

25 February 2009

The Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie St
Sydney NSW 2000

Sent Via Fax: 02 9230 3416

Dear Committee,

Submission made by the Women In Prison Advocacy Network, (WIPAN) into the inquiry of the privatisation of prisons and prison-related services

1. Introduction

WIPAN is a community-based, non-profit organisation committed to advocating and supporting the needs and rights of women who have become embroiled within the criminal justice system. We are committed to ensuring that these women receive safe, fair and just treatment. We ourselves are ex-prisoners, lawyers, academics, social workers, victim's of crime and community members.

To prepare this submission, we have consulted widely, from a variety of sources including women prisoners and ex-prisoners, prison staff, health professionals and international experts in the field of prison privatisation.

WIPAN opposes privatisation of prisons and prison related services, particularly for women prisoners. Women are more vulnerable than men, their needs in the prison system differ and they require specialist services. For example, 58 percent of women in prison are the primary carer of children. Giving birth and raising small children as a prisoner requires specialist support, health services and rehabilitation programs which are costly and unlikely to be provided to an adequate standard by a company which can only increase its profits by reducing its payroll costs and decreasing the prisoner: staffing ration.

We found that where privatisation has been introduced throughout Australia and indeed internationally, it has proven to be the worst of all prison management solutions. For example, the only private prison to revert from private management to public hands in Australia, was a women's prison in Victoria (October 2003).

2. Executive Summary

This submission refers only to the terms of reference where WIPAN members have knowledge and expertise.

WIPAN opposes prison privatisation because:

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 contradiction in the concept of corporations making money from the misery of others. Population groups with special needs such as women prisoners need special protection from the state.

2.2 The Corporate Model is not Appropriate for Prisons

There is evidence that corporations with the purpose of increasing profits provide:

- low standards of care and welfare, particularly for high needs groups such as women
- fail to meet standards human dignity
- encourage growth in prisoner numbers and for longer periods

2.3 Market Failure - 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. For example, the Deer Park Women's Prison in Victoria was issued three default notices, including one for security lapses. Prisoners also experienced 75 lockdowns as a result of staff shortages. In maximising its financial return, the company was reported to have accepted an increase in inmates leading to overcrowding, eliminated programs and health services and reduced staff training. (ABC, 7.30 Report, interview with Andre Haermeyer, Corrections Minister, 3 October 2000)

2.4 It is Incompatible with Reducing Recidivism

The rate of recidivism in NSW is Australia's highest, being over 43%. This is more than 10% higher than comparable states. This imposes a huge economic cost on this state. The shortcomings described in this submission of introducing privatisation will only increase this rate.

3. Responses to the Terms of Reference

The following corporate requirements result in the private operation of prisons to be against the public interest:

- maximising of profits for its shareholders;
- 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

Any examination of the impact of privatisation on prisons and prison related services must keep in mind that corporations are first and foremost concerned with maximising profits to 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 creates an impossible tension between the rights of shareholders and the rights and welfare of prisoners. This demands rejection of the corporate model.

3.1 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 among the prisoner population. NSW has the highest recidivism rate in Australia, with women offenders in NSW. If a company is to provide services within prisons and post release services at a lower cost than that currently allocated in NSW, this disparity should be expected to increase.

In relation to rates of escape, we take the view that this is not an issue. We are unaware of any overseas evidence which shows that prison escapes are increased in public or private prisons.

(b) The incidence of assaults on inmates and disciplinary breaches

Overseas experience with privatisation shows that privatised prisons provide minimum standards of care and poorly resourced prisons. It should be expected, that in such circumstances, prisoners will become dissatisfied with their treatment. Such aggravation is likely to lead to increases in the rates of assault and also incidents of self harm. Minimum staffing levels increases the opportunity to commit assaults, or self harm.

(c) Overcrowding

Under most privatisation models, prison corporations are paid on the number of prisoners supervised in each prison. The size of a women's prison is unlikely to be viable unless the corporation can increase the number of prisoners. There is the risk that corporations will influence the public perception of law and order campaigns to make decisions which are against the interest of the community in the long term.

(d) Prisoner classification levels

Prisoner classification is an important part of a prisoner's progress through the prison system. To an extent 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. If higher payments are made for particular classifications or less costly supervision arrangements apply to specific classifications, there is a risk that the decision will not be made in the benefit of the prisoner or the community.

