimidation, harassment and cultural problems over many years—can you tell me what management action has been taken to alleviate those problems or remove that problem over time?

Mr WOODHAM: I know of one example. I do not want to go into too much detail here today. One of the staff at Cessnock was charged criminally involving the murder of a prisoner and finally got acquitted. There is action taken against some of these people.

The Hon. ROY SMITH: When you say that action has been taken against some of those people, that is a very isolated incident, I would like to think.

Mr WOODHAM: There was action taken against people over those escapes. You will find the details in there.

The Hon. ROY SMITH: In relation to the matter of the escape from Parklea involving a Spaniard and a Mexican that were involved in a drug cartel in America, I think you referred to a United States and Mexican drug cartel.

Mr WOODHAM: Yes.

The Hon. ROY SMITH: I have received correspondence from one of the prison officers who was on duty that day, and he advised me—and correct me if this is wrong—that the prison staff there would not have known, or did not know, that it was the case that there was a relationship with a drug cartel. They thought they were only there for immigration purposes and awaiting deportation. If the prison staff had known, they would not have been working in the industrial centre at the time of the incident.

Mr WOODHAM: Well, there is something in that. I know there is. But there is also, if you look at the paperwork, no doubt about who they were involved with back in the United States. The intelligence was available for anyone who wanted to know. I would say the intelligence officer at Parklea would definitely know that these people were involved with a massive drug cartel in Mexico. One of them was folklore: They even wrote folksongs about him in Mexico. They were both wanted for the murder of a sheriff in Texas. The only thing holding them in the state for so long, from my memory, was that Australia would not deport somebody who might be facing the death penalty in Texas. That is why they were held.

The Hon. ROY SMITH: My understanding is that there was an inquiry or an investigation into the matter.

Mr WOODHAM: Yes.

The Hon. ROY SMITH: Was any disciplinary action taken as result of that inquiry or those investigations?

Mr WOODHAM: Yes, and on the other one there was, too.

The Hon. ROY SMITH: Was the action taken in respect to a failure of the staff, or was it a failure of management at that time? In your original evidence you suggested it was staff.

Mr WOODHAM: When you do these investigations, you investigate the whole thing, right? You mentioned the union. I am not here to say that the union was involved in any of it. They were not. Some of their members may have been, but it is not directed at the union.

The Hon. ROY SMITH: Fair enough. I am sure it is not directed directly at the union, but the inference from the testimony you gave earlier—as you point out a lot of people have taken exception to it—is that it is targeting individual Corrective Service officers. I will move on. I get the impression that the move to privatisation was certainly partly due to the incentive of the possibility of saving money, but it appears that it is a tool to deal with a long period of industrial problems at Cessnock and Parklea, which is a significant part of that decision. Is that correct?

Mr WOODHAM: Every jail has a history of industrial action. Cessnock has had its share and so has Parklea, but in both those jails—and one would expect it—the industrial relations would step up when they are notified that those two jails are going to be privatised. We expected that, and that is what has happened.

The Hon. ROY SMITH: That is certainly the case. The union has been doing what it thought was in the best interests of their members. They have been fighting tooth and nail for their rights, as they should, and management has not been able to get the upper hand, so the solution to the problem has been to say, "Well, we'll privatise the jails."

Mr WOODHAM: No. That is not true.

The Hon. ROY SMITH: That is how it appears.

Mr WOODHAM: That is not true. If you listened to my evidence before, we went into detail why Cessnock and Parklea were selected, and it definitely was not because of industrial action.

The Hon. ROY SMITH: You went to a great deal of trouble to highlight a number of industrial issues over a protracted period and you keep referring to the many years of intimidation, harassment and other problems. You can understand how some people get the impression that it is not just about saving money but it is about the industrial issues as well. We have heard evidence from Corrective Services in South Australia today that they have a privately run jail that is run profitably. One of the factors that allows it to run profitably is that it is a new facility, and new facilities are cheaper to run than are older facilities, such as Cessnock or even Parklea.

Some of the arguments for privatising in New South Wales is that the Junee facility is so much more cost-effective than are our other facilities, but Junee also is a new facility. Do you already have tenders to tell us that the private consortiums will operate older prisons, such as Cessnock and perhaps Parklea, cheaper than we currently do?

Mr WOODHAM: Not from the tenderers. I have not discussed it with them.

The Hon. ROY SMITH: What if we do not get a tenderer or someone to come in and operate it cheaper?

Mr WOODHAM: You will not know what they put in until they put their quote into the tender box.

The Hon. ROY SMITH: Exactly, but you have already told us that 48 staff will be moved on from Cessnock next week, and we do not even know that we have a private contractor who is prepared to do the job cheaper.

Mr WOODHAM: The decision has been made to contract those two centres out. The market testing has estimated that we would save \$15 million, and that is proceeding.

The Hon. ROY SMITH: That market testing was based on figures that are currently generated from Junee, is that correct?

Mr WOODHAM: Partly.

The Hon. ROY SMITH: As I said, Junee is a new facility specifically designed for a particular mode of operation and procedures, and the facilities at Cessnock and Parklea are significantly different.

Mr WOODHAM: Hang on a minute—that is not true. Cessnock was built as a minimum security jail. Minimum security—not maximum or medium, like Junee or Parklea. It was originally built as a minimum security jail.

The Hon. ROY SMITH: Moving on to the transport of prisoners and the transport service, the police gave evidence today that they have significant problems over a protracted period of time with the department. The police commissioner, in his submission, cited a host of examples of where there were problems, where they had to take police off duties to do transport duties, transporting prisoners to and from jail or from courthouses and so forth. I can recognise—I think everyone does—that there is a significant logistical problem in providing that sort of service when you do not know how many prisoners will need to be transported on a particular day. You have made the decision to privatise that section of the department. Have you had any figures or quotes or estimates from private contractors that they will be able to do it cheaper and better?

Mr WOODHAM: I will give you the same answer as I did before. We will not know what the quotes are until they put their quotes in the tender box later on, and that is many months away. Can I just say something about escorts? The responsibility for prisoner escorts from prisons to courts was the responsibility of New South Wales police up until the early 1990s. Before that time the only responsibility DCS had was for bail applications and appeal matters. The New South Wales Police Force had a dedicated division called Four Wheels that carried out this task in the early 1990s. These functions were progressively transferred to DCS. We now have a team of 496 officers covering most parts of the State. We cannot do every escort to court just because they are trying to get more police on the streets.

I recall going up and having a meeting with the local member and the police at Inverell not so long ago where it was not cost effective to take the escorting function that they have on the court, security function, off the police. It would have saved three police but we would have had to put nine prison officers on there. So we cannot take all that function off the police—that is one point I want to make—and we cannot do every escort to court in the State without practically doubling the staff we have now. I also add that the problems with receiving inmates in some of our courts—not all; some of our people do a fantastic job in the courts—is restricted by rigorous union demands, which cause massive overtime runs. We work very closely with the police but, as I said earlier, we cannot cover all the State without massive increases to staff and infrastructure.

We have been told politically that we are not to increase our role in this area. But I can recall meeting Mr Mennilli—he gave evidence here today—where he brought up an example where they could not get one prisoner into Penrith and one of his superintendents spent four hours getting one prisoner into a court cell complex. My answer to him was, "Why didn't you ring me?" We have a number of other options. We could have placed him in the remand centre or Long Bay or somewhere else instead of a senior officer wasting four hours trying to get one prisoner in because the prison officer was saying he will not take him.

The Hon. ROY SMITH: As I said, I can accept that there are significant logistical issues with that particular function, but it surprises me that the department seems to be committed already to privatising those jails and that section of the department yet it does not have a real indication from private enterprises as to what they will charge for those services. If the tenders come in and there is not significant cost savings, will the decision to privatise those sections be reversed?

Mr WOODHAM: They would have to be, I would say. That is my opinion. I am not talking for the political opinion. In my opinion if the tenders come in and they cannot do it cheaper, it would be a useless exercise to even think about it.

The Hon. ROY SMITH: What about the people who have been relocated from Cessnock already?

Mr WOODHAM: I have mentioned this to John Cahill, the head of the PSA.

Ms SYLVIA HALE: Have you told the Minister or any other member of the Government that you may resign if the privatisation does not proceed?

Mr WOODHAM: No. That has nothing to do with this inquiry.

Ms SYLVIA HALE: Given the evidence of poor management of the public prisons, including the evidence that was contained in your own submission, what will you do to improve the culture at Parklea and Cessnock if they are not privatised?

Mr WOODHAM: Well, they are going to be.

Ms SYLVIA HALE: So that is your response.

Mr WOODHAM: They are going to be privatised.

Ms SYLVIA HALE: You have so washed your hands of management that you will outsource them.

Mr WOODHAM: I have not washed my hands at all. That is why we are not trying to put casuals in there and other aspects of the way forward, workplace reform package, is because the decision is made to privatise those two jails.

Ms SYLVIA HALE: I now refer—

Mr WOODHAM: I want to stress that I am not talking about all prison officers at Parklea and Cessnock. It is a very small number.

Ms SYLVIA HALE: I take you now to the answers that you supplied to questions on notice, particularly the answer to question 31 on page 12. In your answer to that question you have identified the history of overtime budgets against actual overtime worked since 1999-2000. Is it the case that for all of that period the actual figure has exceeded the budget figure by least 50 per cent to 60 per cent—for the last 10 years?

Mr WOODHAM: Yes.

Ms SYLVIA HALE: You have referred publicly to an overtime budget of \$20 million per annum being exceeded by almost double the budget figure. Why would the department set a budget figure of around \$20 million per year when the minimum actual amount spent on overtime over the last 10 years was \$23.7 million in 2000 and the 10-year average was in the vicinity of \$34 million? Given that the budget figure bears no resemblance to the actual and appears to take no account of history, how was the budget figure arrived at?

Mr SCHIPP: We do not have the luxury of being funded for what we spend. We are given a fixed budget which is generally escalated from the previous year. The submission that the department made on 27 February, I think on page 34 under item 14, goes into quite a lot of detail as to how our staffing formula works. We employ staff to meet a staffing formula. For example, if you start from 365 days a year that are available and you deduct the weekends and make provisions for recreation leave and sick leave you come down to a figure of 209 shifts, which is what an officer has available to be rostered during the course of the year. In addition to that, we expect unexpected leave, unscheduled leave, to be taken for a variety reasons, either sick leave above the allocation—

Ms SYLVIA HALE: But do you not budget for this?

Mr SCHIPP: I am getting to it. We budget for an average of 15 days in addition to the 209 days that they work to be paid for through overtime because of unexpected leave. That is 15 days less than the 209. Fifteen days less than the 209 for the total number of officers is about \$20 million.

Ms SYLVIA HALE: Surely there must be something wrong with your budget processes that there is such a wide variation.

The Hon. TREVOR KHAN: In the answers to questions, questions 25 through 27 dealt with key performance indicators principally applying to currently existing institutions. In respect of each of those questions—and I recognise there was only 21 days to answer—the response is "response to be provided". If, in fact, a currently

operated institution has key performance indicators set for it would they be readily available in order to have answered that style of questioning within 21 days?

Mr WOODHAM: If you are talking about general managers and managers of security they are not on a contract. We also have key performance indicators [KPIs], quite a number of them. I have got no worries about making mine available to you. We had 209 questions, which was a lot for us to cater for, and we tried to get the things that we thought would be applicable for us coming back this time. My KPIs you can have any time in my opinion.

The Hon. TREVOR KHAN: You are in the process of privatising two institutions. You already had in New South Wales Junee, which is contracted out or privatised. You would understand from the questions that were asked of various witnesses on the last occasion that all committee members are interested in where you are going with the contracts for the two institutions. What are your expectations in terms of performance of any privatised institution? That is the first part and the second is, if you do have expectations in regards to the performance of institutions that you privatise will they be the same expectations in terms of operation as you have of currently operating institutions?

Mr SCHIPP: The minimum standards that all correctional facilities operate under are actually published and tabled in Parliament. They were established as a result of the tendering of Junee in 2000-01. It is that set of minimum standards that all facilities would expect to upgrade to. Each facility is different because of its population number and mix, et cetera. So the contracts and tender specifications that are being drafted have in them a set of key performance indicators or some performance-linked fee provision and what that requires and what that allows us to do is to establish a set of key performance indicators which are bound financially with the provider that they would be required to operate to, and penalised if they do not achieve.

In our submission we gave an example of the performance-linked fee and key performance indicators that are articulated in the current contract and the proposed contracts but the system was established so that the individual key performance indicators can vary from year to year to give us a particular focus, depending on what issues might have arose throughout the course of the operations and throughout the course of the contract. So there is a fixed component which provides for penalties if certain events occur and then there is a variable component that allows us to negotiate on a year-to-year basis with the supplier, with the contractor, to provide a particular area of focus.

Mr WOODHAM: In our submission pp 42 to 52 identifies a number of the—

The Hon. TREVOR KHAN: It does—

Mr WOODHAM: at Junee.

