



**Submission to New South Wales Legislative
Assembly Public Accounts Committee**

**Issues in Considering Benefits of Provision of
Correctional Services by Public and Private
Providers**

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2. Brief CV of the Author

Keith Hamburger AM

Qualifications

Keith has a Bachelor of Arts Degree from the University of Queensland, with majors in Government and Sociology, and, with emphasis upon the Criminal Justice System and Social Justice Issues.

Experience

Keith was Director-General of Corrective Services in Queensland from December 1988 until June 1997.

He worked under the direction of Glen Milliner as the Minister for Corrective Services [and other Ministers] in the successful implementation of the reform agenda arising out of the 1988 Commission of Review into Corrective Services in Queensland.

He assisted in the conduct of two major enquiries into Queensland's prison system; the Bredhauer Enquiry in 1974, and the Longland Enquiry in 1985.

While Keith was Director-General, the Commonwealth Industry Commission reports showed Queensland to have one of the most cost-effective system of Corrections in Australia; and the lowest return to prison rate. Underpinning these achievements was a strategy that included:

- Work place reform within secure correctional centres driven by competition between public and private providers;
- Restructuring of the roles of custodial correctional officers;
- A significant increase in the number of professional program staff working in secure correctional centres;
- A *"through care"* model that saw a much greater emphasis upon the use of community corrections and a consequent fall in the numbers of prisoners in secure custody; and
- Innovative prisoner programs, including the Western Out Reach prisoner Camp Scheme;

Keith has considerable expertise in the area of public-versus-private provider of correctional services and with separation of purchaser-and-provider roles.

Queensland was the first jurisdiction outside of the United States of America to introduce private sector operators into custodial corrections.

Queensland, with Keith as Director-General of Corrective Services, was the first Australian jurisdiction to undertake a correctional project where the public and private sectors tendered competitively against each other for the right to design, build and operate a major secure correctional facility.

Keith, together with his then Minister the Hon. Glen Milliner, was responsible for guiding the development and implementation of a number of innovative custodial and community corrections

programs for indigenous offenders. Keith and Glen also implemented policies that led to the recruitment and training of indigenous people to work in Queensland Corrections in unprecedented numbers. They established good working relationships with indigenous communities through out Queensland.

Keith has visited and studied corrections in Germany, Holland, England, Singapore, America and New Zealand.

He represented Queensland in New Zealand in 1989 at the Australasian Conference of Ministers of Corrections and Correctional Administrators. In 1993 he was a keynote speaker on developments in the Pacific Region at the American Correctional Association's National Conference in Nashville Tennessee.

In 1996 he again represented Queensland in New Zealand at the Asian Pacific Conference of Correctional Administrators in Christchurch.

Prior to being Director General of Corrective Services, Keith spent twenty-nine years in the Queensland State Public Service where he held a variety of senior positions, Including:

- Chief Public Service Inspector (Establishments and Accommodation);
- Deputy Director General (Corrective Programs), Department of Welfare Services;
- Deputy Chief Executive Officer, Department of Harbours and Marine; and
- Chief Executive Officer, Department of the Public Service Board.

Keith is a highly experienced consultant having worked on secondment from the Queensland Public Service with three major Private Sector Management Consulting Organisations where he received specialised training in management and organisational development consulting techniques and led teams on major consulting projects.

Since 1997 Keith in his consulting practice has undertaken a number of significant consultancy projects and reviews relating to correctional and detention projects, as well as efficiency, effectiveness, governance and organisational development projects in government agencies, including:

- Consultant Team Leader – Re-tendering of the privately managed and operated Junee Correctional Centre, New South Wales Department of Corrective Services;
- Consultant Team Leader - New Prison Project, ACT Corrective Services
- Operational Planning Project Leader, Prison Infrastructure Redevelopment Program, Tasmanian Prison Service;
- Consultant to the Organisational Development Program, Tasmanian Prison Service;
- Consultancy advice to the Department of Immigration and Multicultural and Indigenous Affairs on corporate governance, contingency planning, infrastructure design and development, staffing models, performance monitoring and investigative services in relation to Immigration Detention Centres.

- Consultant Team leader and governance input to the business and strategic planning review of CITEC the Queensland Governments computer service provider;
- Consultant Team Leader for the review of building industry practitioner licensing in Queensland commissioned by the Department of Local Government and Planning;
- Consultancy advice to the Queensland Department of Health on Youth Suicide Strategies;
- Consultancy advice to the Queensland Premier's Department on social policy issues, including "Drug Courts";
- Consultant to the Australian Fish Management Authority on the development of detention standards for facilities to hold suspected illegal fishers;

Keith has expertise in the area of corporate governance, in particular in the area of policy development in government and its effective translation to operational outcomes by the bureaucracy.

In 1993 Keith was awarded the honour of Member in the General Division of the Order of Australia - AM, for Public Service.

3. Introduction

The Geo Group Australia Pty Ltd (GEO) have drawn to the attention of Knowledge Consulting Pty Ltd the New South Wales Legislative Assembly Public Accounts Committee's inquiry into *value for money from New South Wales correctional centres* and the following terms of reference for the inquiry:

- *Consider the current initiatives being undertaken by the Department of Corrective Services (DCS) to improve safety and cost effectiveness of correctional centre management;*
- *Compare the cost of corrective services provided by public correctional centres operating using the Way Forward program and private operators; and*
- *Review whether the planned improvements to the DCS calculation of costs will facilitate better comparisons between private and public sector providers.*

GEO, in drawing the foregoing to the attention of Knowledge Consulting Pty Ltd, sought advice as to whether GEO could engage Knowledge Consulting to prepare a paper dealing with issues relating to the provision of correctional services by public and private sector providers.

In seeking to engage Knowledge Consulting to prepare the above paper, GEO was aware of the involvement of the Directors of Knowledge Consulting in *pioneering* the introduction of private sector correctional operators into Australian corrections as a purchaser of the service and subsequently as independent monitors of the performance of private sector providers of detention services.

Knowledge Consulting has agreed to prepare a paper as sought by GEO on a fee for service basis subject to:

- Full editorial control of the paper remaining with Knowledge Consulting Pty Ltd who will comment from their experience in both systems of correctional services provision; and

- The paper being presented to the New South Wales Legislative Assembly Public Accounts Committee's inquiry in full without any changes.

GEO have agreed to the above conditions.

The author of this paper does not have knowledge of the:

- *Current initiatives being undertaken by the Department of Corrective Services (DCS) to improve safety and cost effectiveness of correctional centre management; or*
- *Way Forward program being implemented by the New South Wales Department of Corrective Services; or*
- *Planned improvements to the DCS calculation of costs will facilitate better comparisons between private and public sector providers.*

Accordingly, this paper makes no comment concerning the above initiatives.

