



27 February 2009

The Director  
General Purpose Standing Committee No. 3  
Parliament House  
Macquarie St  
Sydney NSW 2000  
Fax: (02) 9230 3416

Dear Committee Manager,

## **Submission by Justice Action into the inquiry of the privatisation of prisons and prison-related services**

### **1. Introduction**

Justice Action has made the issue of prison privatisation one of the key issues on our campaign agenda. We therefore welcome the invitation to make this submission.

Justice Action is a community-based, non profit organisation committed to protecting the rights of people involved within the criminal justice system, and ensuring that they receive safe, fair and just treatment. We ourselves are prisoners and ex-prisoners, lawyers, academics, victims of crime and community members.

In preparing this submission, we have consulted widely with not only these people, but also with prison staff, unions and international experts in the field of prison privatisation.

We have found that almost universally amongst them, the concept of privatisation of prisons and prison related services is vigorously opposed. We have also found that where privatisation has been introduced outside New South Wales and indeed internationally, it has proven to be the worst of all prison management solutions.

Justice Action strenuously opposes privatization of prisons and prison related services for the reasons described in this submission.

### **2. Executive Summary**

Justice Action addresses the terms of reference of this inquiry in paragraph 3. The rationale for our opposition to prison privatisation on which our comments are based are that:

#### *2.1 It is Morally Wrong*

It is a fundamental attack on the democratic social compact between citizen and state.

The replacement in our prison system of the state by corporations, leads to an inherent obscenity associated with the concept of corporations making money from the misery of others.

In our view, it is completely inappropriate for the mandate of law and order given to government to be outsourced to a commercial venture. This is particularly so in view of the fact that a corporation's primary duty is to its shareholders and not the public, when it is in fact the public that is the source of the law and order mandate.

## 2.2 *The Corporate Model is not Appropriate for Prisons*

It leads to:

- low standards of care
- the profit motive being placed before moral considerations of human dignity and welfare
- citizens being incarcerated in greater numbers and for longer periods to satisfy the demand for growth all corporations must have to survive.

Prisoners are and must be part of the community. Only the public community model is acceptable in a democratic community (see attached paper of Lily Newbold).

## 2.3 *Financially, it is not a better Model*

There is considerable evidence that the outsourcing of prisons and prison related services does not in the longer term, save government money when compared with the publicly run model.

## 2.4 *It is Incompatible with Reducing Recidivism*

The rate of recidivism in NSW is Australia's highest, being around 43.7%. This is more than 10% higher than a comparable state such as Victoria. This imposes a huge economic cost on NSW not to mention a huge personal cost on both victims and their families and offenders and their families. The shortcomings described in this submission of introducing privatisation will only increase this rate.

# 3. **Responses to the Terms of Reference**

## *Preparatory comment*

The terms of reference to this inquiry refer to many issues beyond our expertise, such as the use and effectiveness of private security guards in

perimeter security of prisons. Where issues of this kind are raised, we rely on other organisations such as the prison officers, to provide a comprehensive response to the issue.

### *General comment*

The corporate model requires:

- a maximising of profits for its shareholders which mitigates against discretionary spending;
- the imposition of a statutory duty to put the interests of its shareholders before any other interests; and
- growth of its business in order to grow profits

These requirements make corporations completely inappropriate to operate a public enterprise of prison services.

Any examination of the impact of privatisation on prisons and prison related services must keep in mind that corporations are first and foremostly concerned with maximising profits for their shareholders. This means that where a prison corporation can cut costs, it will – its duty to its shareholders is its major concern. Any impact of privatisation on services to prisons and prisoners must be looked at through this prism.

We believe this profit motive creates an impossible tension between the rights of shareholders and the rights and welfare of prisoners. This, by itself, demands rejection of the corporate model.

## **1. The impact of privatisation on:**

### *(a) public safety and rates of escape*

In relation to public safety, we take the view that in a prison context the biggest danger to public safety is the current high rate of recidivism amongst the prisoner population. A high recidivism rate self evidently means recently released prisoners are again breaking the law and creating more victims.