The Hon. TREVOR KHAN: Assistant Commissioner Mennilli gave evidence this morning. Did you have anyone here during the taking of that evidence?

Mr WOODHAM: Not at the front table.

The Hon. TREVOR KHAN: The general tenor of his evidence seemed to be that, yes, he would support privatisation of court escort services and the like if it resulted in police being freed up from having to do court escort services. If that is his position, that is, we just want to get our blokes out onto the street, are you able to say that if the court escort services are privatised that the police will not have to transport prisoners around, or is that unrealistic?

Mr WOODHAM: No. The private contractor will only take over what we are doing now. I just gave you the example of Inverell because of the politician at that meeting I was at—

The Hon. TREVOR KHAN: if Richard Torbay cannot convince you, noone can—

Mr WOODHAM: had to agree it is not politically viable to put three police back on the street and have to pay for nine prison officers. That does not mean to say we could not do it if a decision was made but you have got to look at the economics of that as well.

The Hon. TREVOR KHAN: Has the position that it is a replacement of like with like been communicated to Commissioner Scippione or Assistant Commissioner Mennilli prior to this point?

Mr WOODHAM: I have met with Commissioner Scippione on the whole Way Forward issue. I have signed a Memorandum of Understanding with him on certain issues. He is aware of what we are doing. I will take that a bit further. We are not going to fall into the trap of Western Australia or some other places that have privatised escort. We are going to keep control of all escort coordination. We are going to keep a senior officer, one of our officers, at every 24-hour cell complex. What will happen is that the private people will come to work and report to that person. That person calls the shots. That person makes the decisions just like they do now. We are also going to keep control—you would not let the alleged terrorist go to court under a contractor—of all the high-risk and extreme high-risk prisoners. We believe that we are going to keep between 70 and 90, even 100 of our officers in that network and they will be running it.

The Hon. TREVOR KHAN: As I understand it, the court escort service provides what I describe as a service, of moving a prisoner who has been refused bail from the cells into court, remains with the prisoner whilst in court and then takes the prisoner back to the cells, assuming bail is not granted. Are you suggesting that the person who does that escort duty into court and provides a level of security in court is going to be a private operator?

Mr WOODHAM: We have got casuals doing that role now and they are mainly retired prison officers and retired police.

The Hon. TREVOR KHAN: Precisely.

Mr WOODHAM: I reckon a lot of those people will be attracted to the private operations as well.

The Hon. TREVOR KHAN: You are probably right, but there is no guarantee in the scheme of things that it could not be the bouncer from down at the Impy?

CHAIR: What is the Impy?

The Hon. TREVOR KHAN: The pub.

Mr WOODHAM: That is up to us and our security checks.

The Hon. TREVOR KHAN: Will you keep control over who is employed by the private operator?

Mr WOODHAM: Yes.

The Hon. TREVOR KHAN: Will you select the people?

Mr WOODHAM: No, I am not going to do the selection but we are going to make sure the criminal check is done and everything else that we do for everyone else who wants to join the job. They have to go through the same process. They have to abide by our policy.

The Hon. TREVOR KHAN: I do not doubt that, but you are not going to do the interviews?

Mr WOODHAM: No.

The Hon. TREVOR KHAN: You are going to be presented with a piece of paper. Somebody is going to check—obviously I am not saying you—that they do not have a criminal history and they have no known associates, I assume, within the prison system. Is that the nature of the check that you do?

Mr WOODHAM: Yes. We have already contracted out boom gates and perimeter security.

The Hon. TREVOR KHAN: Yes, I know that. That has been an issue too.

Mr WOODHAM: We do our own checks of all those personnel as well.

The Hon. TREVOR KHAN: Is it appropriate for private operators to provide a level of security to the judiciary, court staff and members of the public in a courtroom?

Mr WOODHAM: Of course, if they have the appropriate training. That is another obligation that I have to make sure that they abide by is the training they get.

The Hon. TREVOR KHAN: Has that matter been negotiated with the Attorney General?

Mr WOODHAM: The Attorney General?

The Hon. TREVOR KHAN: Yes?

Mr WOODHAM: The Attorney General was the Minister who agreed to privatise those functions. He was our Minister at the time.

The Hon. TREVOR KHAN: I know that Hatzistergos was. You are saying that he agreed to court security, essentially, being privatised?

Mr WOODHAM: Yes. If you go to some of the courts now, the security is privatised with the metal detectors. Go to the airport, go to the military bases; it is the same thing.

The Hon. TREVOR KHAN: Do you think that the operation of metal detectors at the front of the Downing Centre is the same as the fellow who is dragging the prisoner up from down in the cells and then remaining with the prisoner whilst he is in the dock?

Mr WOODHAM: If they are appropriately trained they could do any of that—any of that.

The Hon. TREVOR KHAN: And you see that as appropriate?

Mr WOODHAM: Yes.

The Hon. JOHN AJAKA: Could I take you further on that? Let me understand this: Would a Corrective Services officer do a traineeship? If I were to apply today to be a Corrective Services officer and I was accepted—

CHAIR: You are too old.

The Hon. JOHN AJAKA: I am too old, I understand that, but do I go through a traineeship? How long would a traineeship be?

Mr WOODHAM: Eleven weeks.

The Hon. JOHN AJAKA: And then what? Would the person commence employment?

Mr WOODHAM: Yes.

The Hon. JOHN AJAKA: Is he under supervision?

Mr WOODHAM: Yes.

The Hon. JOHN AJAKA: Would an 11-week probationary or new trainee or new Corrective Services officer be conducting an escort into a court system on his own?

Mr WOODHAM: It could be happening now with our people. The Junee officers take prisoners to court. They take prisoners to hospital, they guard them and they do it well. They do perimeter security with armed perimeter security.

The Hon. JOHN AJAKA: How do you ensure, since you said you will take responsibility—

Mr WOODHAM: I am ultimately—

The Hon. JOHN AJAKA: If I could finish the question please, commissioner, I would be grateful.

Mr WOODHAM: I am ultimately responsible.

The Hon. JOHN AJAKA: But if I could finish the question; I have not even asked it yet. How are you now certain, as the person ultimately responsible, that those who are currently undertaking escort services from Junee, if I understand you, that any of your brand new officer are fully qualified to do so?

Mr WOODHAM: Well, we have got a monitor that checks all those things, a full-time monitor.

The Hon. TREVOR KHAN: On the last occasion I think your evidence was to the effect that you would not be agreeable to the privatisation of the remand jails because of the high stress nature of those facilities. Is that a fair summary of your evidence?

Mr WOODHAM: No. Parklea is a remand jail.

The Hon. TREVOR KHAN: But was it not your evidence that the remand function at Parklea was to be moved way from Parklea?

Mr WOODHAM: No. What we are going to do is put all the new receptions through the Silverwater remand jail before they go to Parklea, so they will not be receiving fresh receptions off the street.

The Hon. TREVOR KHAN: Let us deal with the fresh receptions. You want to keep control of the fresh receptions partly because of the high stress nature of that component, is that right?

Mr WOODHAM: Yes, and to make sure that they are, you know, we—Parklea do not assess many new ones now. Most of them still go through the MRRC. There are only a few that they do, so what we are setting up—and Mr McLean has been talking to the MRRC staff, the remand staff at Silverwater, about them taking over the role of all fresh receptions coming through, which is something we were doing before and we are going back to it.

The Hon. TREVOR KHAN: And you will not privatise the women's jails because of the special needs of the women prisoners, was your evidence?

Mr WOODHAM: Yes, I do not agree with privatising the women's jails.

The Hon. TREVOR KHAN: Let us go to a facility like the one that operates at Moree, a facility that holds plus 24 hours a lot of Aboriginal persons who have been refused bail. Would you agree with me that those are prisoners who are high stress and difficult prisoners?

Mr WOODHAM: Of course.

The Hon. TREVOR KHAN: Under your current proposals you are going to privatise that facility of high stress, difficult prisoners. Does that not sit inconsistently with what you are otherwise proposing?

Mr WOODHAM: When you call high stress, difficult prisoners, there are difficult prisoners in every correctional centre in the State, including Junee.

The Hon. TREVOR KHAN: But they are not just coming into the system?

Mr WOODHAM: They are coming into the system at Junee. It is a catchment area. That is the catchment jail for remands down in the Wagga Wagga-Albury area.

CHAIR: I will start with a question to try to clarify some of the conflicting evidence we have been getting about sick leave and overtime. Commissioner Woodham, can you tell the inquiry why you think there is a correlation between sick leave taken by Corrective Services officers and the amount of overtime being worked within the department?

Mr WOODHAM: I will get Mr McLean to answer that.

Mr McLEAN: An analysis of Department of Corrective Services roster data for correctional officers for the 2007-08 financial year clearly reveals that 44 per cent of all overtime expenditure was directly incurred as a result of sick leave taken by correctional officers. This equates to some \$16,856,661. The second largest reason for overtime expenditure was 12 per cent on security-related matters, which equated to \$4,520,000. A new sick leave policy commenced on 1 January 2009 as part of the memorandum of understanding between the Public Service Association and the Department of Premier and Cabinet. The policy will improve our capacity to manage sick leave within the Department of Corrective Services and should result in a decrease in overtime arising from sick leave. The completion of the statewide implementation of the Way Forward reforms and the improved benchmarking opportunities that will be achieved through the privatisation of Cessnock and Parklea correctional centres will enable us to deliver the efficiencies required by the Government.

The Hon. HELEN WESTWOOD: Can you or your deputies provide information to the Committee on the overtime rates that you have been referring to? Give us some comparison of say, at Cessnock and Parklea, those that have been identified for privatisation, compared to some of the other prisons on the mid-North Coast or Wellington, to give a fair comparison?

Mr McLEAN: I will give a little bit of background in response to this. Cessnock and Parklea correctional centres have a total inmate population of 1,274 inmates, the two centres. Part of the comparison that you are asking for I will give in relation to the mid North Coast and Wellington correctional centres. They have a total inmate population, very similar, of 1,280, six inmates more than Cessnock or Parklea. Overtime expenditure for the 2007-08 financial year for Cessnock and for Parklea totalled \$4,554,200. Overtime expenditure for the same period for the mid North Coast and for Wellington correctional centres was \$809,300. That is a difference of approximately \$3.8 million for a similar inmate population.

The significantly reduced operation costs at mid North Coast and Wellington correctional centres are directly attributed to the Way Forward model of operation that provides a significant financial saving and benefits to all New South Wales taxpayers.

The Hon. GREG DONNELLY: Commissioner, I think the record will show with respect to Ms Hale's first question to you this afternoon that she referred to errors or mistakes in the evidence that you have provided thus far to the hearing, which was some time ago.

Ms SYLVIA HALE: Can you specify exactly?

The Hon. GREG DONNELLY: You made a broad comment.

Ms SYLVIA HALE: I cannot remember using those words "errors or mistakes". I stand to be corrected.

CHAIR: This session is for asking witnesses questions, not having discussions between Committee members.

The Hon. GREG DONNELLY: I make it very clear that that was my understanding of the import of the question. My next question is to the commissioner is: Do you stand by the evidence you provided to this committee of inquiry already?

Mr WOODHAM: Yes.

The Hon. GREG DONNELLY: My next question goes to the point raised by the Hon. Roy Smith, and it is couched in terms of looking at Cessnock. Was going down the path of privatisation at least in part motivated by trying to get the upper hand, that was the phrase he used, in terms of industrial relations at the site? I put it to you, that conflict model of industrial relations of getting the upper hand would suggest that there is a winner and a loser. It is precisely the industrial relations that the Department of Corrective Services does not want in any of its facilities.

Mr WOODHAM: That is right.

The Hon. GREG DONNELLY: My third question goes to an issue that has been touched on already in part, the issue of casual employees. Commissioner, can you tell the inquiry whether the recent introduction of casual correctional officers to the Department of Corrective Services has had an appreciable impact on operational outcomes for the department? In particular has it had an impact on the level of overtime expenditure?

Mr WOODHAM: Mr McLean will answer that.

Mr McLEAN: Sixty casual correctional officers commenced duty at the correctional centres on 8 December 2008, after successfully completing identical training provided to permanent correctional officers. Senior correctional centre managers working with these staff have been very satisfied with the work, and the quality of the work performed. These officers are multi-skilled and capable of working across the variety of correctional centres, an opportunity that I would like to introduce to permanent staff who may be interested in expanding their operational experience. Of particular note is the improved operational capacity of the Department of Corrective Services to respond to unscheduled vacancies quickly and efficiently to ensure that resources are appropriately targeted centrally by the Operation Scheduling Unit.

This is a significant advantage over the traditional system where only officers who are attached to a centre are available to work in that centre. From a financial perspective I can report that from 8 December 2008 to 15 March 2009 the use of the first graduating class of casuals has achieved a net cost reduction of approximately \$450,000 for the period, which can be extrapolated to approximately \$1 million in the current financial year and \$1.6 million for a full financial year—that is with 60 officers. An additional 57 casual correctional officers are due to graduate in April 2009. They will further enhance the ability of the department to meet operational needs while also continuing to substantially reduce the operational costs for the benefit of all New South Wales taxpayers.