(e) Rehabilitation programmes, mental health support services and recidivism rates

In relation to rehabilitation programs we refer to our general comments above and our comments on prisoner classification levels. If appropriate rehabilitation programs are not commenced in prison, they may never be effectively implemented on their release. We have reports from Junee prison that it is particularly difficult to get access to programs that help prisoners meet conditions which will assist them to meet parole conditions.

In relation to mental health support services, Justice Health and not prison officers provide most of these services. We would be concerned if there was any suggestion that Justice Health would not have a continuing role in privatised prisons and at least the same levels as they are currently provided. This issue is of particular concern for women in the prison system who require specialist health services and programs.

The model and cost structure for male prisons such as Junee are not appropriate for a women's prison. Medical services models in particular are inappropriate and inadequate. In 2008, the Las Vegas Women's Prison operated by a commercial company was taken over by the Nevada Department of Corrections. The Las Vegas Review Journal (11 January 2009) reported that this was due to health care concerns. The company had reported as early as 2004, an estimated loss of \$1 million in operating the women's prison due to medical costs.

Health services and rehabilitation services have a significant impact on the rate of recidivism. The Government target is to reduce the rate by 10 percent. Failure of a private corporation to allocate funds to programs creates a cost to the community, families of prisoner and the State budget - \$78,000 per year per prisoner.

4. 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*'.

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 in 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).

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.

5. Accountability mechanisms available in private prisons

As described in this submission, the authority of government to remove the liberty of individuals and the role of courts in procedural justice should not be contracted to those who have no legitimate role in this process. The need for accountability in these areas, where an individual's freedom is the issue, is the reason why government should continue its management role. Privatisation weakens accountability. The 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*"¹.

Contractual arrangements with providers are business arrangements and carry with it requirements for confidentiality which works against full disclosure and scrutiny of practices. Commercial arrangements limit the information available and therefore limits the role and scrutiny of:

¹ Hon Paul Swain, Hansard, Legislative Assembly, 7/5/04

- Non-executive members of Parliament
- The media
- Organisations supporting prisoners
- Members of the public including families of inmates
- Ombudsman, the Health Care Complaints Commission and the Coroner
- Auditor General
- Ministers, Parliament and Parliamentary Committees

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

Privatisation of prisons and prison related services in NSW is a retrograde step. It is the position of WIPAN that all corrective services and related services are in government hands and does not support a mixed system. The division between private and public ownership creates tension within the system when interaction between them occurs in undertaking their duties. This leads to the welfare of prisoners being ignored as incidents of infighting between prison officers from those groups occurs. 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 on the welfare of prisoners who become in many ways ‘the meat in the sandwich.’

A divided prison service leads to problems of accountability, around where the government services end and the privatised services begin. In an atmosphere of tension between the two groups, there will be a tendency to blame each other if anything goes wrong.

Prisoners are likely to be caught in the middle of such disputes in detriment to their welfare. When prisoners make complaints about their treatment it will be difficult to arbitrate and make systematic improvements to the system.

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

No 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 that the corporate model is inappropriate. 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 (*Jane Andrew in the Journal 'Critical Perspectives of Accounting' at page 886*)

The profit motives ensures that corporations will only spend as much as they have to when running prisons. For example, Australian Correctional Management (one of the tenders for the Parklea and Cessnock prisons), was found accepting clothes from charities to avoid purchasing them for prisoners. When St Vincent de Paul stopped the supply, the company then tried to obtain clothes from the Uniting Church, who also refused to supply them (*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.'*(page26).

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 newspaper report revealed that two judges in the United States had pleaded guilty to taking bribes from prison corporations to extend the sentences of prisoners coming before them for sentencing.

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 which *'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 and has recently legislated against private prisons². In Canada, the first and only privately run prison opened in Ontario in 2001. After the five-year contract expired, Canadian government did not renew contract either.

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. 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 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. Prisoners are human beings; they are not chattels to generate profits for shareholders.

8. Conclusion

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

Ms Kat Armstrong
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² Corrections Act 2004 (assented to 3 June 2004). See NZ Department of Corrections