The current recidivism rate with male offenders in NSW stands at around 43.7%, the highest in the country and nearly 10% higher than a comparable state such as Victoria.

For the reasons outlined in our submission below, privatisation will do nothing to lower and may well increase this financially and morally unsustainable statistic.

In relation to rates of escape, we take the view that this is not an issue. Even if rates of escape increase (and we are unaware of any

overseas evidence which shows this is a trend in privatised prisons), where escapes have occurred in NSW, there have been few incidents where escapees have harmed members of the public.

*(b), (c) the incidence of assaults on inmates and disciplinary breaches*

Our research finds that the overseas experience with privatisation shows that privatised prisons stand for minimum standards of care and poorly resourced prisons.

It is natural against this background that prisoners will become upset and dissatisfied with their treatment. Such aggravation is likely to lead to increases in the rates of assault. As the Victorian experience with the then newly privatised Port Phillip Prison showed, it can also lead to high numbers of suicides. As mentioned in an article by Stephen Nathan, Port Phillip Prison had the highest rate of suicide in the state<sup>1</sup>.

The problem will be exacerbated because privatised prisons generally operate on minimum staffing levels which means supervision is reduced and the opportunity to commit assaults and commit suicide increases.

*(d) overcrowding*

Under most privatisation models, prison corporations are paid based on the number of prisoners supervised in each prison. In our view, the temptation to maximise profits by maximising prisoner numbers thereby leading to overcrowding will be too much for prison corporations to resist.

*(e) prisoner classification levels*

Prisoner classification is an important part of a prisoner's progress through the prison system. In many ways, it is the first step in a prisoner's rehabilitation program. It controls such things as time out of cells, levels of security, visiting rights, access to prison based employment and exercise facilities. In many respects it is a reward for good behaviour.

The overriding consideration in determining prisoner classification should be based on issues directly relevant to the prisoner. As mentioned in our general comment, when the profit motive implicit

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<sup>1</sup> Nathan, S. (June, 2000) *Private Prisons: Battle lines drawn over prison privatisation in Ontario*, CPPA Monitor

in a corporate prison culture takes over, financial considerations may well be more important than issues directly relevant to the prisoner.

For example, it is cheaper for a prison corporation to keep prisoners locked in their cells because less staff are required during lockdowns. There is therefore a real temptation for a prison corporation to resist reclassifying prisoners as being at a lower risk level because classification at a lower level generally means prisoners are permitted out of their cells for longer periods of time and therefore manpower costs to supervise them are higher.

*(f) rehabilitation programmes, mental health support services and recidivism rates*

If rehabilitative programs that teach life and employability skills, and clinical services that are aimed at prisoners addressing their offending behaviours are not paramount in corrections, then the prison system will not be effective in protecting the community through reducing crime. A private prison corporation needs return business, but with each returnee and with each new customer, harm is done to the individual victims and the community as a whole.

Victoria learned from the failure of privatisation and when it established Marngooneet Correctional Centre in Lara as a purpose built and operated 'Treatment Community that prepares prisoners for a successful crime-free release from prison', it did so by a partnership agreement that sees the land owned by the State, but the buildings and the maintenance provided by a private operator. The prison and clinical staff are all government employees (*Sentence Management Manual*, 2007, Appendix I, p.A1.21)<sup>2</sup>.

In relation to recidivism, the current rate of recidivism in NSW is unsustainable. Quite apart from the moral undesirability of having such a high rate, it also imposes a huge cost on the state's budget with the annual cost of incarceration of the average prisoner approaching \$78,000.

The NSW Government has set itself the aim of reducing the recidivism rate by 10%.

Given the shortcomings in the corporate model of prison privatisation outlined above and given the fact that by privatising Parklea and Cessnock prisons, the government will effectively lose direct control over 2 of its most important prisons, we cannot see

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<sup>2</sup> Sentence Management, Corrections Victoria. (2007) *Sentence Management Manual*, Department of Justice – Corrections Victoria

how the rate of recidivism in NSW can possibly be helped by privatisation.

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

The decision by the NSW government to privatise Parklea and Cessnock prisons was based on positive prison privatisation recommendations in a 2005 report of the Legislative Assembly *'Value for Money from NSW Correctional Centres'*<sup>3</sup>.