The Hon. HELEN WESTWOOD: Apart from privatisation, can you tell the Committee of any other workplace reforms that you have put in place throughout the department?

Mr WOODHAM: Yes. The other reforms include a new absenteeism policy, the centralising of rosters, the closing and opening of correctional centres. There has been a feasibility study done at Grafton Correctional Centre. I stress that no decision has been made in relation to even if a new jail is to be built at Grafton or how it would be built, but it is thought that if it were built there is a possibility of it going totally a privately funded project. A number of management plans have been sent to the union and the jails to start discussions on them. As well, of course, there is the introduction of casuals into correctional centres.

The Hon. HELEN WESTWOOD: Regarding the contract that is currently in place with Junee and the contracts that you are preparing for the privatised prisons that you have identified for privatisation, do those contracts have conditions that specify the training level and certification?

Mr WOODHAM: Yes.

The Hon. HELEN WESTWOOD: That is required of prison officers?

Mr WOODHAM: Yes.

The Hon. HELEN WESTWOOD: Does that specify whether it is an accredited institution at which those officers are to be trained? Who certifies them?

Mr SCHIPP: Certainly the national standards need to be met—the competency standards, certificate 3 for correctional officers. The department has to certify that all the officers pass that standard and that, as the Commissioner mentioned earlier, we run our own security checks. We also require contractors to submit all their current standard operating procedures and have clearly documented procedural amendments for all positions based within the centre. There is an entire regime form of voluntary key performance indicators that the companies have to meet. The companies themselves are also subject to all of the same obligations and requirements that we are in terms of freedom of information and access by the Ombudsman, by the Independent Commission Against Corruption and various other oversighting bodies and the contract binds the contractors to that.

The Hon. HELEN WESTWOOD: The department certifies them?

Mr SCHIPP: Yes. As I said, they have to be compliant with the national training standards.

CHAIR: Commissioner Woodham, one of the themes that has come out in the evidence so far in this inquiry is that people say that there is a lack of information, a lack of accountability for the standard of service provided

by the Junee prison. Given that you have been at a senior level in the department for the whole 15 years that Junee has been operating, why are you confident that the private contractor has been delivering a quality service up to the value of what the State has been paying?

Mr WOODHAM: Junee Correctional Centre, like all other correctional centres in New South Wales must operate under the provision of the Crimes (Administration of Sentences) Act 1999 and the Crimes (Administration of Sentences) Regulation 2008, and must abide by Department of Corrective Services operational policy and procedures. Junee is also contractually bound to comply with a suite of minimum standards and a system of monthly inspections and assessments of performance, which is not required by public-managed correctional centres. I have often said that I would love to have a monitor in every prison.

The original invitation for tenders for the management of Junee Correctional Centre issued in 1992 incorporated a set of minimum standards of operation of correctional centres under contract management. These minimum standards were developed by the department to allow maximum opportunity for innovation in correctional management. One of the things that Junee has implemented is up-to-date technology that is not in any other jail; for example, the issue of methadone. The issue of methadone is done on an iris recognition system that pours out the dose to that person, so there cannot be any mistake in the dose that the person gets. That is one of the things they do better than anywhere else in our system.

In approaching the contract tender for a new management contract for Junee Correctional Centre in 2000, the department gave consideration to the issue of whether the existing minimum standards were to be used unchanged or whether the documents should be changed in light of developments in corrections over the previous decade. At that time governance and monitoring of outsourced delivery by governments had become an issue of contention, and in the preceding 10 years correctional practice in New South Wales had evolved and advanced.

It was also recognised that all correctional centres in New South Wales, including Junee Correctional Centre, should be managed in accordance with the department's corporate plan. Therefore it was considered highly desirable that the new Junee contract and minimum standards reflected best practice in that area. So during 2000 the department conducted extensive research across jurisdictions to facilitate the development of a new suite of minimum standards for Junee Correctional Centre, which were compatible with the department's vision, mission and corporate plan. As we delivered that, the department's vision, mission, statement of values and corporate goals would provide the framework for a cohesive and consistent correctional system in New South Wales.

Junee Correctional Centre, as part of the New South Wales correctional system, must be managed in a manner that is consistent with the achievement of the department's corporate goals. Accordingly, the minimum standards for the current management contract were developed within the framework of the key result areas of the department's corporate plan. Minimum standards are grouped under the appropriate key result areas to ensure that the private operator addresses the corporate goal of the department in delivering the services required by the management contract. A similar approach has been adopted in England and New Zealand, which link the management specifications of their contracts to their corporate key result areas.

In conducting the research for this integration of the contract, the department found a number of jurisdictions had implemented a way of driving correctional performance through the implementation of a performance linked fee. This fee is intended as an incentive to the achievement of the highest possible scope, range and standard of correctional services and programs. Integral to the fee is a schedule of fixed outcomes and key performance indicators against which the private operator's performance is assessed. The outcome of their performance determines the proportion of the fee they will receive at the conclusion of each contract year. The fee represents 2.5 per cent of the annual management fee, which is withheld pending the annual assessment of their performance against the key performance indicators. If they do not meet the required performance level for a key performance indicator, a proportion of the fee is retained by the department.

In addition, the performance linked fee can be reduced by amounts of \$100,000 for a range of incidents. For example, if the Coroner makes a finding of contributory negligence against the private operator in relation to the unnatural death in custody of an inmate, the fee can be reduced by \$100,000. It may similarly be reduced if the commissioner has to intervene to resolve an inmate disturbance which has escalated due to the private operator failing to take timely and appropriate action, which may include asking the department for assistance. The performance of publicly managed correctional centres is not driven by key performance indicators, nor are there any financial penalties for poor performance. The current contract for Junee is soon to expire and the new contract is to commence. As part of its preparation for tendering, in 2008 the department once again scanned the

correctional environment to ensure the minimum standards of the new contract reflected the latest developments in correctional management practice. The elements of the performance linked fee were similarly reviewed and refreshed.

Whilst these minimum standards were being developed and then implemented, stringent accountability mechanisms to underpin the contracted out correctional service of New South Wales were also developed and implemented. Since the first contract was awarded in 1993, systems for monitoring the delivery of service in accordance with the minimum standards in the contract have been refined and strengthened. The department has established the Corrections Inspectorate to carry out a number of functions associated with the oversight of contracting out of correctional services. The director of the inspectorate is responsible for monitoring the operation of the privately managed correctional centre at Junee. A senior officer, known as the monitor, has been specifically appointed for that role, and reports directly to the director. This officer attends Junee each month to conduct a review.

To ensure the department has an effective accountability mechanism, the following review methodology has been prescribed for the monitor. It requires that on each occasion they visit Junee they must: validate data supplied by Junee concerning their performance against key performance indicators of the performance linked fee—this involves going back to source documentation and confirming what has been reported to the commissioner each month; review performance against a defined list of monitoring elements covering a broad range of correctional operations—this is more an operational audit; review compliance against departmental policy and departmentally approved local procedures—this is more traditional-style auditing, consisting of reviewing local records, registers and files, observing staff in the performance of the duty, and interviewing staff about their knowledge and understanding of what they are required to do to comply with policy and procedures; and, additionally, review performance against one or more of the 74 minimum standards specified in the management agreement.

Other features of the accountability mechanism are as follows. The management of Junee Correctional Centre are required to report to the commissioner on an extensive list of indicators. The monitor routinely selects data from this report for validation during the monthly review. Audits are conducted periodically to examine performance in specified areas, including program delivery, health service delivery, and food service delivery. A committee comprising senior departmental officers, senior management of the private operator and a senior representative of Justice Health meet bimonthly to review performance. Junee Correctional Centre is not exempt from any of the independent review processes that apply to public facilities. This means that the New South Wales Ombudsman, the Official Visitors Scheme and the Antidiscrimination Board can perform their functions with respect to prisoners detained in privately operated facilities as they would with respect to offenders in Corrective Services-operated facilities.

Advisory bodies, including the Serious Offenders Review Council and the Correctional Industries Consultative Council, visit the centre and provide advice to the commissioner with respect to individual inmates and activities in the centre. Inmates in private facilities can also petition bodies such as the United Nations and the Human Rights Committee, and can seek relief from the New South Wales Supreme Court. Junee Correctional Centre is also subject to oversight and inspection by statutory bodies like the WorkCover Authority, whose inspectors can enter the centre at any time to review work practice and worker safety issues.

In conclusion, I am satisfied that the accountability mechanisms the department has in place for monitoring the performance of the private operator at Junee Correctional Centre will ensure the private operator is delivering the services required by the management agreement.

The Hon. JOHN AJAKA: Commissioner, can I put a hypothetical case of what I believe would be a normal situation for the employees, the officers? Take a situation where a corrective officer is working at Cessnock, with a young family, children at school, wife working in the local area, and they own a home in Cessnock and have been there for a number of years and are well connected to the community. As I understand what you have said you are doing everything you can to look after them. You are providing them with psychological and other support services seven days a week, which I am sure they appreciate enormously, and you have given them three choices: they can transfer, accept voluntary redundancy or apply to work for the incoming provider. There is no guarantee that if they apply to the incoming provider it will give them a job or one at the level at which they are currently employed, is there?

Mr WOODHAM: I would say that if they have a reasonable work record, with the number of people that have elected to leave Cessnock they will be offering the greater majority of staff, if not all, a job if they want one.

The Hon. JOHN AJAKA: From your earlier evidence I got the impression—I speak only for myself—that there were so many rorts going on at the jail by the staff, by the members to use your own words, that it was causing a problem. Why would any private operator come in and want to risk hiring those employees?

The Hon. GREG DONNELLY: Point of order—

Mr WOODHAM: I have never mentioned the word "rort".

Ms SYLVIA HALE: No, he talked about manipulation.

Mr WOODHAM: That was not specific to Cessnock.

CHAIR: Order!

The Hon. GREG DONNELLY: My point of order goes to basically verballing the commissioner.

The Hon. JOHN AJAKA: Oh, come on. That is nonsense.

Ms SYLVIA HALE: The commissioner can stand up for himself.

CHAIR: Order! Ms Hale you do not have the call and we will use our time more usefully if people do not interject when a member takes a point of order.

The Hon. GREG DONNELLY: The commissioner has not made a statement about all of the staff at Cessnock.

The Hon. JOHN AJAKA: I did not say that.

The Hon. GREG DONNELLY: Read the record. Rorting is a word that I do not think is likely to come from the commissioner. Questioning is fine. We understand this is broad-ranging questioning but it goes to the evidence that has been put before this inquiry, not what you want to interpret it to be.

The Hon. JOHN AJAKA: On the point of order: I made it very clear in my question that the impression I was getting—and if it is the wrong impression it is open to this witness, who is clearly qualified; he is the commissioner, for goodness sake, to tell me that my interpretation is wrong. I am sure he will correct me. With all due respect, it is not a point of order.

CHAIR: Order! We do not have a lot of time left in this session and I do not want to waste it on this sort of argument backwards and forwards amongst the Committee. Members should be mindful not to misinterpret information that has been given in evidence. However, the Hon. John Ajaka was seeking an opinion from the commissioner. If the commissioner does not agree with the premise of the question it is quite within his rights to assert that fact.

Mr WOODHAM: Can I have the question again?

The Hon. JOHN AJAKA: Let me re-word it. Do you really believe it is fair that the only choices available to an officer in this situation are to accept a transfer somewhere that will take him completely out of the area, force him to sell his home and force his wife to give up her job, or take redundancy, which means his career with the department is complete, or maybe get a job with the new provider? Do you consider you are offering them a fair situation?

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

On your question, the successful tenderer must invite existing departmental personnel employed at Cessnock Correctional Centre or Parklea Correctional Centre, as applicable, to participate in a merit selection process for available positions. They must do that. In undertaking merit selection the successful tenderers—there could be different tenderers at Parklea and Cessnock—will be required to select a departmental employee where the departmental employee has sought a position and is of equal merit to another candidate who is not a departmental employee. That is, department personnel have a priority. The successful tenderer may determine the salary, wages and conditions and entitlements offered to departmental personnel who accept offers of employment with a successful tenderer. We have to maintain their current salary for 12 months. I think that answers your question.

CHAIR: Order! Although we have gone past our scheduled finish time we will have five minutes of crossbench questions. Mr Smith says he has one very short question.

The Hon. ROY SMITH: Commissioner, during the protracted negotiations over the years with the Prison Officers Vocational Branch [POVB] was there a point in time where they were told that if they did not accept The Way Forward reforms Parklea and Cessnock would be privatised?

Mr WOODHAM: No, it did not go that way at all. I will ask Mr McLean to answer.