Essentially this paper works from the premise that *private* providers are a part of the custodial corrections landscape and seeks to:

- Summarise the reasons for *private* sector providers being introduced to the traditionally *public* sector secure correctional environment;
- Outline the impact of this initiative on the performance of *public* sector providers; and
- Make suggestions for enhancements to the governance of correctional systems that will lead to enhanced performance by both *public* and *private* providers, to achieve improved overall outcomes within an environment of continuous improvement.

4. Executive Summary

In the context of achieving value for money from the delivery of correctional services the information contained in this paper can be summarized as follows:

Increasing Efficiency and Effectiveness

This goal needs to be pursued within the framework of a sound governance structure that includes:

- A continuous improvement strategy founded in:
 - A clear vision for a desired *future state* for corrections in New South Wales which is driven with enthusiasm and passion by departmental leadership;
 - Ownership of the vision by key stakeholders; and
 - Understanding of the existing culture, a vision for a desired culture and a culture change strategy that recognises that leadership is the major force in determining culture; and
 - Access to the best available organisations and resources to achieve a cost effective system of correctional services.
- Definition of the role of government as a *purchaser* of correctional services which is to:
 - Define the services to be delivered;
 - Assess the risks inherent in the purchase and supply of these services;

- Take account of assessed risks and required risk treatments in the development of specifications and performance indicators for the delivery of the correctional service;
 - Source the best organisations and people available to deliver the specified service on a value for money basis, whether these be drawn from the *public* or *private* sectors, which may require competitive tendering;
 - Monitor independently, objectively and equitably the delivery of the service purchased to ensure that the contractor, *public* and or *private*, is delivering according to contract; and
 - Take corrective action where service delivery does not meet contracted requirements.
- Definition of the role of a *provider* of correctional services (whether a *public* or *private* provider) which is to:
 - Deliver services under contract to a specification and performance indicators;
 - Have internal risk assessment and compliance systems that monitor quality and performance in achieving contract specifications;
 - Have industrial agreements and sound financial management systems in place to ensure that contracted prices are adhered to;
 - Have systems in place to respond in a timely and effective manner to complaints and performance issues; and
 - Respond positively to the needs of the *purchaser* within the framework of the contract.
 - An objective and independent contract performance monitoring system that:
 - Monitors the performance of both *public* and *private* providers of service on the same basis and to the same standard;
 - Performs systemic reviews of the *providers* compliance systems;
 - Provides the *purchaser* with objective, quantifiable and timely management information that allows the *purchaser* to effectively manage the contracts with the providers;
 - Provides all monitoring reports to independent agencies of scrutiny such as Ombudsman and Auditor General; and
 - Is subject to systemic oversight by the independent agencies of scrutiny.

The paper provides ten (10) criteria and a matrix for an initial macro test that could be applied to the New South Wales corrective services system to test the robustness of the existing governance system, as well as providing an indication as to whether the existing approach and systems are likely to achieve value for money.

Achieving Change

The author has presented information in relation to the introduction of *private* providers of secure custodial services into Queensland and Victoria corrections. As outlined in this paper, in Queensland the *private* providers contributed as a significant catalyst in achieving work place reform. Queensland utilised the *power of competition* as part of an overall *continuous improvement strategy* for achieving value for money in the delivery of correctional services. Because such a

strategy confronts the traditional *closed shop* monopoly position of the *public* provider, there is the potential for considerable industrial unrest from public sector unions when competition is introduced via *private* providers.

At the time of preparing this paper the author has not been able to access publicly available information on the comparison of costs of operation of public and privately operated correctional facilities in Victoria and the respective custodial work practices or the impact, if any, of the introduction of private operators on public providers work practices. However, given the extent of *private* provider involvement, Victoria is well placed to achieve enhanced correctional outcomes from healthy competition between providers.

In jurisdictions, apart from Queensland and Victoria, where limited *private* sector involvement in the delivery of custodial correctional services has occurred without an overall strategy for work place reform across the entire custodial system, the public sector unions have effectively quarantined any efficiencies introduced by *private* sector providers from flowing to the *public* sector providers' operations.

In deciding whether to embark on a significant change program, particularly in an environment where stakeholders exist with entrenched views and considerable industrial muscle, the following threshold questions need to be answered:

- Is the perceived need for change based on strong evidence with potential benefits quantified?
- Is the need for change clearly understood by the decision makers?
- Is there is broad based support for change from significant external stakeholders? and
- Do the people to be entrusted with leading the change program own the vision and will they be resolute in pursuing it?

Concerning the threshold question, *is the perceived need for change based on strong evidence with potential benefits quantified*, this evidence needs to be generated by the governance system. In the case of New South Wales where a *private* provider is operating beside the *public* provider it is essential that the governance system provides and is seen to provide, objective, quantifiable data that allows for meaningful comparison of the benefits and shortcomings of each provider.

Therefore, to assist the Legislative Assembly to determine *where to from here*, the author suggests that the initial step, to provide clarity in relation to the extent and nature of any change program, should be to conduct a review of key macro governance elements relevant to the Department of Corrective Services using the framework outlined in this paper. Such a macro review could be conducted relatively quickly and would identify any missing essential planks in the governance system.

For example, if the Department, the correctional service *purchaser*, does not have in place with its *public* providers at the various correctional centres, specifications, performance indicators and contracts with cost of service delivery fixed on the same basis as is in place for the *private* provider; and if service delivery by both providers is not monitored objectively, to the same standard by an independent agency then vital objective data to inform change is missing and the governance system is seriously flawed.

If the above example was found to be fact this, considered together with other data gathered from the macro governance review, would inform development of a holistic change management strategy which would include development of a robust governance system.

The author has no knowledge of the *Way Forward* program, but if this program is a *change management* or *continuous improvement program*, its conceptual basis could also be tested against the principles of good governance and culture change outlined in this paper.

Use of Private Sector Providers of Custodial Correctional Services

In the context of introducing work place reform in a *closed shop public provider* environment, *private sector providers* are an essential catalyst for the stimulation of competition, and through competition, enhanced correctional outcomes including value for money.

However, as outlined in this paper, to achieve the above benefits, their introduction must be part of a *continuous improvement strategy* for the Department and managed within a robust governance framework that sets performance parameters and independently and objectively monitors performance of both public and private providers to the same criteria.

Regulatory Capture

The issue of *regulatory capture* is discussed in this paper and is an important issue in terms of governance. Harding describes *regulatory capture* as:

“Regulators come to be more concerned to serve the interests of the industry with which they are in regular contact than the more remote and abstract public interest. A number of overlapping factors predispose regulators to capture including:

- *being recruited from the same professional background as persons being regulated;*
- *working in an environment where the disparity between the resources of the regulator and the size of the job to be done means that short-cuts must be found and discretions must be exercised; and*
- *working in a culture where there is little organisational support for a firm approach towards regulation”.*

Harding points out that in areas of public administration, strong *regulatees* can capture weak *regulators*. The author of this paper argues that strong prison officers unions (*the regulatee*) have captured correctional administrators (*the regulator*) in Australian jurisdictions in the past and almost certainly are holding some captive at present.