Jane Andrew of the School of Accounting and Finance, University of Wollongong and Damien Cahill from the University of Sydney, attacked the report's conclusion that the privatised model of prison management delivered superior value for money. In their paper, *'Value for Money? Neoliberalism and NSW Prisons'*, Australian Accounting Review 2008, they concluded that *'the report is fundamentally flawed on its own terms'* (at page 3), and was driven by concepts of ideology rather than any cost data evidence of financial savings (at page 24)<sup>4</sup>.

On the evidence provided in this paper, the privatisation financial model is certainly no better and is in fact worse than the publicly funded alternative.

It is interesting to observe that the authors of the paper come from an accounting background and the paper attacks the report and privatisation from an economic perspective rather than a moral perspective.

We believe that the moral and social justice arguments are just as strong.

## **3. Accountability mechanisms available in private prisons**

Privatisation weakens accountability. We believe this is an area of government responsibility where accountability is vitally important. The then New Zealand Minister for Corrections correctly summarised the position when he said: *"The management of prisons involves the exercise of some of the State's most highly coercive powers against individuals. There needs to be direct accountability for the exercise of such powers, and that can best be achieved through a Government department directly accountable to a responsible Minister"*<sup>3</sup>.

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<sup>3</sup> New South Wales Public Accounts Committee, *Value for Money from NSW Correctional Centres*, NSW Legislative Assembly, Report No. 13/53 (No. 156), September 2005

<sup>4</sup> Andrew, J & Cahill, D. (2007) *Value for Money? Neoliberalism and New South Wales Prisons*, "Faculty of Commerce – Accounting and Finance Working Papers", Paper 16

<sup>3</sup> Hon Paul Swain, Hansard, Legislative Assembly, 7/5/04

4. **Future Plans to privatise prisons or prison services in NSW, including the Court Escort Security Unit**

We take the view that part privatisation of prisons and prison related services in NSW is a retrograde step.

Firstly, we believe that because of the obvious tension between privatised and non privatised prison officers within the system, the necessary interaction between them when they perform their duties, will lead to the welfare of prisoners being ignored as incidents of infighting between prison officers from those groups occurs.

Already we have anecdotal evidence of incidents of abuse and threats being traded between these groups. This will only increase particularly when they interact together as they must with the privatisation of the Court Escort Security Unit.

This is obviously not good for prison services in NSW and will impact detrimentally on the welfare of prisoners who become in many ways ‘the meat in the sandwich.’

In addition, a divided prison service leads to blurred edges around where the government services end and the privatised services begin. In an atmosphere of tension between the 2 groups, there will be a natural tendency to blame each other if anything goes wrong and indeed ‘manufacture’ breaches by the other.

5. **The use and effectiveness of private security guards in perimeter security of prisons**

We refer to our preparatory comment in para 3 above. We leave it to prison officer groups and those more qualified than us to make comment on this issue.

6. **The experience of privatisation of prisons and prison services in other Australian and overseas jurisdictions**

The experience of privatisation in Victoria and overseas has shown just how inappropriate the corporate model is to prison privatisation. In particular it has shown:

*The Profit Motive means Minimum Standards*

The profit motives ensures that corporations will only spend as much as they have to when running prisons. That means they will not have the necessary regard to moral considerations of human decency and welfare, which are so important in a prison system. A study conducted by Biles and Dalton found that in Victoria, the privatised Port Phillip, Deer Park, and Arthur Gorrie prisons, all have higher rates for deaths and suicides than the Australian

average<sup>5</sup> (*Jane Andrew in the Journal 'Critical Perspectives of Accounting' at page 886*)

Australian Correctional Management (one of the tenderers for the Parklea and Cessnock prisons), was caught taking clothes from charities to avoid purchasing them for prisoners, until St Vincent de Paul discovered the scam. They then tried to get clothes from the Uniting Church who refused to supply them when they realised what was happening (*Andrew at page 891*).