Mr McLEAN: Throughout the proceedings over the number of years you have mentioned it was made very clear through a series of letters from the commissioner and through attendance at staff meetings that we also had to make sure that we were very competitive in relation to privatisation. We did that on a regular basis during that period of time.

Mr WOODHAM: Can I just add to that? The privatisation issue nearly occurred at Dillwynia and Kempsey. It was a case of "For God's sake sign up or you will lose it." It went right to the last night before the POVB agreed with me to sign up those two jails, otherwise they would have been privatised at that point. They were going the next day.

Ms SYLVIA HALE: Commissioner, I would like to clarify one thing before I ask my question. You referred to a murder at Cessnock. Is it correct that that incident occurred in 1985 or even earlier and the police investigated and the subsequent trial resulted in acquittals?

Mr WOODHAM: I have said that.

Ms SYLVIA HALE: 1985?

Mr WOODHAM: I have said that. There is a history there. I can give you plenty more examples if you want them.

Ms SYLVIA HALE: It was more than 20 years ago. You have complained about manipulation of overtime and said that this is one of the elements that are leading to privatisation. Can I take you to the table that you provided on page 17 in the answers to questions on notice, which refers to average overtime hours worked per custodial officer? At Parklea the average number of hours worked was 181 hours, in a period when the ratio in the prison population was 1:1 between prison officers and inmates. In 2004-05 it went up to 293 and in 2007-08 it has come down to 260, at a time when the staff ratio has gone to something like 3:1. If we then look at the Mid North Coast and Dilwynia—that you hold out as examples of properly administered correctional centres—in 2004-05 the average hours worked were 39 per custodial officer and that rose to 157 in 2007-08. Similarly at Dilwynia it has gone from 24 to 27. What sort of system are you administering?

Mr WOODHAM: A good one.

Ms SYLVIA HALE: The average number of hours does not seem to reflect that? In fact, they seem to suggest that less overtime is being worked at Parklea than, say, four or five years ago—

Mr GRANT: Ms Hale, I am not sure how you are interpreting that document. The document says the average overtime worked per custodial officer. Parklea, as you said, in 2007-08 was 260 per custodial officer—

Ms SYLVIA HALE: That is right but it has gone to 293?

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Mr GRANT: Irrespective of the trend, that versus 37 at Dillwynia—it is almost eight times higher than the rate per individual at Parklea. So you are drawing attention to a major discrepancy there.

Ms SYLVIA HALE: I also draw your attention to the increased ratio of prisoner to inmate, which at Parklea is so much greater than elsewhere?

Mr GRANT: No, that does not reflect that.

Ms SYLVIA HALE: To suggest that Parklea is leading the surge in overtime really is a massive misrepresentation of the position?

Mr McLEAN: I will answer part of that for you, if you like? We have made many attempts at Parklea, right through those years that are mentioned, to reduce overtime. We have had discussions on a regular basis with the Prison Officers Vocational Branch [POVB], the Commissioned Officers Vocational Branch [COVB] and the management of that centre. On every occasion, particularly in relation to an activity statement, we tried to look at how we could reduce the overtime it was rejected—rejected outright. We can provide you with documentation if you like?

CHAIR: We have run out of time for questions in this part of the hearing. I thank the Commissioner and the senior officers from the Department of Corrective Services for giving evidence to the Committee again today.

(The witnesses withdrew)

(Short adjournment)

BRIAN LAWRENCE, Manager, Acacia Prison Contract, Court Security and Custodial Services, Department of Corrective Services, Western Australia, sworn and examined:

CHAIR: I welcome Mr Lawrence to our hearing and thank him for making the effort to come from Western Australia to assist us today. During the course of your evidence if there are any matters or documents you wish to table that you would only like the Committee to see, please let us know and we will take that into consideration. The Committee has resolved that if you take any questions on notice during today's hearing, could you please provide the answers to us within 21 days. Is that all right?

Mr LAWRENCE: It certainly is.

CHAIR: Would you care to make an opening statement?

Mr LAWRENCE: Yes. I would just like to let you know a bit about myself and my background. I am a career public servant and have been in justice for the past 34 years, of which 28 have been with Corrective Services. I started out with Corrective Services as a prison officer working at the historic Fremantle Prison. So, my background is operational and I worked my way through the ranks to my current position of contract manager. When we introduced privatisation in Western Australia in 1997 when the Government made the decision to privatise a prison and to introduce a custodial service and transport contract I, like a number of my colleagues, prison officers, was horrified and thought it was a big mistake. But sitting here today I can tell you that our experience in the west has been very good. Acacia Prison has brought many good things to our service; there are some benefits in privatising.

What I would say, though, in terms of lessons learnt, from the first contract we had to the second one that we wrote at the end of the first five years was vastly different. I would say that irrespective of whose decision it is to privatise, there are key things you need to do. Those are: make sure you determine what the services are that you want. You need to specify and include in the contract exactly what you want that prison to deliver. Further to that, in terms of the procurement process, you need to make sure that you select the right contractor and make sure that what they say they are going to deliver is actually written into the contract. The other key we found in the west was a requirement—it was part of the approval from Parliament—for us to have on-site monitors at the prison 24 hours a day seven days a week.

We started out with seven monitors working in the prison for the first five years of the contract. That was supported by a dedicated contract management team to ensure compliance and accountability of the contract. If you issue a contract and then do not make sure that the contract is delivering, what is the point? I think that has been part of the key success with Acacia Prison. The other thing we did was that we just did not take the word of the contractor in terms of selecting them with what they wrote in their proposals; we actually did site visits. We went and had a look at those sites to make sure where they said, "We are experts in" self-harm or program delivery or education, we actually went and kicked the tyres and made sure that that was the case.

So I suppose in summing up in terms of I think why we have done reasonably well at Acacia and why it has produced some good results is that we have what I term in-your-face contract management and monitoring. Even though with the second contract we have a very good contract and we have been able to reduce the number of on-site monitors—we have now reduced the number to four—the fact is that we now hold the contractor to what he says is going to do. The abatements, the performance link fees, if they do not deliver, there are some very serious abatements. Of course, at the end of the day, if the department or the Government is not satisfied with the service that is being delivered, then we can take the contract back in-house. That is actually part of the contract. The other thing we do in the west that is very different to other jurisdictions around the world is that we are open and transparent. This issue of commercial-in-confidence to us is a load of rubbish. We publish all our reports on the website, our annual reports, any reviews that we do. As you are aware, we have an inspector of prisons in Western Australia who reports directly to Parliament. He reviews the prison regularly, as we do.

I call in experts from around the world to come and conduct independent reviews. We have used Alison Liebling and we have also done reviews using people from other jurisdictions in Australia. We are transparent and open; we put everything out there for people to see. You can go onto our website and it will tell you exactly how much we are paying for the contract. There are no secrets. This is important for all concerned. This issue of people saying, "It is cheap to run" or "It is not cheap to run", it is all out there in the public domain for people to see. On that issue of privatising for the sake of doing it cheaper than the public system, that is not something that we did in Western Australia. In fact, with the proposals, sometimes cheapest is not always best. We were very

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careful in determining that we got the right contractor. So you may pay a little more for who you are getting, but I think it is worthwhile and very important. I just wanted to make those opening comments.

CHAIR: Thank you, Mister Lawrence. We will start with questions from the crossbench members.

Ms SYLVIA HALE: You say that there are no secrets in the contract. Does the Government require that the details are made available to the public?

Mr LAWRENCE: Yes, the contract is on the website. You can Google the contract, as any member of the public can.

Ms SYLVIA HALE: When we asked GEO, which is administering Junee, whether its figures would be publicly available, it said it supplied them to the department and it was up to the department to determine whether to make them available. Do you have a clause in your contract that requires the private operator to make those available?

Mr LAWRENCE: That is actually written in the proposals. All the respondents were aware of how we operate and that transparency. If they are uncomfortable with that or do not wish that to be made public, then we tell them, "Don't apply for the contract". It is simple.

Ms SYLVIA HALE: You said the important thing is to get the right contractor. What qualities do you see as being typical of the right contractor?

Mr LAWRENCE: With the Acacia prison, in Western Australia we have a large indigenous population. Some 40 per cent of our prisoners are indigenous. One of the key things that we wanted introduced in our new prison was to make sure that program delivery, education, all those things were done but, most importantly, that we actually increase and improve the services for indigenous people in our prisons. That was part of our proposal package to all the respondents. What we looked at all in their responses was to see what they were going to individually offer us to provide those services. We went through, had a look and did a valuation and we chose the respondent that not only addressed those issues but also was able to provide us with their philosophy in terms of how they as an organisation operate, what their philosophies are and whether those matched ours in the department. Obviously, we did not want somebody coming in with views that were contrary to ours and our philosophy.

Ms SYLVIA HALE: I am told that Acacia took its first prisoners in May 2001. It still remains Western Australia's only privately operated prison.

Mr LAWRENCE: That is correct.

Ms SYLVIA HALE: Have there been any other prisons opened in the meantime? Why is it the only one? If it has been so successful, why has the Government not moved to privatise other prisons?

Mr LAWRENCE: That is an interesting question and it is probably one that should be answered by the Government. The previous Government was a Labor Government that was quite clearly in opposition to privatisation. They made that very clear. However, the new Government is very different and I would not be surprised if we do not see some new prisons coming on line fairly shortly. We are over capacity in our prison system at the moment and we are awaiting some announcements to be made. I would not be at all surprised if they are private prisons.

Ms SYLVIA HALE: Perhaps what makes the difference is the overriding philosophy of the Government in power at the time, whether it is predisposed to privatisation or the maintenance of a public service?

Mr LAWRENCE: Obviously that is it. But the other thing is if you have a look at the results of Acacia and what they have achieved, I think it is very hard to go away from the fact that they do provide a very good service. If you compare the costs, it is quite embarrassing.

Ms SYLVIA HALE: The Commissioner of Corrective Services, Mr Woodham, in his evidence earlier today, said in relation to the prisoner escort services, "We're not going to make the mistakes that Western Australia made." Do you have any idea what mistakes he is referring to? If they are mistakes, are any moves being made to rectify them?

Mr LAWRENCE: Absolutely. The transport contract has been a very difficult contract in Western Australia due to the tyranny of distance and the sheer vast areas that we have to cover in the locations. We have 20 regional locations that we have to cover, and some of those trips are in excess of 1,000 kilometres. They travel 1.4 million kilometres a year, and we have a fleet of 39 vehicles. I think one of the mistakes we have made—and we are just about to start the procurement process, because that contract ends in 2011. I have only recently taken that contract over, but I think one of the mistakes that we made was that when they first put that contract together they did not do the work up front. The data that they collected to determine the demand model required was incorrect. So when the contractor started the demand was far in excess of what the department had said it would be.

The other issue was we have a fleet of 39 vehicles to service this vast area. If I have my way with the new procurement process, I will be saying that some of those services need to be retained in house. The high-volume, low-risk services I will recommend be contracted out. The high-risk variable I will suggest remain in house. And particularly the regional areas, it is just too difficult. It is difficult to get staff and housing in the regions. For the contractor to get staff out in the regions is very difficult, whereas we have prisons in the regions and I think it will make sense if we brought that back in house and let the prisons look after that.

Ms SYLVIA HALE: Does that mean that the public sector picks up all the costs of the difficult aspects of, say, prisoner escort while the private sector is allowed to cream off the more profitable and more easily serviced areas?

The Hon. TREVOR KHAN: Spoken like a true Trot.

CHAIR: Order! I have said before that I do not want comments between Committee members taking place during public hearings.

Ms SYLVIA HALE: I have asked that as a genuine question. Do you not think that that is giving the private operator a considerable advantage over the public operator because the difficult cases remain the preserve of the public system?

Mr LAWRENCE: Not necessarily. When I talk about high risk I am talking about contracting out more or less the metropolitan area. There still remain significant high risks in terms of the metropolitan area, but what I am saying is that the regions are made all that more difficult. Add to that the fact that we are also required to do lockup clearances for the police. We are required to provide staff for the lockups in certain regions. It is just not sustainable. It is very difficult.

Ms SYLVIA HALE: One of the things I noticed from Mr Woodham's testimony was that they were going to retain the high-risk transport of prisoners. They were going to station officers within every I think court complex. They expected at least 70 to 90 correctional services officers to be retained. Then they have all the overheads for doing all of this. What is the advantage to the State then?

Mr LAWRENCE: I think the costs, if you compare Acacia prison to our cheapest publicly operated prison, the difference is \$15 million per annum cheaper to run and operate than our cheapest facility. If you take into consideration we use a benchmark in Western Australia and we say that between 2 per cent and 5 per cent of the overall value of the contract should be spent on administering that contract. So I have four staff who work for me in head office in contract management, and I have four monitors who work full time at the prison. In addition to that, I have monitoring officers who I have just introduced for the transport contract, and I also have contract officers who work for me on the transport side of the contract. So there are still significant savings to be made, even with those costs included.