Harding also identifies that when the *regulator* operates in the same business as the *regulatees*, and has delegated the achievement of its goals and the discharge of its responsibilities to them, any failure by the delegates is tantamount to failure by the agency itself. This creates in the *regulator* a vested interest in its delegates (*the regulatees*) appearing to be doing a satisfactory job.

In the author's view, where a Department of Corrective Services argues in favour of *public* providers as against *private* providers, it is often an indication of this vested interest at work and that *regulatory capture* has occurred.

5. Brief Overview of the History of Private Sector Involvement in Corrections in Queensland

Knowledge Consulting's Directors (Keith Hamburger and Glen Milliner) experience with private sector providers of correctional services dates from the introduction of private sector operators into Australian corrections in 1989.

In 1988 the then Queensland government appointed businessman Mr Jim Kennedy to conduct a Commission of Review into Corrective Services in Queensland. The Final Report of this Review, which covered all aspects of Queensland's custodial and community corrections, was presented on 31st August 1988. In summary the Commission of Review found an inefficient and ineffective system of Corrective Services and recommended significant structural and operational changes.

In the context of this paper, the Commission of Review recommended:

- *"The Queensland Corrective Service Commission (QCSC) have the power to utilise private sector services in order to promote competition and efficiency; and*
- *The QCSC actively seek private sector involvement in the provision of a wide range of services currently provided by the public service including:*
 - *Security services; and*
 - *Escorts;*
- *The use of part-time and casual employees to meet short term needs for staff be encouraged".* (Recommendations 21 and 22, Page 94, Final Report, Commission of Review into Corrective Services in Queensland, August 1988)
- *When the Corrective Services Bill becomes law, tenders be called for the total operation of Borallon Prison on a fee per prisoner basis as a medium/ low security prison to be operated along the lines of Mobilong Prison in South Australia".* (Recommendation 26 Page 98, Final Report, Commission of Review into Corrective Services in Queensland, August 1988)

The Commission of Review also made recommendations in relation to private sector involvement in Community Corrections.

The QCSC, the creation of which was also a recommendation of the Commission of Review, commenced operation in December 1988 under a Community Board and its first Director General, Keith Hamburger, the author of this paper. The Hon Glen Milliner MLA, now a fellow Director of Knowledge Consulting with Keith Hamburger, was appointed Minister for Corrective Services in December 1989 following the election of the Goss Labor Government. Glen and Keith led and oversaw implementation of the Commission of Review's recommendations in relation to private sector involvement in custodial corrections in Queensland, the first corrections jurisdiction in Australia to use private sector providers to manage and operate secure custodial correctional facilities.

Private sector involvement in the delivery of correctional services in secure custodial environments can involve a range of combinations of infrastructure ownership, management and delivery of operations. The delivery models adopted in Queensland from 1989 through 1997 were as follows:

Borallon Correctional Centre – Facility for Prisoners Classified at Medium Security Level

- Infrastructure designed built and owned by the Queensland government; and
- Management and all services required to operate the correctional facility tendered to the private sector. This required specification of all services against which competitive tenders could be invited and assessed. The performance of the successful tenderer was subsequently monitored against the requirements of the tender specification.

The Commission of Review anticipated two significant benefits from the introduction of private sector operators to the delivery of custodial correctional services in a secure environment which were:

- Reduced cost of service provision through competition by the private sector to provide clearly specified services; and
- Improved correctional outcomes through transfer to the wider correctional system of innovation in service delivery brought by the private sector.

Concerning the aim of achieving reduced cost of service provision, a *shadow costing* of the anticipated public sector cost of operating Borallon was not performed. However, given the performance of Queensland Custodial Corrections at that time, a *shadow costing* would have been a meaningless figure in real terms as none of the secure prisons could meet their annual budgets due to out of control overtime expenditure and sick leave costs. Further, the QCSC advised the market that a higher weighting would be placed on the quality of the services tendered than on price.

This approach reflected a strategy that this contract was a critical first step towards greater involvement of the private sector in secure custodial corrections, in the face of trenchant opposition from the prison officers union and interest groups opposed to the concept of *private prisons* or to use their term, *prisons for profit*. Therefore it was essential that the first contract delivered high quality correctional outcomes as a first priority and that the contract price was such that the QCSC had confidence that the quality of service delivery was sustainable.

The outcome was that the QCSC accepted the second lowest tender submitted for the management and operation of Borallon Correctional Centre on the basis that the package of correctional services offered for the price tendered was considered better value for money than the lowest tender.

The tender was let during 1989, some months prior to the State election held in December 1989 which saw the election of the Goss Labor government. The decision created considerable industrial unrest as well as active opposition from interest groups strongly opposed to privatisation of prisons. In opposition the policy of the Goss Labor Party was anti the private sector operation of prisons and the party pledged that on attaining government they would cancel the Borallon contract and hand the facility back to the public sector. Glen Milliner was the shadow Minister for Corrections and when the Goss government came to power in December 1989 he became the Minister for Corrective Services.

In opposition Glen was a diligent shadow Minister and came to government with a sound knowledge of the prisons portfolio. He assembled a competent Parliamentary Committee with

some representatives who had been lawyers prior to entering parliament with a working knowledge of the culture and operations in Queensland prisons through visiting prisons in their legal practice and representing incarcerated clients before the courts.

Shortly after taking up his appointment as Minister, Glen, accompanied by his Parliamentary Committee members and the Director General of Corrective Services Keith Hamburger, visited Borallon Correctional Centre to inspect operations. During the forty minute coach journey to Borallon Glen and the Parliamentary Committee members questioned the Director General extensively on the legalities of the contract and sought advice on the most efficient method of terminating the contract.

On the return coach journey following their inspection of operations at Borallon Correctional Centre discussion related to how the new government could develop a strategy to leave the centre under private sector management in the face of their pre-election commitment to terminate the contract. This complete reversal of attitude was driven by the correctional culture they witnessed at Borallon which was characterized by:

- Humane treatment of prisoners;
- Almost all prisoners engaged in constructive daily activities, including a mix of programs, work and recreation;
- Facility housekeeping of a high standard;
- A well trained and well presented work force; and
- A custodial correctional centre that had a low level of staff sick leave, very little overtime and worked strictly to budget.

The foregoing was in stark contrast to the then culture and operations in Queensland's public sector operated prisons, of which they had first hand experience. The new Minister and his Parliamentary Committee were determined that the Borallon culture would be translated across the Queensland custodial corrections system.

What followed was a period of intensive negotiations with the Union representing Prison Officers to put the government's position that while the government had philosophical concerns relating to private sector operation of prisons, they could not ignore the fact that by any measure Borallon Correctional Centre was efficient, effective and provided a best practice model that the rest of the Queensland system should aspire to emulate.

The Union was advised that the Government had decided not to cancel the Borallon contract. The Union was urged to work with the QCSC to develop similar work practices to Borallon in the public sector managed and operated secure custody correctional centres.

