

Sylvia Hale MLC

## Statement of Dissent

This inquiry has the purpose of inquiring into the proposed privatisation of prisons and related services in NSW. The function of prisons and related services are significantly different to other types of government services that have been privatised.

Unlike financial, health, transport or similar government services, prisons operate for the purpose of exercising coercive power. Their purpose is to deprive of their liberty those sentenced by the courts or those denied bail. In addition, prisons operate their own disciplinary procedures, which can include physical restraint and solitary confinement.<sup>1</sup>

The transfer of such powers from a public authority to a private provider is qualitatively different to the privatising of other government services that do not involve the exercise of coercive power. It raises serious concerns in relation to the responsibility of government to ensure the protection of the human rights and dignity of its citizens.<sup>2</sup>

Coercive powers should only be placed in the hands of the private sector in circumstances where there is an overwhelming case to show that it will result in a genuine benefit to all who will be affected by the decision; inmates, staff and the general public.

In my view the evidence before the committee does not provide a strong case to support the proposition that privatisation will result in a benefit to all concerned.

*“In the US, a 1998 report commissioned by the National Institute of Corrections, and a 2001 report by the Bureau of Justice Assistance (BJS), reviewed a number of studies and suggested that there was no definitive research evidence to support the conclusion that privately operated facilities were significantly cheaper or better in quality.”<sup>3</sup>*

A Canadian experiment involving the Ontario government constructing two identical prisons and allowing one to be run by a private provider and the other to be run by the government and reviewing the outcome showed no significant advantage arising from the privately run prison. The government subsequently resumed control of the private prison.<sup>4</sup>

While advocates claim that privatisation of additional NSW prisons or related services could provide benefits, there was no substantive evidence to show that privatisation will provide such benefits.

The direct evidence in relation to cost and effectiveness is inconclusive. The only direct evidence of potential cost savings is the comparison of employment conditions at Junee with those at NSW public prisons. This shows that officers at Junee receive lower pay and significantly lower entitlements than their public sector equivalents.<sup>5</sup> There is no clear evidence however to show that this directly translates to lower cost to the public. No evidence was presented to show what proportion of these lower labour costs are extracted as profit by the private provider. Public/private cost comparisons presented to the Committee do not adequately address the range of factors that distort such comparisons.<sup>6</sup>

The evidence demonstrates that while in some cases private prisons perform effectively, in other cases they perform poorly and have failed in Victoria, the USA and the UK<sup>7</sup>.

In light of my serious concerns about the placing of coercive powers into private hands and the lack of clear evidence that privatisation will deliver public benefits I cannot endorse the privatisation of any additional prisons or prison services in NSW.

This is not to suggest that no improvement is required in the administration of NSW correctional centres by the Department of Corrective Services (DCS).

The Committee heard disturbing evidence about the administration of the DCS, in particular the poor relationship between senior staff and front line correctional officers, the inability of senior management and the union to find constructive and

agreed ways to continually improve the way centres operate and the inflexible and often unrealistic administrative processes that operate within DCS.

At times the Commissioner emphasised the alleged manipulation of overtime as a key driver of the privatisation push<sup>8</sup>, although at other times he denied this<sup>9</sup>. What is clear from the evidence is that the DCS has exceeded its overtime budget by a significant margin every year since at least 1999/2000. This shows a disturbing inflexibility in the DCS budget process with the formula used to calculate overtime being unchanged since 1986, despite its obvious inaccuracy<sup>10</sup>.

Commissioner Woodham's explanation for the excessive overtime expenditure is alleged "manipulation" of the sick leave and overtime system by some prison officers. He supports this assertion with graphs demonstrating that sick leave decreases on weekends and public holidays when an employee who takes sick leave suffers a loss of penalty rates<sup>11</sup>.

I do not accept the proposition that this represents a manipulation of the system. The fact that an employee is less likely to take sick leave if he/she suffers a financial disadvantage is the very reason that we have paid sick leave. My view is further strengthened by the Commissioner's evidence that no prison officer has been subject to disciplinary or other action for alleged rorting of the overtime system.<sup>12</sup>

I therefore conclude that the Commissioner's allegation of widespread manipulation of sick leave and overtime is not substantiated. It is disturbing that the Commissioner has promoted this allegation so publicly.

Equally disturbing is the allegation by the Commissioner that an escape occurred at Parklea Prison because prison officers were watching cricket instead of monitoring a closed circuit TV.<sup>13</sup> This allegation is not supported by the incident report tabled by the Commissioner.<sup>14</sup> The Commissioner was unable to provide any additional supporting evidence when requested.<sup>15</sup> This is particularly disturbing given the extent of media coverage of the allegation at the time it was made, the damage done to the

public reputation of prison officers, and the fact that the Commissioner made the allegation under oath to a public hearing of a parliamentary committee.

I consider that the Commissioner bears ultimate responsibility for the problems within DCS. In my view it would be appropriate for an external review of the management of DCS, including the role of the Commissioner, to be undertaken as a matter of urgency.

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<sup>1</sup> Submission 102, p.6

<sup>2</sup> See for example Submissions 126 and 270,

<sup>3</sup> Submission 107, p.20,

<sup>4</sup> Submission 257, p4

<sup>5</sup> Submission 258, appendix 1

<sup>6</sup> Commissioner Woodham, Answers to Questions on Notice, taken during evidence 23 February 2009 (Part 1), q.114, p.30

<sup>7</sup> Submission 107, p.8-10, Submission 102, p.6, L.Roth, *Privatisation of Prisons*, p.84,

<sup>8</sup> Commissioner Woodham, Evidence, 23 February 2009, p.4

<sup>9</sup> Commissioner Woodham, Answers to Questions on Notice, 27 March 2009, q.16

<sup>10</sup> Submission 258, p33

<sup>11</sup> Commissioner Woodham, Document tabled 27 March 2009, pp. 63-69

<sup>12</sup> Commissioner Woodham, answers to questions on notice 27 March 2009, q.17

<sup>13</sup> Commissioner Woodham, Evidence, 23 February 2009, p.14

<sup>14</sup> Commissioner Woodham, Document tabled 27 March 2009, p.14

<sup>15</sup> Commissioner Woodham, answers to questions on notice 27 March 2009, q.s 24 & 25.