Ms SYLVIA HALE: In answers to questions that we put to the Commissioner of Corrective Services we asked him to break down the savings that would be made, and those savings consisted of longer working hours, reduced rates of pay, less annual leave, less sick leave—it went on and on. It seemed to me that the only conclusion that you could draw was that the savings would be made at the expense of the Corrective Services wages and conditions.

Mr LAWRENCE: I cannot comment on New South Wales—

Ms SYLVIA HALE: No, but on your experience, do you have comparable pay rates and conditions?

Mr LAWRENCE: What I can tell you is that we have pay parity for our private prison. If our officers in the public system get a pay rise, so do the officers in the private prison; otherwise the minute the officers in the public prison get a pay rise staff would want to leave to go and join the public system. So we introduced a system where we pay parity.

The Hon. TREVOR KHAN: Dealing with the prisoner escort contract, what does it involve the private operator doing?

Mr LAWRENCE: Just about everything. It involves the transporting of prisoners from prison to the courts, inter-prison transfers so prison to prison, prison to hospital. They also do the hospital sits. Where a prisoner goes into hospital for a operation and is there for a period of time the contractor also provides a staff to do the hospital sit. They provide all the services in the courts, dock guards, security staff both inside and outside the courts throughout the State. So they very much do everything, as I said. I would like to just clarify that my comments in terms of the procurement and what I would like to see, those are my personal views and as contract manager I will be putting those to our commissioner and the department. But those are not necessarily the views of the department.

The Hon. TREVOR KHAN: Can we just go back to Acacia prison? You have indicated that you were in a sense initially opposed; now you are a bit of a fan of what has occurred. Putting aside the costs issue, what do you say the private operator is doing better? I know you have spoken in terms of in a sense the indigenous programs, but what do you say the private contractor is doing better than the public institutions?

Mr LAWRENCE: We have 12 measures, key performance indicators [KPI], in the contract and in all of those KPIs they perform better than the public system. Their at-risk management—that is the management of prisoners who are at risk of self-harm and suicide—is the best in the State. One of the things they did very early on at that prison was they introduced what we call a pro-social environment. As a prison officer, when they introduced it I thought, "My God, what are we doing?" Staff and prisoners interact. They are on a first name basis. Because it is an open campus style facility, the whole atmosphere of the prison is very good. The other thing they have done is they are capable of introducing a lot of innovation. At Acacia we have a smart card system where there are ATMs in every unit of the prison. Prisoners are issued with, it is almost like a bank card, and they can use the ATM to determine what their account balance is. They can use it to purchase goods from the canteen; they can use it to apply for a job in the prison; they can use it to research the policy and procedures in the prison—it is just fantastic. It is light years ahead of anything I have seen anywhere in the world.

They have introduced things like a menu, which was scoffed at by a lot of us in the public system. When they came on board they said, "We are going to introduce a menu where we are going to say to prisoners, 'You have a choice of what you can eat at any particular meal'". We thought, "Oh my God, if the media gets hold of this we are going to be hammered." Let me tell you what that has done. That has reduced wastage of food in a prison by 15 per cent because now what happens is a prisoner gets his menu at the beginning of the week and he will have a look and he will have a choice of three things for lunch and he will pick what he is going to eat—maybe it is pasta, a salad or whatever. Whereas previously the prisoners would come back from either recreation or work and they would be feeling like a steak or a sausage—being men they all want meat and potatoes—they would come in and they would see it is pasta. What they used to do, they would get their food dished up but they would chuck it in the bin and bitch and moan. So the introduction of this menu has just been fantastic. You know what you are getting so when you come back at the end of the day you eat your meal. It has been very, very good.

The Hon. TREVOR KHAN: What has been the impact of the private operator on the operation of the publicly operated jails?

Mr LAWRENCE: That is a very good question, and I think it is important that people remember that whilst it is a private prison they still have to abide by all our legislation in Western Australia: the Prisons Act, the commissioner's rules, the policy directives, et cetera. They are still our prisoners and they come and go from that prison and go back into the public system. It is important to remember that. I am sorry, can you just repeat the question; I lost my place there.

The Hon. TREVOR KHAN: What you have described is a very innovative and cost-effective institution that is operating in the State. Have any of the practices, procedures or methods of operating, including recipes and the like, flowed over into the public institutions?

Mr LAWRENCE: Oh yes, absolutely. Initially there was a fair bit of resistance, as expected, from the public prisons and we worked very hard to make sure that they integrated with the public prisons. So the general manager of the prison was invited to the superintendent's monthly meetings, and we have got to the stage now where they even train together for emergency management exercises. Staff from that prison will go and train with staff in other prisons—a lot of innovation. I think we are just about to introduce the menu system in the public prisons. I heard Commissioner Woodham talk about the methadone dispensing program. We use that as well. That is something we are going to introduce into our system.

We are just about to go into the second stage of the smartcard system; they are introducing a new model that is much better. Once that comes on board, because it becomes our intellectual property, we will be rolling it out to the public system. Things like sustainability—they have introduced this to reduce the costs of electricity and water and they have prisoners participating in these programs, which is not only beneficial to the prison but it is also beneficial for the prisoners who undertake a course and are issued with a certificate so when they actually leave they have some understanding of what sustainability is about so they can put that into practice once they get out and back into the community.

That innovation was raised at our recent board meeting. We have a board of management meeting that sits once a quarter, and when they tabled that program and the results, our commissioner immediately directed that that be introduced into the public system. So there are lots and lots of things that are flowing into the public system that have started at Acacia prison.

The Hon. TREVOR KHAN: Serco is the operator of the facility, is that right?

Mr LAWRENCE: That is correct.

The Hon. TREVOR KHAN: Did they design and build the facility or did the State design and build the facility and then hand its operation over to Serco?

Mr LAWRENCE: No, AIMS Corporation were the first contractors. They designed and built the facility. Serco—after the first five years we went out to tender again and Serco won the tender for the second five year operation.

The Hon. TREVOR KHAN: In relation to that transition from one contractor to another, what arrangements were made in terms of the staff?

Mr LAWRENCE: All staff were offered positions across there and we worked extremely hard with the provider, Serco, in making sure that the transition went as smoothly as possible. Obviously we did not want to see any reduction in prisoner services. I have to say they put some considerable horsepower into the transition period. They brought representatives from the United Kingdom—an actual transition team—that worked in there alongside my monitors and myself, and the transition went like clockwork; there were no issues. I think they picked up about 95 per cent of the staff, and those staff that were leaving were leaving to take up positions in the mines and things like that; they were not leaving because Serco was coming on board.

The Hon. TREVOR KHAN: Does your group section have a procedure in place to deal with either a contractor being wound up or abandoning a contract for some other circumstance?

Mr LAWRENCE: Absolutely. We have what we call a transition plan, which covers a multitude of issues or things that could happen. For example, if tomorrow we were to take the service back in-house we have a plan that we can roll out to make sure that, once again, services are not interrupted. We have a model that we have used previously where the private operator—not Serco but the previous provider—their staff went out on strike. So this transition plan was put in place to cover all those eventualities, and obviously that is kept up to date regularly and it forms part of an overall document that we use. We have what we call a contract management framework, which very clearly sets out our roles, responsibilities and what we actually do to administer this contract. That is our Bible, and included in that are things like the transition plan.

The Hon. TREVOR KHAN: I am appreciative of your evidence, thank you.

CHAIR: I might just ask you two questions to clarify issues that you raised. You said that the original private operator, I think it was AIMS, built the facility and managed it for the first five years and then Serco took over after that?

Mr LAWRENCE: Yes.

CHAIR: What was the basis for changing the operators? Was it a quality issue or a cost issue? Secondly, what happened to the transfer of the capital investment of the AIMS group?

Mr LAWRENCE: The reason for the change was yes, to be honest, they were not providing the service to the standard that we required. However, they did have the opportunity and applied—they applied when they knew that a contract went out to tender. But also part of the problem was that the department did not have its act together and the first contract was terrible. The specifications in the first contract were terrible. This is why I said it is so important about getting this thing right from the beginning. Things like staffing levels where we said, "You require adequate staff to run the prison", they were not actually specified. When we tried to pull AIMS up and said, "Look, we think you are running a bit lean and it is a bit dangerous", they said, "Tough luck. Show us in the contract where it says we have to have X amount of prison officers."

So what we have done with the new contract is we have written that into the contract. So Serco have to operate to a specified level. It is things like that that we did.

CHAIR: Is that level a ratio of prison officers to inmates or a specific number of prison officers?

Mr LAWRENCE: It is a ratio for each area in the prison that has to operate at a minimum number, but if they do not do that they are in breach of a contract.

CHAIR: What happened to the capital? Who paid to build the thing in the first place?

Mr LAWRENCE: The prison actually belongs to the Government. So after 20 years it gets handed back to the Government. The contract is for 20 years.

CHAIR: So the Government paid for it in the first place and let AIMS have the first five years and now Serco has got the second?

Mr LAWRENCE: Yes.

The Hon. HELEN WESTWOOD: The model that you talked about Serco, was that there when Ames, the first contractor there?

Mr LAWRENCE: The model?

The Hon. HELEN WESTWOOD: Yes. You talked about the different relationship that prison officers have with prisoners and how that has received very positive results.

Mr LAWRENCE: The pro-social environment was introduced from day one. Ames had a different approach when they selected staff. They did not select any people who had previously been prison officers because they wanted to introduce a new culture. We had a bit of a giggle when it all happened because a lot of the people that they actually employed were packers, mums and people who had worked in Coles or places like that where traditionally in public prisons they tended to go for ex-military, police officers et cetera. They took this completely different approach and employed people who did not have any previous experience or background in Corrections.

The Hon. HELEN WESTWOOD: Are you able to compare recidivism rates at the private prison to public prisons?

Mr LAWRENCE: To be honest that is a very difficult one. People will give you figures and say how wonderfully well they have done in terms of recidivism. I can say that at Acacia they have a very strong re-entry model. It is the best we have in our system and it was one of the things when they came on board that they were very keen to introduce. They have a similar system that operates at Doncaster Prison in the United Kingdom and they are using that model. We have seen some great results from that model which we are now pulling back into our prisons.

The Hon. HELEN WESTWOOD: Is there a roll-out into the public prisons of this new approach? Has it hit the ground yet in the public prisons or is it about to be introduced?

Mr LAWRENCE: It is about to be introduced. We have actually managed to get some funding for re-entry across the entire service. We have actually now got a dedicated directorate that is going to deal with re-entry services because it is such an important area. But Acacia was leap and bounds ahead of anybody else. When they actually introduced it they were running it in the facility, which no other facility in our public system was doing at that time. Whilst people say "Yes, we run re-entry" what they were doing was making sure a guy had his driver's licence before he was being released, and that sort of thing, but they were not doing the connect between education and programs and making sure that when prisoners got out they had a job. What has Serco done? They have been out to the mines. They have got big companies and organisations involved to find employment for prisoners when they leave Acacia. It is things like that that we are now learning from and introducing into the public system.

The Hon. HELEN WESTWOOD: Is it the new contract more expensive than your contract with Ames?

Mr LAWRENCE: It is, yes.

The Hon. HELEN WESTWOOD: Significantly more?

Mr LAWRENCE: No, not really, and I am happy to tell you that that was not the cheapest bid either. But in terms of cost per prisoner per day, as I say, we just recently did a check of our finance department and I say it is \$15 million cheaper to run Acacia than our cheapest prison.

The Hon. GREG DONNELLY: Thank you for coming over. It is a long haul from the west and a long haul back so the committee appreciates your time. I refer to the agreements that have operated with respect to the private prison. You had your first generation agreement and you are, in effect, into your second generation agreement and then presumably unless there is a change of government policy there will be a third generation.

Mr LAWRENCE: That contract is also due to expire in 2011 so there will be a decision made by government what we do but certainly whatever happens we continue to make variations to the existing contract.

The Hon. GREG DONNELLY: Obviously you have reflected on some of the issues that arose during the first agreement with Ames. There were quite a few "to do" matters associated with that first agreement. We then have the second agreement which is very comprehensive but as good as it is presumably there are still some "to do" matters associated with that agreement. There would be some issues presumably that the department, if it had its time over again, to put it that way, would perhaps want reflected in the agreement or at least will be taking them up with the next generation of the agreement. In effect, is it fair to say the nature of the contract is an evolving process?

Mr LAWRENCE: It is. Obviously things change and operations change slightly, we introduce new programs or whatever, so where that requires some change to the existing contract, we vary the contract. To vary the contract it has to go to Parliament and be signed off there but we are continually looking at trying to improve the contract and make variations. We are currently reviewing the performance-linked fees. We have 12 measures that if the contractor meets he receives a bonus or a payment. If he does not we withhold that money. We have found obviously with some of those measures as the contractor gets better we need to increase the measures. Things like self-harm rates are so low that the current measures mean nothing so the contractor is just getting that money for nothing. We are reviewing the measures at the moment.