Arthur Gorrie Correctional Centre

- Infrastructure designed built and owned by the Queensland government; and
- Management and all services required to operate the correctional facility tendered to the private sector. This required specification of all services against which competitive tenders could be invited and assessed. The performance of the successful tenderer was subsequently monitored against the requirements of the tender specification.

During 1991 the QCSC and the Minister engaged in negotiations with the Union representing Prison Officers in an endeavour to reach agreement to work practices and staffing levels for the high security Arthur Gorrie Remand and Reception Correctional Centre under construction at that time and due to open in early 1992. The Arthur Gorrie Remand and Reception Correctional Centre was to replace the notorious and outdated Boggo Road high security prison. The Prison Officers then employed at Boggo Road expected that they would transfer to the new Arthur Gorrie Correctional Centre.

The Minister and the QCSC advised the Union that transfer of existing Boggo Road staff to the new correctional centre could only occur on the basis of enhanced work practices being agreed to by the Union that would result in efficiencies as well as more effective correctional outcomes. The Union was placed on notice that unless agreement could be reached the Government would invite tenders from the private sector for management and operation of the Arthur Gorrie Correctional Centre.

The Union refused to negotiate on the issue of work practices and insisted that work practices and staffing models existing at Boggo Road be implemented at the Arthur Gorrie Correctional Centre. They argued that:

- The Borallon *privatisation experiment* was an initiative of the previous National Party Government, was contrary to Labor Party policy and should not be repeated by the Goss Labor Government; and
- The work practices at Borallon were occurring at a *green-field site* under the auspices of a *private sector* Union and as such could not be translated to the public sector.

In response to the foregoing the Minister, with the support of the Premier and Government argued:

- While *privatisation of prisons* was contrary to then Labor Party policy, the Government had a responsibility to ensure that tax-payer funds were not wasted through inefficient work practices (sick leave and overtime *rots* in particular) and that prisoners were dealt with humanely and offered programs aimed at correcting offending behaviour;
- The Commission of Review's recommendation to *privatise* Borallon was underpinned by the desire to see innovations brought to corrections by the private sector transferred to the public sector to improve efficiency and effectiveness. The review recommendations had received bi-partisan support in the parliament; and
- Should the Union agree to the transfer of the *innovations* including work practices and staffing models, then, in accordance with Labor Party policy, there would be no need for further privatisation of correctional centres.

The Union refused to accept the foregoing arguments and remained adamant that Boggo Road work practices and staffing models would be transferred to Arthur Gorrie Correctional centre. The Government then directed the QCSC to:

- Prepare a shadow costing for the operation of Arthur Gorrie Correctional Centre based on Boggo Road work practices and staffing model; and
- Prepare a specification and go to tender for private sector operators to bid to operate the centre at a standard similar to the Borallon experience.

In the Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, Paper No 36, Private Prisons in Australia, Richard Harding wrote:

"In October 1991, following the breakdown of negotiations with the State Services Union (prison officers branch) on revised work practices, tenders were also called for the management of the newly – constructed Wacol Remand and Reception Centre in Brisbane (Arthur Gorrie Correctional Centre). Five bids were short-listed. On 9 March 1992 State Cabinet announced that ACM was the successful tenderer. The annual contract management fee will be \$11.5 million, as opposed to an estimated \$18.00 million if it were run by the public sector".

Without access to departmental documents at this time, the author's recollection of the difference between the shadow bid and the successful private contractor's tender price is in the order of \$4.00 million per annum, not \$6.5 million as quoted by Richard Harding above. Nevertheless, there was a substantial difference and once again given the incapacity at that time of the Queensland Corrective Services Commission to control prison officers sick leave and overtime, actual costs would have blown out well beyond the figure arrived at in the shadow costing.

As with the decision to privatise Borallon Correctional centre, the decision to privatise the management and operation of the Arthur Gorrie Remand and Reception Correctional Centre created considerable industrial unrest. Some two-hundred (200) prison officers employed at Boggo Road prison were made redundant and the majority of these were not reemployed by the private contractor at Arthur Gorrie Remand and Reception Correctional Centre.

In the first year of operation of Arthur Gorrie Correctional Centre the private sector provider experienced a number of severe operational difficulties including deaths in custody and a riot resulting in loss of an accommodation block through fire. The QCSC monitors identified poor management performance at the centre and the then Minister, Glen Milliner, acted to direct the company to replace the General Manager or he would cancel the contract. The company replaced the General Manager and the centre achieved an efficient and effective level of functioning relatively quickly.

Following the 1991 decision to privatise the management and operation of the Arthur Gorrie Remand and Reception Correctional Centre, the Minister and the QCSC continued with the reform of Queensland corrections following the blue print provided by the Commission of Review. Considerable finance and effort was expended in:

- Upgrading physical infrastructure;
- Enhancing the training of correctional officers;
- Increasing the number of professionally qualified staff in the correctional system;
- Introduction of innovative offender programs aimed at addressing the underlying causes of offending behaviour, including specific programs for Aboriginal and Torres Strait Islander offenders;
- Establishment of the Western Out Reach Prisoner Work Camps Scheme; and
- Encouraging the correctional officers Union to accept changes to work practices and staffing models aimed at reducing excessive sick leave and overtime costs.

Significant progress was achieved in all areas with the exception of *work practices and staffing models*.

Woodford Correctional Centre

In 1995/ 1996 it was decided to build a new six-hundred (600) cell High Security Correctional Centre at Woodford. Again the Minister and the QCSC entered into negotiations with the correctional officers Union on the issue of enhanced *work practices and staffing models* that would enable a case to be mounted to the government for public sector management and operation of the new correctional centre. Again the Union refused to negotiate on these issues.

The government decided to test the resolve of the Union by instructing the QCSC to put in place a mechanism to achieve a competitive tendering process between the public and private sectors on a *Build Own and Operate* model. This approach required the Union to become a member of a consortium, QCSC *the operator* and Concrete Constructions the *builder*, to compete against private sector contractors. The government via the Minister and the QCSC advised the Union that if they did not agree to enhanced *work practices and staffing models* it was likely the tender would not be competitive and another correctional centre contract would be awarded to a private sector contractor.

The Union became a reluctant participant in the process and just prior to the tender closing date *signed off* on enhanced work practices and staffing models that included:

- Agreement to the employment of Casual Correctional Officers; (an essential element in reducing sick leave and overtime costs)
- Separation of Security and Custodial roles of Correctional officers into separate occupational streams;
- Flexibility in staff deployment as opposed to traditional *fixed post* rostering; and
- Twelve (12) hour shifts.

The foregoing represented a major breakthrough in the campaign to achieve efficient and effective work practices in secure correctional centres and was a significant factor in the QCSC being awarded the contract to *Build, Manage and Operate* the six-hundred cells, Woodford High Security Correctional Centre.