#### *Growing the Business of Prison Management is not in the Public Interest*

In the corporate world, businesses need to grow to survive. Stephen Nathan, a leading prison privatisation expert, in the March 2008 edition of the Independent Monitor says that means privatising prisons '*requires more people in the criminal justice system for longer and is squarely at odds with the public good.*' (page 26).

In the United States the need to grow has led to prison corporations being accused of joining with and funding right wing 'shock jocks' to ramp up the law and order debate so that they can have more people jailed to grow their profits. The more frightened the public is, the more they will pay.

Just as worryingly, a recent media report revealed that 2 US judges had pleaded guilty to taking bribes from prison corporations to extend the sentences of prisoners coming before them for sentencing. They admitted doing this to increase the length of the prisoners' incarceration, thereby maximising the profits to the prison corporation that bribed them<sup>6</sup>.

#### *Low Standards of Care*

Privatisation of prisons has been shown to provide unacceptable outcomes in the standards of care involved in the management of prisons. Stephen Nathan in the same article referred to above disclosed that a recently leaked report placed 10 of the 11 private prisons in the United Kingdom in the bottom quarter of the performance register of all UK prisons. He concluded this '*showed they are consistently worse than their publicly run equivalents*'. (at page 24).

New Zealand opened its first and only privately run prison in July 2000, however, the current government did not renew the private operator's contract

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<sup>5</sup> Andrew, J (2007) *Prisons: the profit, motive and other challenges to accountability*, in *Critical Perspectives on Accounting*, No. 18 pp. 877-904

<sup>6</sup> Author Unknown, *Judges Jailed kids for money*, Reuters, February 13<sup>th</sup> 2009 (<http://www.news.com.au/story/0,27574,25048468-23109,00.html>).

<sup>7</sup> Nathan, S. *Blind Faith in Private Prisons*, in *Independent Monitor*, March 2008, Issue 93

and has recently legislated against private prisons<sup>4</sup>. In Canada, the first and only privately run prison opened in Ontario in 2001. After the five-year contract expired, the Canadian government did not renew the contract.

## **7. Any other relevant matter**

### *Moral Issues*

Privatisation of our prisons is a fundamental attack on the democratic social compact between citizen and state. It is a move from the penal colony to the corporate colony with a loss of accountability and the transfer of power to corporations.

Government is empowered to manage the justice system of its citizens with the mandate of its citizens. It is a responsibility that is not capable of division. A government by being given the right to incarcerate its citizens has also been given the power to impose the ultimate sanction of punishment available in our society. It therefore has a moral obligation to be responsible for the conduct of that sanction. It must ensure first hand that the sanction is properly and humanely imposed.

The replacement of the state by corporations in the running of our prisons, leads to an inherent obscenity in the concept of corporations making money from the misery of citizens, which includes both the victims and the offenders. Prisoners are human beings; they are not chattels to generate profits for shareholders.

### *The Importance of the Public Community Model of Prisons*

Historically, it has been shown that the most effective system of prison management is the public community model. Attached is a paper prepared by Lily Newbold, Bachelor of Social Science (Criminology) University of New South Wales, which demonstrates how effective this model can be when properly resourced and implemented.

Privatisation of our prisons quite simply means that this model can never be introduced in privatised prisons.

## **4. Prisoner comments**

In the course of preparing this submission we have sought comment from prisoners who have experienced privatisation in other Australian states.

One response in particular stands out:

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<sup>4</sup> Corrections Act 2004 (assented to 3 June 2004). See NZ Department of Corrections website: <http://www.corrections.govt.nz/public/PolicyAndLegislation/correctionsact/>.

Bernie Brown – former inmate of the privatised Borallon Prison in Queensland.

*'Prisoners after all, are people not assets for business manipulation toward profits...  
Fight the privatisation people, believe me, it's not the way to go.'*

## **5. Conclusion**

This submission concludes that from all perspectives whether they be based on moral, business, economic, social justice or reform considerations, the privatisation of prisons and prison related services, simply does not work.

Justice Action is proud to share this view and work with the Community Justice Coalition, Unions NSW, the PSA and the prison officers themselves to oppose any move towards privatisation.

Yours faithfully

Michael Poynder  
Coordinator