The Hon. GREG DONNELLY: Obviously the level of specificity in the agreement in relation to certain matters is very high. Without being trite, schedule 4 has specific provisions for menu items—maximum number of meat meals, two fish meals, one poultry meal et cetera. Was that level of specificity essentially an importation of the operating arrangements in the public prisons into the contract for private prisons or was the opportunity used to look at a number of things and create the contract?

Mr LAWRENCE: The opportunity was there. Those were introduced to bring about improvements to the public system. They were not in existence in the public system and they were introduced to bring some competitiveness—

The Hon. GREG DONNELLY: Can I stop you there? When you say "introduced" to improve the public system, only with respect to the site that is under contract or more holistically?

Mr LAWRENCE: More holistically. The idea is that if we could get Acacia performing to a high level then that would then flow into the public system. It is about that benchmarking if you like and providing some contestability across the system.

The Hon. GREG DONNELLY: You may choose not to answer my final question because of its difficulty. The matter confronting this committee is to look at the whole issue of privatisation in the context of two prisons in New South Wales, Cessnock and Parklea, which are brownfield sites, they are existing sites as opposed to a new site. I would think you probably would agree that putting arrangements in place at a new site is probably easier than retro-fitting arrangements at an existing site. Have you pondered or reflected on retro-fitting some of these specific arrangements in existing prisons in Western Australia? If you want to answer it as an individual with expertise in the area, as opposed to being a public servant, I am happy if you declare that. Obviously you have thought about such things?

Mr LAWRENCE: I have, and my answer will be a personal answer. I have seen some prisons where that has happened and I think Borallon in Queensland is one. It was an existing prison where a provider came on board and took it over. I am a firm believer that if you get the contract right and you get the right provider, it is not an issue whether it is an established prison or a new prison. As I said at the beginning, you need to do your homework. We are two years out from re-tendering for the Court Security and Custodial Services contract. We start of the procurement process now to get the metrics and the data right. If you get that right and you put together a good brief and you get the right provider, I do not see it as an issue, but that is my personal view.

Ms SYLVIA HALE: You have spoken about the need for transparency and openness. Was that level of transparency required when Ames was first given the contract?

Mr LAWRENCE: Absolutely.

Ms SYLVIA HALE: So you have not increased the requirements in light of the Ames contract?

Mr LAWRENCE: It was a decision made by people in our area and we sought support from the Government on that. So, from day one we have had that transparency. You can look at all the annual reports written about Acacia. You can look at all the reviews that the inspectorate has done. The contract is there. It will tell you the price; everything is there.

The Hon. JOHN AJAKA: Who has the final say in the format of the contract? By that I mean is it internal within the Corrective Services Department or is it Parliament?

Mr LAWRENCE: During the procurement process obviously we have a steering committee, which is made up of senior stakeholders and is chaired by the commissioner. But included on that committee are representatives from the inspector's office and other key stakeholders, police, very senior people, the Commissioner of Police, et cetera. So, when decisions are made and agreed by the steering committee, they are then run past the Minister, who gives the signoff by saying, "I am happy with the determination, please proceed."

The Hon. JOHN AJAKA: So it is not a situation where, for example, tenders are called, contracts are entered into, it is all finalised and kept commercial in confidence, and then subsequently the Government or the Minister finds out all the fine details if a problem arises?

Mr LAWRENCE: In the lead-up to awarding the contract, obviously that is confidential. But I can tell you the commissioner is in discussion with the Government—that is my understanding—over that issue. Of course, we do a lot of work into companies, parent companies, things like due diligence, making sure they are financially viable. We take a bond from them, a fairly large sum of money, which we put into our bank account. Should the business fold tomorrow, we will be able to run the prison for the next couple of years. All those things are put in place. As far as I am concerned, if you are going to do privatisation, the key is the preparation beforehand. If you do the preparation and get the contract right and you select the right contractor, it works.

The Hon. JOHN AJAKA: The Hon. Trevor Khan asked you whether any positives had flowed into the public system. We also heard evidence earlier about how just the aspect of competition itself appeared to make a huge difference in relation to public and private. Is that your experience as well?

Mr LAWRENCE: It is. As I say, initially there was this resistance. Obviously the public prisons were resistant to having a private company involved. That is all gone now. As I say, we do operations together. Superintendents from public prisons go out to Acacia to look at some of the innovative stuff it is doing, and vice versa. If the public system introduces something that is good, we let them know and the director from Acacia will go out and have a look and say, " We will do this, I reckon this is great."

The Hon. HELEN WESTWOOD: You talk about your openness and transparency in tendering and contracting. I wonder whether your experience is that that results in fewer tenders?

Mr LAWRENCE: Definitely not.

The Hon. HELEN WESTWOOD: How many tenders or expressions of interest did you have last time when you advertised?

Mr LAWRENCE: Every provider that provides a service in Australia tendered for Acacia, and we also had some from America.

The Hon. HELEN WESTWOOD: You said at the beginning that reduction of costs was not the original reason that the Government of the day went down the path of privatisation. Can you tell the Committee what the main reason was?

Mr LAWRENCE: As I said, it is about making sure their philosophy meets with the department's philosophy. It was about our ideals for the prison, what we want to do, particularly in indigenous prisoner management. They have just done some wonderful things. They introduced an assistant director for indigenous affairs, an Aboriginal lady, who has just done absolute wonders. She has been out and met with the elders in the regions, in the desert. We have got the mines involved in providing these people with employment when they leave. So, for indigenous prisoners they have done a wonderful job.

Ms SYLVIA HALE: Where does the company make its money? Is it from prison industries or is it from the amount paid to run Acacia?

Mr LAWRENCE: It is probably from the contract amount. However, they have some prison industries, and provided they are not in competition with any local industry or affecting that industry, they are allowed to manufacture and sell things as well. As part of the contract, we retain 10 per cent of that profit, which we then put back into prisoner activities for the prison. They also have a savings scheme for the prisoners where Serco donates a dollar for every dollar the prisoner saves. So, when they get released they have some money to go back into the community with. It is the little things like that which make the difference.

The Hon. GREG DONNELLY: In the agreement itself, the dispute resolution clause, clause 26, is very long. I do not intend to ask specific questions about it but more generally it deals with differences between the State and the contractor. Has this particular clause needed to be used a lot, a little or not at all to deal with matters that have arisen in the course of the contract?

Mr LAWRENCE: No, we have not used that particular clause. We have in addition to abatements—we have a number of fairly significant abatements—that should a prisoner die in prison, they get fined \$100,000. If somebody escapes, they get fined \$100,000. If they lose control, \$100,000. So, we have all those in place. I might add, we have not had a major incident at that prison—touch wood—since it opened, but we have other mechanisms in place. We have what we call our PIR, a performance improvement request notice, which, if we find they are not delivering a service at the standard we would really like it, we can write to them and say they need to address this issue. Depending what it is and how important it is, we will give them either five or 10 days to remedy it. They need to write back and tell us how they remedied it. If they do not remedy it, we fine them \$30,000, and we continue to fine them until they have remedied it.

Ms SYLVIA HALE: Have you ever had reason to invoke that PIR?

Mr LAWRENCE: We issue PIRs regularly, but we have never fined them \$30,000, because they always fix up the issues we are whingeing about.

The Hon. GREG DONNELLY: If we apply the reasonable person test to this issue of running costs of private versus public, is not the issue that there is not a comparison of a Granny Smith with a Granny Smith? This site is coming up to the third generation but if you compare that to existing jails run by the public sector in Western Australia there could be a range of reasons why costs could be higher in those facilities, and that has been part of the argument some people have given to us in this hearing. You really do not have a strict ability to compare one with the other because, at the end, they are all somewhat different and have been built along different lines in terms of specifications, et cetera. How can you be so sure about your cost comparison?

Mr LAWRENCE: When we did the last re-tender we got the Department of Treasury and Finance to come in and provide those figures. The public comparator was done by them, independently of us. It took into consideration things like contract management costs, commissioner's costs, who is the principal of the contract—et cetera. We compared Acacia with a like public prison. We chose a medium security prison of like that provided the same programs and education, et cetera. We did the comparisons based on that.

The Hon. GREG DONNELLY: That is why you stand by your position?

Mr LAWRENCE: Absolutely. Independently, the Inspector of Corrective Services has also done his own independent assessment. If you read his latest report, I think he said it is about \$12 million; slightly less than what we are saying.

CHAIR: Thank you for attending the inquiry today. The Committee may send you some questions and I ask that you respond to them within the time frame indicated.

(The witness withdrew)

BRENDAN CURTIS LYON, Executive Director, Infrastructure Partnerships Australia, and

LAWRENCE STEPHEN McGRATH, Manager, Social Infrastructure and Utilities Policy, Infrastructure Partnerships Australia, affirmed and examined:

DEPUTY CHAIR: Mr Lyon, do you appear in your own right or as representing an agency?

Mr LYON: I appear here representing my organisation alone.

DEPUTY CHAIR: Mr McGrath, do you appear in your own right or as representing an agency?

Mr McGRATH: Solely representing Infrastructure Partnerships Australia.

DEPUTY CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate if the response to those questions could be sent to the committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the Committee commences with questions, would you like to make an opening statement?

Mr LYON: Yes. It is my great pleasure to appear before the inquiry into prisons and prison-related services. I am the Executive Director of Infrastructure Partnerships Australia. I am joined by my Manager of Social Infrastructure and Utilities Policy, Mr Larry McGrath. Infrastructure Partnerships Australia is the nation's peak infrastructure body. Our membership is drawn from the nation's most senior leaders, both the public and private sector. Our mission is to advocate the best policy frameworks and the priority projects and services that will help to build Australia for the future.

We recognise very clearly that infrastructure is about far more than simply roads, bridges, rail or, in this case the delivery of prison assets or prison-related services. Infrastructure is, at its core, about the services that it delivers to taxpayers, to commuters, to consumers. With a significant public sector membership Infrastructure Partnerships Australia is focused on the use of the best procurement and delivery models, be they publicly or privately financed and delivered and with a strong focus on the regulatory frameworks for any asset or service that deliver the best outcomes to taxpayers, policymakers and consumers alike.

I would like to start by taking their Committee for the opportunity to appear today. I recognise that the Committee has heard from a wide range of stakeholders, with significantly disparate views. The privatisation corrective services is an important issue. Infrastructure Partnerships Australia and our membership congratulate both the Committee and the Parliament on the initiative to inquire into these important matters in New South Wales. The mandate of my organisation is to articulate the procurement and delivery frameworks that will ensure that governments have the maximum choice of options in the delivery of both services and assets.

Infrastructure Partnerships Australia is not ideological in its support for private operation. But we believe that there is a significant role for both competition and contestability in the delivery of public services. We contest that the Parliament and this Committee should approach its deliberations on these important reforms with a view to robust competition and diversity of supply. The experience of prison privatisation domestically and abroad has shown that a competitive, contestable environment ultimately delivers efficiencies and improvements as it has across other areas of the economy. As an organisation representing the public and private sectors, we seek to be a balanced voice amongst the ideological viewpoints on both sides of the debate.

We see this issue not so much about whether a prison is privately or publicly run, but ensuring that the corrective facilities are humane, effective and efficient. Where there is demonstrable evidence that the public or the private sector can achieve these better than the other, a decision based on those outcomes should be the focus. It is a fact that overseas evidence has overwhelmingly found that prisons operated by the private sector generally deliver a quality of service as good as or better than the public sector. Importantly, through innovation and streamlining of the workforce they are able to do this more efficiently.

In the United Kingdom a competitive market has been created for many different types of public services, including the delivery of corrective services. The experience there has been largely positive, with greater accountability measures being introduced. In my opening statement I would like to make a few brief comments

about three different issues; namely, efficiency and cost, quality of service, and accountability. I would then like to make some general remarks and turn over to you, Mr Deputy Chair, for questions.

A number of statements have been made to this inquiry to the effect that there is no evidence of cost savings under the private sector operation of prisons. Some have even asserted that private sector operation generally results in a greater cost to government. Those claims are simply false. In the United Kingdom it has been found that contract prisons are, on average, 11 to 15 per cent less expensive than comparable publicly operated prisons. In some way that is an underestimated the net benefits, because that figure fails to take into account the taxes on revenues from the private sector operators, which would boost it probably closer to 20 per cent.

In the United States, under corrective service contracting, average savings across the board range from 5 per cent to 15 per cent. In New South Wales the efficiencies have been just as stark. With Junee prison, the Committee has seen that the cost per inmate per day is significantly lower than comparable publicly run prisons. I was surprised to discover that Junee prison, during one recent year, was 46 per cent more cost efficient than the average of the other publicly operated prisons. The latest figures show that Junee is 32 per cent more cost efficient than the State average on a per inmate, per day basis. The truth is that there is no robust evidence, none whatsoever, to demonstrate that the private sector operates prisons on average, in Australia or overseas, at greater cost than the public sector.