6. Brief Overview of the History of Private Sector Involvement in Corrections in New South Wales

New South Wales was the second state in Australia, after Queensland, to introduce private prisons. The Greiner government engaged the private sector to design, build and operate the Junee Correctional Centre, which opened in 1993. The government believed that the private sector could offer more efficient and innovative prison management as well as providing a benchmark for the public sector. Junee remains the only privately run prison in NSW. The Carr Government awarded the private operator a new contract in 2001. There was speculation that two new correctional centres in NSW, which opened in July 2004, might be privatised. However, following negotiations with unions, the government approved the public operation of those prisons. The government said that a decision on the operation of third new centre at Wellington, which is due to open in 2006, would depend on successful implementation of a new workplace agreement.

(Source for the foregoing - *Privatisation of Prisons* Background Paper No. 3/2004 by Lenny Roth, Parliament of New South Wales web site)

It can be argued in relation to Junee Correctional Centre, that as at the year 2000 when the management and operation of this centre was re-tendered to the private market, the public sector provider was uncompetitive in terms of quality and price for custodial correctional services compared to private sector providers.

This argument is based on the fact that in 2000 the New South Wales Department of Corrective Services intended to implement a tendering process based on the Queensland Woodford model where the public and private providers would compete for the contract. The author understands that this did not occur as the union representing New South Wales correctional officers would not agree to participate in the tender process. Participation would have required the union to *sign up* for work practice reforms that would have resulted in enhanced correctional outcomes and made public sector employment costs competitive with those of the private sector. Based on the Queensland experience this would not have resulted in reduced award rates of pay, but through a variety of initiatives would have achieved more efficient use of labour, improved job satisfaction for officers and eliminated excessive overtime and sick leave costs.

Based on the union's position the Department decided that it would not be able to mount a competitive bid and chose not to enter into a competitive tendering process against the private sector providers. This information is derived from personal knowledge of the author and Glen Milliner who provided consultancy services to the New South Wales Department of Corrective Services in relation to re-tendering of the Junee contract. It is noted that in Lenny Roth's *Privatisation of Prisons* Background Paper No. 3/2004 it is stated in relation to the 2000 – 2001 Junee re-tendering process that:

However the Government ultimately abandoned its plans to submit a tender, on the basis that the tender process was an unreasonable diversion of the efforts from other major projects underway in the prison system. [150](#)

The reference [150](#) is not included in the list of references at the end of the paper quoted from above. The above statement may refer to the considerable effort that would have been required by the Department to develop and manage a strategy to attempt to achieve involvement by the correctional officers union in the tendering process.

The author does not have first hand knowledge as to whether in the period 2001 to the present the New South Wales Department of Corrective Services has achieved work practice reform in secure custody correctional centres that has resulted in efficiencies through flexible staffing and work practices and elimination of excessive sick leave and overtime costs. If this has not occurred, then it can be argued that the public provider would still be uncompetitive with the private provider.

It could also mean that the union representing New South Wales correctional officers has effectively quarantined the custodial work practices introduced by the private sector provider at Junee from transferring to the public sector and or that in the intervening period the Department has not had in place an effective *continuous improvement* or *change management program* aimed at achieving holistic improvement of the correctional system.

This is similar to what occurred in Queensland in the early 1990's following awarding of the management contracts for Borallon and Arthur Gorrie centres to private sector providers. In Queensland, as outlined above, the union and the QCSC were eventually able to achieve a meeting of minds on the issue of work place reform.

7. Brief Overview of the History of Private Sector Involvement in Corrections in Victoria

Lenny Roth's *Privatisation of Prisons* Background Paper No. 3/2004 reports as follows:

"Victoria did not enter the private prisons arena until 1996 but then pursued this policy "with unmatched fervour". ⁷¹ In 1994, the Kennett government, which privatised a number of government enterprises during the 1990s, announced that within the next three years it would "move from an entirely state-run system to having 45 per cent of prisoners in private prisons." ⁷² In October 1994, enabling legislation was introduced in the form of the Corrections Amendment Bill 1994. The announcement then became a reality with the privatisation of three prisons in quick succession, including the 125-bed Metropolitan Women's prison at Deer Park (1996), a 590-bed, medium and low security prison for males at Fulham (1997), and a high-security remand and reception centre for males at Port Phillip (1997). These were all Build-Own-Operate-Transfer (BOOT) contracts for a period of 20 years. ⁷³ A different private company was contracted in relation to each of these prisons.

There were major performance issues with private operators in Victoria resulting in serious government intervention which has been summarized by Lenny Roth as follows:

"Metropolitan Women's: This prison opened in August 1996. As a result of deficiencies, on 3 October 2000, the state government took control of the prison pursuant to its powers in the legislation⁴⁵⁶; and on 2 November, the government announced that it had reached agreement with the operator, CCA, to transfer ownership and management of the prison to the public sector. ⁴⁵⁷

The government's decision to take control of the prison followed three default notices and a report from the Correctional Services Commissioner, which found that the operator was failing in relation to fundamental security and drug prevention operations. ⁴⁵⁸ The Commissioner found that CCA remained non-compliant in five of the nine issues identified in default notices:

- *The maintenance of security, through inadequate staffing levels;*
- *The maintenance of security, through a lack of proper security systems;*
- *The control of illicit drugs within the prison;*
- *The identification and management of prisoners at risk of self harm or suicide; and*
- *Excessive lock downs to cover staff shortages and other critical problems.*

The Minister said that 'the operator was given repeated opportunities to fix the problems and meet its contractual obligations, but failed to adequately respond to verbal and written warnings and three default notices.' ⁴⁵⁹

Port Phillip: This maximum-security remand and reception prison opened in September 1997. The Victorian Auditor General outlines early problems in the prison's operation.

Despite the identification of significant areas of poor performance at Port Phillip Prison during the first 5 months of operations, the Commissioner's Office attributed the position to "teething problems".

The circumstances at Port Phillip Prison reached a point when, on the days of 11 and 12 March 1998, the prison experienced the extremely serious situation of a major disturbance. A Ministerial Task Force established to investigate the major disturbance reported to the Minister in May 1998 and was highly critical of the operator's management of Port Phillip Prison.

The Government chose not to take the extreme position of exercising its termination right but opted to work with the operator at Port Phillip Prison in an attempt to achieve effective resolution of all of the matters raised by the Task Force. On the basis of the latest reports issued by the Commissioner, progressive improvement in performance at Port Phillip Prison has occurred up to February 1999 but the prison operator is still to satisfy the Commissioner that it is meeting all required service delivery outcomes. [460](#)

Later, a coronial inquest inquired into five deaths in custody at Port Phillip prison between October 1997 and March 1998. The findings were released in April 2000; and prompted the government to establish the independent investigation referred to above. [461](#) In October 2003, the state government issued the operators of Port Phillip prison with a default notice "over reported security breaches at the maximum security prison". [462](#)

The breaches were: (i) In May 2003, a search by the private operator revealed a small loaded handgun, a mobile phone and significant quantity of drugs; and (ii) a search the following day discovered contraband including mobile telephones and a digital camera.

The Corrections Commissioner ordered an independent security review and the operator responded to the findings of that review. [463](#) However, in August, there was a further security breach where a prisoner was unable to be located for more than 7 hours; and this prompted the default notice. [464](#)"

Current information is that the problems with private sector provider performance in Victorian Corrections of the nature identified above have been overcome.

At the time of preparing this paper the author has not been able to access publicly available information on the comparison of costs of operation of public and privately operated correctional facilities in Victoria and the respective custodial work practices or the impact, if any, of the introduction of private operators on public providers work practices.

8. Brief Overview of the History of Private Sector Involvement in Corrections in South Australia

South Australia was the third State after Queensland and New South Wales to engage a private sector operator to manage a correctional centre.

As Lenny Roth reports in *Privatisation of Prisons* Background Paper No. 3/2004:

"The government decided to proceed with privatisation even though its Correctional Services (Private Management Agreements) Bill 1994 was defeated in the Legislative Council; and before a Legislative Council Select Committee had reported on the issue. ⁶⁸ In late 1995, the South Australian government contracted with Group 4, to operate a 125-bed, medium and low security prison at Mount Gambier. ⁶⁹ However, due to the legislation not being passed, the situation at Mount Gambier is a little different to private prisons in other states. While Group 4 conducts the day-to-day running of the prison, the Department for Correctional Services maintains two staff members at the prison to exercise certain functions reserved for the CEO of the Department, which can only be delegated to Departmental employees. ⁷⁰"

At the time of preparing this paper the author has not been able to access publicly available information on the comparison of costs of operation of public and privately operated correctional facilities in South Australia and the respective custodial work practices or the impact, if any, of the introduction of private operators on public providers work practices.

9. Brief Overview of the History of Private Sector Involvement in Corrections in Western Australia

Lenny Roth reports in *Privatisation of Prisons* Background Paper No. 3/2004 that:

"Western Australia initially decided to reform the public sector rather than to look to private companies to run prisons. ⁷⁴ In the early 1990s, the prison officers' union agreed with the state government (Liberal/ National Party coalition) to accept a restructuring package in return for a commitment by the government that it would not privatise prisons before the end of 1997. ⁷⁵ However, in 1998, the government decided that it would engage the private sector to construct and operate a new prison and it called for expressions of interest.⁷⁶ The Prisons Act Amendment Act 1999 was passed and the government contracted with the private sector to design, finance, construct and manage the new Acacia prison. The prison at Wooroloo South, which opened in 2001, is a medium security for males and, with a 750-bed capacity, is the largest prison in Western Australia."

At the time of preparing this paper the author has not been able to access publicly available information on the comparison of costs of operation of public and privately operated correctional facilities in South Australia and the respective custodial work practices or the impact, if any, of the introduction of private operators on public providers work practices.

10. Brief Overview of the History of Private Sector Involvement in Corrections in Tasmania, the Northern Territory, the ACT and Commonwealth Jurisdictions

There are no private providers of correctional services in Tasmania, the Northern Territory or the ACT.

The Commonwealth Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) have engaged a private sector provider to manage and operate all of its immigration detention centres. DIMIA does not have a public detention services provider capacity.

11. Benefits of Specifying Correctional Services for Competitive Tendering and Experience in Translating these Benefits Across the Correctional System

Governments and Correctional Administrators, in particular in Australia and the United Kingdom, have used the private sector service providers as a catalyst to assist reform of inhumane, inefficient, ineffective and moribund correctional systems. In this regard, in *Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, Paper No 36, Private Prisons in Australia*, Richard Harding, says:

“Properly scrutinized and regularly evaluated, private prisons can stimulate improvement across the whole of Australia’s prison system – a system which during its first two centuries’ wholly public existence has been no less squalid, oppressive, inequitable, degenerate and demoralizing than the English system upon which it was modeled”.

The conditions in public prison systems described above by Harding were identified by Kennedy in the Commission of Review into Corrective Services in Queensland. That review drew attention to the monopoly position of the public provider and therefore by default the prison officers union. In this uncompetitive environment, not only in Queensland but in all Australian jurisdictions, correctional systems were characterised by:

- Lack of focus on correctional outcomes;
- Inhumane treatment of prisoners;
- Inadequate and inefficient administrative systems;
- Unsafe environments for both prisoners and staff;
- Inadequately trained staff;
- Low workplace morale;
- Inflexibility in staff deployment (*Fixed Post* staffing where all Posts had to be *manned* for the full period of each shift even if there was no operational need for the post at periods during the shift);
- Industrial unrest;
- High sick leave rates;
- Excessive overtime costs; and
- Either non-existent or totally inadequate internal and external scrutiny of the overall prison system as well as of individual prisons.

The Kennedy Commission of Review in Queensland recommended sweeping systemic change of which the introduction of private correctional services providers was one important element that facilitated a reappraisal of, a refocusing of and reenergised the way in which correctional services were delivered.

To implement the concept of private or contract management of correctional centres required correctional administrators to analyse each and every service/ activity within a correctional centre and specify these services in a form that would allow for contractors to price the services and for the purchaser of the service to measure performance against the specification. Development of a correctional centre operating specification is a valuable exercise for correctional administrators in

that it forces testing of underlying operating assumptions, challenging of *sacred cows*, research into best practice and importantly definition of performance indicators.

From the tenderers' perspective, pricing of a tender to operate a secure correctional centre is a very serious matter. On the one hand they are aware that they are in a competitive market place and on the other hand they know that if they under-price they are locked into a long term contract on a fixed price. This is in stark contrast to public sector operators who, in a number of jurisdictions, typically over spend their operating budgets in individual correctional centres. These budgets are generally allocated on the basis of past performance rather than against pre-determined specifications and performance indicators. These budget *over-runs* are mostly reimbursed by Treasury Departments on the basis of "*unforeseen expenditure*".

The specification prepared for the Borallon Correctional Centre in Queensland was the first such specification prepared for any prison/ correctional centre in Australia. The author was involved in preparation and approval of the Borallon specification and to date has contributed to the development of a further four (4) specifications for secure correctional and other detention facilities for the purpose of tendering to the private market. Over the period of this experience (1989 – 2005) the author can report a considerable improvement in the way in which services are specified and in particular in relation to the setting of performance measures due to experience gained by administrators in managing these contracts.

The challenge in developing specifications and performance indicators for tendering the operation of correctional centres is to balance the need to specify to a level of preciseness that can assist in achieving the best possible price with ensuring that this *preciseness* does not restrict the capacity of the tenderer to introduce innovations that could either achieve cost savings or better correctional outcomes.

In the author's experience, this challenge is best met through the conduct of a risk analysis as the first step in development of the tender specifications to identify those service delivery areas where the *duty of care* is such that ultimate responsibility for failure will be sheeted home to the *purchaser* with serious consequences. For these areas, which typically relate to security of the facility and safety of prisoners and staff, the *purchaser* generally finds it prudent to specify to a reasonably high level of precision the infrastructure, systems, procedures and resources required to meet *duty of care* responsibilities.