In terms of profit I understand there have been some claims during the course of this inquiry to the effect that public sector companies operating public services sacrifice, or could sacrifice, service quality for profit. There seems to have been that view in some of the submissions and some of the testimony that, because they have shareholders, the private sector will shirk humane responsibility. This is a very simplistic view of the private sector and fails to take into account a number of important factors—and one of the foremost is corporate reputation.

Like all private enterprise, the corporate reputation of service companies is their most valuable asset. These reputations, both internationally and domestically, are contingent on performance. Private companies that operate prisons generally do not wish to operate only one prison. Being businesses, they are always looking for growth opportunities. Governments would naturally be reticent to allow companies with poor reputations to come anywhere near their prisons, given the political risk that continues to be worn by the public sector and governments in contracting out of arrangements.

If private companies are reprimanded because of poor quality standards, this adversely affects their image and reputation, and also their opportunities for growth and future corporate success. No private sector company would want that. Further to that, it would be somewhat offensive to hardworking prison officers and staff to claim that a simple change in the management arrangements would deprive them of their moral and social conscience.

In terms of quality of service 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 operate to the same. However, the private operation of public services provides mechanisms to ensure quality service delivery and to minimise poor or non-performance. This is principally through the clear articulation of minimum service outcomes and quality conditions, supported by strong financial and contractual sanctions for non-performance or part-performance.

Importantly, the private delivery of public services also removes the inherent conflict of the public sector as both a regulator and a market participant. The contention that service levels drop under private operation has been shown as a falsehood in research overseas. A literature review published recently in the *Harvard Law Review*, which looked at many other robust values of quality in public and privately operated prisons found:

No rigorous study found that quality at private prison [is] lower than quality at public prisons on average, and most find [that] private prisons [outscore] public prisons on most quality indicators.

Quality is a notoriously difficult thing to measure objectively, but qualitative evidence suggests that service delivery is maintained or enhanced under private sector operation. I would also like to point to a particular study undertaken by the Serco Institute in the United Kingdom in which the researchers interviewed contract managers who had undergone a shift from public to private sector operation. The results highlighted an extraordinarily high level of satisfaction under 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—

98 per cent agreed. 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 per cent of respondents either agreed or strongly agreed. More than half of the respondents to the survey maintained that the need to deliver a profit rarely, if ever, compromised their capacity to deliver high-quality services. I noted that Mr Gary Sturgess, the Executive Director of the Serco Institute and a former head of the New South Wales Cabinet Office, told the inquiry this morning that privatisation of prisons present an opportunity for governments to increase quality, humanity and decency in the jails in this State, principally because they can stipulate the standards of service that they want from the private operator in the service contract.

That brings me finally to the issue of accountability. I would like to give the Committee an example of how accountability can work under a private prison contract, specifically from Acacia Prison who you have just heard from. When it was first contracted to the private sector, there were problems with the contract and the operator, and the decision was made to market test the prison again. Another operator bid for the contract and this new operator was ultimately appointed. At the latest inspection in 2008 the Western Australian 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**.

When the former operator's underperformance became apparent, the contract allowed for the prison to be re-tendered to a new operator, allowing for vastly improved prison management and outcomes. Obviously this would never have been possible under public sector operation, where it is very difficult to take meaningful action when service qualities are found to be lacking. The Public Service Association has submitted that the allocation of justice cannot be separated from its administration. We differ substantially in our view and believe that the separation of the administration component, particularly the monitoring of performance, removes the unavoidable conflict which arises with the State being both an operator and regulator in the same market.

With the global economic crisis creating even greater pressures on the stretched State Government balance sheet now is a prudent time to re-examine more innovative ways to achieve greater efficiencies in the public sector without compromising service quality. It is an opportune time to look at services which the Government currently provides which could be provided just as well or better and more efficiently by the private sector. All States face a significant challenge to deliver key services and a significant backlog of infrastructure and capital investment.

It is therefore fundamental that we start to look at what reforms and at what represents best value investment for taxpayers. We would contend that the near monopoly delivery of justice services in a market in which the private sector can deliver more efficiently and effectively means that valuable government capital is tied up in a market in which taxpayers simply do not need to be in. Junee has now been operational for well over a decade and the results are stark. The private sector has the ability to deliver prison services in this State for less cost, with equal or better services.

It has also been shown in the case of Junee that the operator has made a significant contribution to the local economy, providing valuable jobs and revenue. We do not have any specific information on Parklea or Cessnock prisons other than what has been brought to this Committee so far. Broadly, it is our view that there is certainly greater potential for private sector participation in the delivery of prison and related services in this State. If the department believes that Parklea and Cessnock are the most suitable jails to be taken to market, then they should be taken to market.

As with any private sector involvement in the delivery of public services, the key to ensuring ongoing success is to engineer a genuine and meaningful partnership between both the public and private sectors. Fostering this kind of partnership requires thorough and ongoing communication from all parties involved. A failure to specify

core outcomes, responsibilities and the behaviours expected from each party, both public and private, backed with strong financial and contractual sanctions for part or non-performance, would greatly increase the chance of poor results.

Our submission highlighted three main findings from our research into prison privatisation. Firstly, throughout Australia but particularly in New South Wales there is greater scope for involving the private sector in the delivery of prison services and infrastructure. Secondly, international and domestic research shows that private prisons generally delivers superior outcomes on cost and provide a quality of service which is at least as good and sometimes better than the public sector. Finally, 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 prisons is far greater, provided there is a rigorous and strong contractual service agreement between the parties.

The key challenge is not the issue of privatising prisons themselves 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. We would now be delighted to take questions from the Committee.

The Hon. HELEN WESTWOOD: You said in your opening statement that the private sector has the capacity to provide the same services at less cost. Can you tell the Committee why you believe that is so?

Mr LYON: Principally in a service-based industry—and we are talking about the delivery of custodial services, which in essence is a service-based industry—the largest cost is in the human capital that drives that business. Undoubtedly there are efficiencies to be gained and to be appropriately and safely gained in the operation of prisons by the private sector. There are also further innovations that take place through the use of technologies and so on, which will deliver an equally secure facility, but it is essentially through better work practices and through better use of innovation and technologies that those efficiencies are usually derived.

The Hon. HELEN WESTWOOD: So it is work practices rather than less wages or less entitlements?

Mr LYON: It is a better allocation of resources. It may be wages or it may not be wages but certainly it will be a more efficient use of the resources that are needed to provide the ultimate service at best value, at best quality to taxpayers in this State.

The Hon. HELEN WESTWOOD: Have you done an analysis of the costs to ensure that they are comparable? The Committee has had quite a bit of evidence today that the comparisons are not reliable; we are not comparing exactly the same type of service. Can you tell me whether or not you are very clear about what components make up the costs per prisoner per day that are quoted in many of the submissions we have received?

Mr LYON: The figures we have are the ones that have been delivered by the Department of Corrective Services. They show that the cost per inmate per day in Junee is around \$124 and that New South Wales averaged around \$184 per prisoner per day.

The Hon. HELEN WESTWOOD: Do you have any information or were you provided with any information about what that cost is made up of?

Mr LYON: We have derived that from the submission that was made to this inquiry alone.

The Hon. HELEN WESTWOOD: I have a question about contract failure. I am sure you would be aware of the Victorian example where the contract was taken back by the department. Do you have any views about why that contract failed?

Mr LYON: I imagine the contract failed because they failed to meet the specific performance criteria that were in that contract. I do not know the particular example well. I can say that the opportunity to introduce private sector competition—it is not the introduction of the private sector alone that drives the efficiency gains and the service quality gains that may flow, it is the fact that you now have an independent way of benchmarking and assessing a competitive and contestable structure for the delivery of services. As with all sectors of the economy the introduction of competition is what drives the innovation, which is what drives the efficiency gains.

The Hon. GREG DONNELLY: Thank you for coming along today. On page 5 of your submission you refer to possible models of what is in effect private sector participation with respect to jails. Does your organisation advocate or specify any of these as being the best models for governments to look at or are they equal possible alternatives?

Mr LYON: We do not have a strong preference. What is important is that there is a rigorous gateway to assess what the best outcome is. It may well be, on a case-by-case basis, that continued public sector delivery for a prison may be the best model for particular reasons to do either with the services or the particular vagaries of that asset. It is important to have a rigorous gateway to assess what the best outcome is going to be in terms of cost and importantly also in terms of the value and quality of the service delivery. Government needs to move towards a competitive structure where all models are on the table rather than having a near monopoly structure for the delivery of corrective services like we have now. Through the introduction of competition, as I said, we will deliver these efficiency and innovation gains. It is more about having a structure that looks at all the models rather than trying to pick winners and say this is one.

The Hon. GREG DONNELLY: With respect to overseas jurisdictions, you mentioned the United Kingdom and the United States specifically. We have received some evidence, and granted some aspects may be anecdotal or secondhand or thirdhand, that with respect to the US model there could be some major matters of concern about the way in which the private sector model operates. The evidence to the Committee with respect to the private sector facilities in the UK, at least on the surface, seems to be more favourable and positive. Do you have any specific knowledge of general outcomes of the running of prisons in overseas jurisdictions?

Mr LYON: Only in so far as the evidence that we have tendered in our submission to the inquiry today. We are aware that the domestic delivery of private services in correctional services has been overwhelmingly positive. Given the correlation between the jurisdictions within Australia I would recommend we look to the models used in Western Australia before we start looking to the ones used in the United States, particularly if you have received compelling evidence that they are questionable in outcomes.

The Hon. GREG DONNELLY: Why do you specifically point to Western Australia as compared to, say, Mount Gambier in South Australia?

Mr LYON: Only because they immediately preceded me and I heard the end of their evidence and they came to mind first. There is a range of good models of private sector participation—

The Hon. GREG DONNELLY: I will give you another chance to answer that question. I am not being flippant. Seriously, there is obviously Junee in New South Wales that is private and there has been a fair bit of complaint by some witnesses that it is very non-transparent as far as understanding the outcomes from that facility are concerned. We have had the Sandgropers here this afternoon saying how good the Western Australian jail is and we had the Croweaters this morning saying how good the one in Mount Gambier is. As Ms Hale said, the women's prison in Victoria went out of and back into public control. The question is how do we look at all of these possibilities and say that one seems to be the best model for New South Wales?

Mr LYON: The models that have been employed in Australia are largely similar in the outcomes. It is most likely that there has been variation in performance in their structuring and administration. What this Committee and this Parliament have the opportunity to do, if you are moving down the path of creating a greater role for the private sector in the delivery of public services in corrections, is create a market. When you create a market that gives this Committee and this Parliament an opportunity to specify the market frameworks that are going to sit around that. Because you are creating a market you can set the levers, benchmarks, metrics and behaviours that the market will operate within. I would recommend that this Committee look at all the models that are available to it and pick the strengths. There has been a progressive evolution in the delivery of public services by the private sector in Australia. It kicked off in Queensland, I think, in 1990. There is a reasonably lengthy track record of the private sector's operations within this market.

I would recommend that the Committee should be looking at all examples, particularly within Australia and within similar jurisdictions like the United Kingdom, and drawing strength from each of those case studies as you go through to ultimately make your recommendation to the Parliament. I would say there are strengths and weaknesses within the application in each jurisdiction in Australia and you should be looking particularly at what the weaknesses have been and how you can articulate a market framework that will avoid those in its application in this State.

The Hon. JOHN AJAKA: Do I take it you are saying that what is fundamentally required is that one looks at each existing system and takes the very best out of each and tries to come up with the perfect terms and conditions for a contract?

Mr LYON: Absolutely. An exercise like that was undertaken in the United Kingdom recently, which ultimately built an imaginary prison in Middleborough, which does not in fact exist. It looked at best and worst practice within each of the private sector and public sector delivered prisons in that country's corrective services market and used that to build a theoretical model of what the perfect, privately delivered and privately run corrective services facility would look like. I would recommend that given the time that this Committee has and the strength of the submissions you have received from parties right across the spectrum, you have an opportunity to really look at best and worst practice, particularly in the broader Australian market, and recommend and articulate a clear way forward for New South Wales in this market creation.

The Hon. JOHN AJAKA: We have heard arguments about starting a new prison from scratch, taking a blank piece of paper and purpose building a prison, compared with looking at a prison such as Cessnock and saying that it will be privatised. Cessnock has been around for a very long time and maybe was not purpose-built for that. Do you have any views on that?

Mr LYON: Certainly as we are moving down the path of new prisons, public private partnerships [PPP] for construction projects have been shown to deliver overwhelming benefits during the construction phase both in terms of time saving and cost saving. We were talking earlier about whether we were comparing Granny Smiths with Granny Smiths. It is very hard to rank public sector procured construction projects against private sector delivered PPP model projects. We commissioned the Allen Consulting Group at arm's length from our organisation in 2007, assisted by the University of Melbourne, to undertake that first Granny Smith to Granny Smith comparison. The results it showed in the construction phase were stark. The private sector has a whole-of-life focus because they will be operating that asset over its economic life and they have an interest in ensuring that it is fit-for-purpose design and there are minimal overruns in materials, labour and so on. It found the cost savings in the construction phase ranged from 11.4 per cent to 30.8 per cent over traditional Government-managed construction projects. So when you are talking about a prison project like the one in South Australia that is currently under procurement at half a billion dollars, and there are construction cost savings of between 11.5 per cent and 30.8 per cent, the potential savings to the public sector are significant.