For those service delivery areas where security and safety are not paramount, the *purchaser* can prepare the specification focused on outcomes required and encourage the tenderer to offer and price innovative procedures and services for the achievement of these outcomes.

The specification should also provide guidance to the tenderer that the purchaser will be seeking proposals that provide for effective interface between the security/ safety systems and procedures and the services for food, health, recreation, visits, activities, education and correctional programs such that a humane and productive environment is achieved. Typically, in past years in public sector operated secure correctional centres services to prisoners were inappropriately degraded under the guise of the need to ensure security. This occurred due to the industrial influence of prison officer unions who strenuously resisted the introduction of professional staff and correctional programs into the prison environment.

This lack of correctional programs actually contributed to security problems due to the high level of idle time for prisoners and the lack of therapeutic treatment programs for prisoner's behaviour problems.

As stated in Section 3 of this paper, the Kennedy Commission of Review into Corrective Services in Queensland anticipated two significant benefits from the introduction of private sector operators to the delivery of custodial correctional services in a secure environment which were:

- Reduced cost of service provision through competition by the private sector to provide clearly specified services; and
- Improved correctional outcomes through transfer to the wider correctional system of innovation in service delivery brought by the private sector.

Concerning reduced cost of service provision, there is clear evidence in Queensland that in the early 1990's the private sector operators delivered correctional services at both the Borallon and Arthur Gorrie Correctional Centres to a higher quality and at less cost than the public sector provider could have achieved at that time.

Concerning the aim of achieving transfer of innovation brought by the private sector to the public sector, this was strenuously resisted by the union representing correctional officers over a period of years until they were faced with the prospect of a third correctional centre (Woodford) being managed by a private contractor. This prospect finally triggered real competition between not only the public and private sector providers, but between the two unions representing the officers employed by the public and private providers in relation to the work practices and conditions they would accept to ensure their respective contractors bids could be competitive.

In New South Wales, as previously stated, it can be argued in relation to Junee Correctional Centre, that as at the year 2000 when the management and operation of this centre was re-tendered to the private market, the public sector provider was uncompetitive in terms of quality and price for correctional services compared to private sector providers. If inefficiencies through inflexible staffing and work practices and excessive sick leave and overtime costs still remain entrenched in the New South Wales system then it can be argued that the public provider would still be uncompetitive with the private provider.

As previously stated, apart from the Queensland information and the New South Wales commentary provided, the author has not been able at the time of preparing this paper to access publicly available information relating to the comparison of costs of operation of public and privately operated correctional facilities generally; and the respective custodial work practices or the impact, if any, of the introduction of private operators on public providers work practices

In terms of controlling cost of service provision against budget or contract price, a critical element is for the unions representing all staff categories, prior to the tender bid being submitted, to fully understand and desirably assist in developing:

- The Correctional Centres Operational model, including all elements of the centre's structured day;

- The centre's management structure and the required interface between all functions and staff categories within the centre; and
- The performance indicators against which the contractor's performance will be measured

Subject to the foregoing, the contractor and the relevant unions need to reach agreement prior to the tender bid being submitted upon a range of matters, but including the following:

- The Correctional Centres Operational model;
- Staff establishment levels and categories of staff to meet the specification and deliver the Operational Model, including casual and part time officers;
- The rates of remuneration;
- Flexibility in deployment of officers to meet operational circumstances during each shift;
- Flexibility in length of shifts;
- Training and skill levels required for the work roles in modern correctional centres; and
- Occupational Health and Safety Standards.

In the case of the Woodford Correctional Centre tender process, the interaction between the QCSC and the correctional officers union did not follow the *pure model* outlined above due to the union continuing to fight a *rearguard* action against *privatisation*. Nevertheless, in the face of the government's and the QCSC's determination to achieve work place reform within Queensland correctional centres the union ultimately agreed to the changes outlined in Section 3 of this paper that contributed significantly to the public sector provider winning the Woodford contract.

The agreement by the union at that time was contingent upon Woodford being regarded as a *green-field site* and that the work practices agreed for Woodford would be quarantined there and not extended to other Queensland correctional centres. However, over a relatively short period of time following pressure from officers at other centres the Woodford work practices flowed to the rest of the state's correctional centres. This resulted in Queensland in the late 1990's achieving one of the most cost effective correctional systems in Australia as measured by the Industry Commission's reports on government services.

In summary, the benefits of specifying correctional services for competitive tendering are:

- Provides a catalyst for correctional administrators to objectively consider the correctional outcomes they wish to achieve;
- Encourages research into best practice;
- Challenges *sacred cows*;
- Risk assessments are carried out and risk treatments are identified;
- Procedures and systems are understood and refined;
- Performance Indicators are defined;
- Contracts can be set on the basis of the specification and service delivery costs controlled;
- The service provider and the union representing the provider's staff have an agreement based on mutual understanding of contracted outcomes; and
- Focuses attention on how the contract for service delivery is to be monitored/ audited to ensure that the *purchaser's* duty of care and other non-transferable accountabilities are met.

The benefit mentioned in the last dot point above of *attention to monitoring/ auditing* is an area where to date, in the opinion of the author, the various Australian jurisdictions who have engaged the services of private sector providers have not yet achieved good practice. These views are expanded upon in the next Section of this paper.

12. Correctional Services Governance and Performance Monitoring of Correctional Services Providers

As covered in the summary of historical information earlier in this paper, serious service delivery failures have occurred in a number of correctional facilities under private sector management in Australia. However, such failures need to be viewed in the light of failures in public sector managed and operated correctional facilities stretching back to the time of the arrival of the First Fleet. In modern times various Australian jurisdictions have experienced Royal Commissions and other enquiries, including coronial enquiries, into what can reasonably be described as the disgraceful performance of the public sector in managing and operating whole correctional systems and individual facilities.

The fact that a Royal Commission or other significant enquiry eventuates at all is a clear indication of systemic failure in governance by the *purchaser* of the correctional service. That is, the *purchaser* failed to understand the risks inherent in the service they were ultimately accountable for delivering and did not have adequate risk treatments in place or robust performance monitoring systems that provided early warning, such that timely corrective action could be taken to avoid disasters occurring.

As covered in the previous Section of this paper, a significant benefit of opening up the corrective services system to competitive tendering has been improved governance through clarification and understanding of risks and better understanding and specification of correctional outcomes. Also there is the benefit that is derived from much enhanced monitoring/ auditing of service provider performance due to the clarity achieved from performance specification.

However, in the author's view Australian correctional jurisdictions have generally not achieved an integrated governance model that includes good practice in performance monitoring of the delivery of correctional services, irrespective of whether the services are delivered by public or private sector providers. This view is based on experience as Director General of Corrective Services in Queensland responsible to the QCSC and to the Government for the initial introduction of private sector providers into corrections in Australia and subsequent experience in private consulting practice of monitoring the performance of private sector providers.