Value for money will not only accrue in terms of the construction phase if you move down the path of a public-private partnership for a new prison but also in terms of its design. Because the private sector consortium delivering that project will ultimately be operating and delivering the services that go alongside that built asset, they have a significant incentive to ensure that the design and construction are fit for purpose, innovative and well designed, to allow the best value and most efficient delivery of services over their economic life.

DEPUTY CHAIR: I understand that. But you have a prison that already exists. There is going to be no construction, no designing, the four walls are built, it has been in the public hands for a considerable period, and one is now looking at putting the prison into private hands. Do you see a great difference between that situation compared with building it from a blank sheet of paper?

Mr LYON: There are efficiencies that can be guarded in the operation and delivery of services. I think that moving down the path of bringing a greater role for the private sector in the delivery of existing brownfield assets in this State will provide an opportunity to benchmark and to introduce competition and contestability into the delivery of corrective services. So, yes, it will deliver efficiencies. Is it good policy? I believe it is, and my organisation believes it is. And should public-private partnerships be examined for future prisons for greenfield sites? Absolutely.

DEPUTY CHAIR: Earlier you referred to reputation. Is it your position that one should seriously look at not only the issue of privatisation but, more importantly, who will be handed the contract on the tender process, simply because one would want to ensure that the international reputation or the local reputation is not tarnished anyway and they will simply try that little bit harder?

Mr LYON: Generally in these kinds of procurements the proven track record is one of the assessments undertaken during the procurement phase. I would not see any reason why a move to outsource, to contract out, the private delivery of public corrective services in this State would be any different.

The Hon. TREVOR KHAN: With regard to the reputation phase, if that is such a strong motivator for a private operator achieving appropriate outcomes, I ask rhetorically: How do you explain a disaster like ABC Learning Centres?

Mr LYON: I am not overly familiar with the child-care sector. Not yet having children, it is not something I have focused on a great deal. But I understand that the problems with ABC Learning Centres were not so much in the delivery of the service but in a failure of the business model. I could be wrong on that; I am only relaying what I know from such august academic journals as the *Herald* and the *Daily Telegraph*.

The Hon. TREVOR KHAN: I think you are right: it is a failure of the business model. Let us talk about failures of business models a little further in the context of public-private partnerships. Thinking off the top of my head, we can go through the Airport Tunnel, the Lane Cove Tunnel, the Harbour Tunnel, and the Cross City Tunnel. In many of these we have had very significant international companies on the one side, apparently experienced public servants on the other, and yet it would seem that the two sides had entered into disastrous financial agreements. If we accept that the private model is a reasonable way of proceeding in terms of prisons, do we learn anything from these failed public-private partnerships that can assure us we are not going to have prisoners with a cup wandering the streets because nobody can afford to look after them anymore?

Mr LYON: Besides the fact that all the things you are talking about are transportation projects, the one thing that is common to each of them is that the market risk for those projects remained with the private sector operator. That means that they took the role. I must say that with each of those examples—before I talk about the difference with a social infrastructure public-private partnership model—one of the many great strengths of public-private partnerships is the transfer of risk away from the public sector, or ultimately away from taxpayers, and on to the private sector.

The Hon. TREVOR KHAN: The Airport Tunnel did not achieve that outcome.

Mr LYON: In terms of the tunnel construction it did; in terms of the operation it did not. In any case, let us talk about the Cross City Tunnel because certainly that is the headline case. The Cross City Tunnel did not stop operating for one day. In fact, it was a generous donation by the private sector to the people of New South Wales in many ways. Ultimately the equity that was earned was that of the private sector investors. What that means is that it was in fact a success of the public-private partnership model in terms of its risk transfer capabilities. The tunnel did not stop operating, the people of Sydney now have an east-west crossing of the city, and it was ultimately the private sector that came in with what later turned out to be ambitious traffic forecasts which impacted on their gearing models and ultimately the business model of that road.

With regard to risk allocation, it will be an issue moving forward. Since the global economic crisis has hit, the appetite in economic infrastructure projects for risk is somewhat reduced. That is something that will need to be dealt with by policymakers if they are going to continue to deliver projects and we harness the gains. In any case, we thankfully do not toll prisoners; we do not use a voucher process for them. The type of model we use to deliver a public-private partnership on a project like that is an availability payment model. What that means is that there is no market risk on the private sector. It means that there is an upfront certain payment to the private sector consortium, a service payment, in return for having whatever service is available and for which they are paying. Provided the minimum service guarantees and the core outcomes specified in the contract are met, there is a service payment which is generally made quarterly to the private sector in return for, in this case, for instance, having a 750-bed private prison available for use.

Ms SYLVIA HALE: Pursuing the line of questioning by the Hon. Trevor Khan, you say that one of the key features is that there is no transfer of risk. But surely what we have seen with ABC Learning Centres, and we would see with things such as prisons, is that ultimately it is the public sector that is going to pick up the tab if things go wrong. And that is essential, because if the private operator departs someone has to do it, and it is inevitably the public sector that is going to step in.

Mr LYON: It is the transfer of market risk in particular. There are many risks that sit around the project. I was simply talking about market risk. But operational risk, technology risk, regulation risk, and so on, remain with the private sector as the operator.

Ms SYLVIA HALE: Surely they are then transferred to the public sector, which becomes the de facto operator if the private operator fails?

Mr LYON: Ultimately, under these kinds of arrangements, it is the delivery of a public service. The difference is, instead of paying the department to deliver these services they are providing a fixed-priced contract with the private sector partner to deliver those services in lieu of, in this case, the Department of Corrective Services. So it gives cost certainty. And we would argue it provides certain levers, which are not as readily available under public sector operation, to ensure rigorous assessment and to ensure minimum services are met. We would argue that on appropriate projects these models have a significant benefit. But ultimately the Government is always going to be responsible for the delivery of public services. This is simply a delivery model. This is not about removing it from the suite of things that governments will always be required to do.

Ms SYLVIA HALE: At a previous hearing we were given the instance of the transfer of the Victorian women's prison back to the public sector and how that imposed a cost of something like \$20 million on the public sector, \$2 million of which was in sheer administrative costs in making that system consistent with the public system. It seems to me that if you get to a situation where the private operator fails, that has immediate financial repercussions for the public system.

Mr LYON: As it does when the public operation of such a facility were to have, for instance, as you were talking earlier about a riot through a poorly managed prison, I think during Mr Sturgess's presentation earlier today, which I was fortunate to be here for. So, there is always a risk that sits around the delivery of public services. If we ever come up with the perfect model where there is no risk for anyone involved, then we have done very well. But I would suggest to the Committee that there will always be an element of risk, particularly when you are dealing with things like Corrections. There are, by definition, certain risks that sit around that sort of industry, which are always going to exist. Also, when you are dealing with any delivery of public services there is going to be an element of risk and you cannot remove that from the equation entirely.

What this model does though is allow for the transfer of risk. There has been no social infrastructure project in Australia that we have been under a PPP that has failed us yet. There is simply no track record for it. Will it never happen? It would be very difficult to say that. It would depend on business models. As we have seen recently, the global economic crisis, the global financial crisis, has changed significantly the economic framework, which everyone operates within. So there is always a risk when you are dealing with that. It may well be that under public sector operation, for instance, you could outsource the delivery of food and you pay a forward supply contract and they go broke. Then all of a sudden you are left with a shortfall in food deliveries, which would have an immediate financial risk.

Ms SYLVIA HALE: I believe you were present when we heard evidence about Acacia Prison in Western Australia.

Mr LYON: I heard the tail end, yes.

Ms SYLVIA HALE: One of the significant points, a point I think that was emphasised, was the need for complete transparency and the need for the contract to be available to the public, reports, independent assessments of those reports; that there would be absolutely no shred of commercial in confidence. Is that the view of the infrastructure partnerships, that once these contracts are entered into there should be complete transparency and an absence of commercial in confidence?

Mr LYON: I am on the record already as saying that transparency is ultimately the key to better outcomes. That is across the board. Yes, we support full transparency, but not only for private sector operation. Certainly there will always be elements of commercial in confidence, which could not be disclosed because it would provide a commercial disadvantage, but they should be very minimal and the focus should be on full disclosure with reasons not to disclose rather than no disclosure. So we would say, yes, there should be and we would be very keen to shine a light on delivery of all elements of public service delivery by the private sector. But equally there would have to be the same level of transparency around the public delivery of public services and the operations of government. That is fundamental. You cannot shine the light on one without the other.

Ms SYLVIA HALE: That is right.

Mr LYON: It needs to be both and it should be very strongly a focus on having full transparency and full disclosure other than the minor elements, which would need to protect the commercial advantage of a particular commercial concern.

Ms SYLVIA HALE: Presumably we do have that to some extent; we have a Department of Corrective Services that does annual reports that are subject to scrutiny and criticism by the Auditor-General, but what we do not have is a similar reciprocity on the part of, say, the operators of the Junee jail. Of course, what is bedevilling this inquiry is this absence of information.

Mr LYON: The one point that I made when I was summing up my introductory statement is that it is within the capacities and capabilities and remit of this inquiry, of this Parliament and ultimately the Executive Council of New South Wales to specify what the market structures are, what the levers available to government are. I would think that you should recommend that there be full disclosure, and that that be a condition of moving forward. People will operate within the market structures that you set. So I would certainly think that that should be one of your considerations. The point I make to you is that the private sector has nothing to hide in its operation at all, as long as, and this point is important, equal measurement takes part in the functions of government.

Ms SYLVIA HALE: One of the other points made in the presentation concerning Acacia Prison was the importance to take one's time and determine exactly what you wanted the private provider to provide. However, in your recommendations you say, "The New South Wales Government expeditiously implement the planned contract of Corrective Services." What is your definition of "expeditious"?

Mr LYON: Clearly, I would include appropriate consideration within my definition of expeditious, but I think that the model is reasonably evolved in terms of case studies for you to have studied within other States. I think that the Sydney Ferries process, for instance, has been less than expeditious. I think that there is an opportunity for this Committee to recommend with some level of certainty the way forward, the market structures, case studies and opportunities for this to occur. Certainly we are not saying that there should be a fire sale and that we should be rushing into contracts. And the private sector operators will want very clearly and carefully defined the outcomes that are sought by government. One of the blessings and curses of private sector delivery of public services of infrastructure assets is that they will deliver what is contracted. They will deliver exactly what is contracted.

Ms SYLVIA HALE: No more and no less?

Mr LYON: I mean they work within the contract that is there. One of the things we hear from our private sector members is that they want a greater specification from government upfront as to the outcome ultimately of an asset or a service. What are the benchmarks they will be assessed at? What are the outcomes that are required? I think a careful consideration of what outcome is required, but that takes place during the tender process because it will vary from asset to asset, particularly with brownfield assets. That would take part in the tender process rather than in the deliberations of this Committee, I would think.

Ms SYLVIA HALE: You would agree that in coming up with the best tender or at least tender document for expressions of interest—

Mr LYON: Tender process more than document.

Ms SYLVIA HALE: There should be an opportunity for input from all the departments or public sector or whomever, the public, who will be affected by the ultimate contract that is entered into?

Mr LYON: I am not quite sure what you mean by that question. I think the education department hopefully has an interest.

Ms SYLVIA HALE: We were told by the prison chaplain service, for example, that it has been consulted about the tendering process, but the police department, which has considerable concerns, has had no consultation about the process. Do you think that is the appropriate way to draw up a tender?

Mr LYON: Obviously, key stakeholders, as with any major reform, should be consulted as you move down the path of tendering. Whether it is appropriate that it has been done so far or whether it be appropriate that it be done in a couple of weeks time, I do not have a particular view on. But it is clearly something that will need to happen. I imagine there are skilled people within the bureaucracy of New South Wales. We have to remember that the outsourcing of public services is not a new phenomena in New South Wales; in fact, it has been done since the First Fleet arrived here. So there are models that are there, there are people who are skilled in outsourcing public services. Admittedly, this will only be the second time it has been done for Corrective

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Services in New South Wales, but the models are ultimately the same. You specify the services that are there, the services that are to be delivered and you consult with your key stakeholders as part of putting those outcomes together. So I imagine that would occur as a matter of course.

CHAIR: That concludes our time for questions. I thank Mr Lyon and Mr McGrath for coming in this afternoon and giving the Committee a different perspective perhaps than what we have heard in previous evidence. If the Committee has any additional questions, they might be in contact with you. I do not believe you took any questions on notice. Thank you very much for your submission and for your attendance today.

Mr LYON: Thank you again.

(The Committee adjourned at 5.18 p.m.)