Concerning the performance of correctional services providers, the debate in the *popular media* has tended to focus on private sector providers and their *profit motive* and therefore the need to either exclude them from this area of public service provision on this basis or if they are to be tolerated then their performance must be rigorously scrutinized. In this context, the debate tended to ignore the failures of public sector providers which, as previously mentioned, have been well chronicled in the outcomes of numerous enquiries.

In this regard it is useful to record the comments by Logan, covered in the *Privatisation of Prisons* Background Paper No. 3/2004 by Lenny Roth, as follows:

"Firstly, he says that, strictly speaking, the motivation of those who apply a punishment, as distinct from determining the punishment, is not relevant either to the justice or to the effectiveness of the punishment.

Secondly, Logan submits that a consistent objection requires one to compare the motives operating in the public sector. He asks whether it is wrong for state employees to have a financial stake in the existence of a prison system? Whether it is wrong for unions to profit by exacting compulsory dues from those employees? Whether it is wrong for state prison bureaucracy to seek growth through seizing the profits of others (taxation) rather than through reinvestment of its own profits? Logan says that it is simply an expression of prejudice to say that any activity becomes suspect if it is carried out for profit, as compared to salary and other benefits.

Thirdly, Logan contends that of various possible motivations for serving as an agent of punishment, the profit motive is among the most benign. He says to compare some alternative motives such as enjoyment of power, arrogance, malice, cruelty, resentment, or prejudice. Logan argues that criminal justice policies and practices must be judged by their consequences, not by their motives. He says that public service should be judged as an outcome, regardless of whether the motivating force behind it is probity, power or profit. In conclusion, Logan asserts:

"Replacing "public servants" with "profit seekers" in the management of prisons will not trade those whose motives are noble for those whose motives are base. Rather, it will replace actors whose motives we suspect too little with actors whose motives we might suspect too much." [259](#)

Certainly, it can be argued that the systems of governance in place to ensure efficient and effective performance in the delivery of correctional services in Australian jurisdictions, to paraphrase Logan, appear to be based on a starting point of *too little suspicion of poor performance by the public providers too much suspicion of poor performance by the private providers.*

To elaborate, a correctional system in terms of governance and performance needs to be viewed holistically. A correctional system is an important part of our social system and at the next level an important part of our criminal justice system. To play its role in both the social and justice systems, as envisaged and required by relevant legislation, it is essential that the performance required from all elements of the correctional system are clearly defined and that correctional administrators are free to source the very best legally available people, organisations, systems and equipment to discharge their obligations to the correctional system, the criminal justice system and to society. From the author's perspective it is inconceivable that in a democracy the capacity to seek and implement the best available systems of human service delivery should be fettered.

In this regard Harding's comments as recorded in the *Privatisation of Prisons* Background Paper No. 3/2004 by Lenny Roth are relevant:

It is argued that what matters most is not the status of the of the service provider, whether public or private, but the quality of the service. [255](#) Harding elaborates:

A moral position which is blinkered from the realities which exist on the ground may be self-sustaining and may well comfort its adherents; but it does not take debates about penal policy in any useful direction. Indeed, this is the point at which morality starts to give way to fundamentalism. It sometimes seems as if all the data in the world – even if they showed that private prisons were cheaper, prisoner health was better, recidivism rates were lower, and so on – it would not convince some opponents.

Neither does moral or ideological fundamentalism help the people who actually inhabit prisons...Prisoners may not be particularly cheered by the knowledge that grandiose strategies about ideological realignment can so readily be constructed out of their predicament. They are left stranded as irrelevant symbols of supposedly greater issues. Their own identities and preferences are of no interest. This is their ultimate disempowerment. A debate which par excellence possesses profound human connotations is reduced simply to moral or ideological abstractions.[256](#)

In Australia, in each correctional jurisdiction where private sector service providers were introduced, history records the reason being founded in concerns held by the respective governments and administrators as to the efficiency and effectiveness of the pre-existing public service provider. It can be argued that only in Queensland and Victoria was the strategy of introducing private sector correctional services providers approached with a commitment to drive systemic change across the wider system. In the other jurisdictions private sector involvement has had little impact beyond the particular institution where it is in place.

All jurisdictions responded to pressure from interests groups such as academics/ researchers, unions, politicians and the media and instituted various methods of monitoring/ measurement of the private sector providers' performance in an endeavour to meet accountability concerns. However, with the qualified exception of Victoria and Western Australia, the other jurisdictions either upon the initial introduction of a private sector provider or with developments over time have not implemented what the author would describe as good practice objective and accountable performance monitoring and performance measurement systems for both the public and private sector providers within their system.

Victoria led the debate in the early years of correctional services privatisation in the area of defining purchaser and provider roles. They moved initially to place a greater proportion of their system under private sector management than other jurisdictions and over time have instituted systems and processes aimed at bringing objectivity to the performance monitoring of both public and private providers in the Victorian correctional system.

In May 1999 the Victoria Auditor General in a report, *Victoria's Prison System: Community Protection and prisoner Welfare, Special Report no 60*, tabled in the Victorian Parliament 27th May 1999 raised concerns in relation to the capacity of the Commissioner for Corrective Services Office under structures existing at that time to operate effectively *"as an independent industry monitor"*. The report observed, *"A sufficiently resourced and effective industry monitor would be a vital source of independent confirmation to the Government that management of the industry is carried out in a manner conducive to ensuring the safety of the community and the welfare of prisoners"*.

On 1 July 2003 concurrent with the integration of the Office of the Correctional Services Commissioner (OCSC) and CORE - The Public Correctional Enterprise Victoria established a Corrections Inspectorate as an independent unit of the Department of Justice (Victoria) which reports to the Secretary Department of Justice through the Executive Director Community Operations and Strategy.

The creation of the Corrections Inspectorate was seen as a means of providing monitoring and advice on the operations, conduct and performance of correctional services, independent of the Commissioner Corrections Victoria. Prior to the OCSC/CORE integration, those roles had been performed by the OCSC.

The mandate of the Corrections Inspectorate is to provide independent, objective and accurate advice to the Executive Director on the operation of the corrections system to ensure that:

- The corrections system acts in a fair, transparent and accountable manner towards all prisoners;
- The management of the corrections system minimises risk to the safety of prisoners, staff, visitors to prisons and the community at large; and
- The corrections system provides humane prison environments to required standards of service delivery.

An overview of correctional monitoring services in Western Australia is contained on the web site of Western Australia's Office of the Inspector of Custodial Services as follows:

"The Office of the Inspector of Custodial Services was originally established by the Prisons Amendment Act 1999. It commenced operations in June 2000. The role of the Office is to bring independent external scrutiny to the standards and operational practices relating to custodial services within the state. The Office, which falls within the general portfolio responsibility of the Minister for Justice, is answerable directly to the Parliament.

Initially, the jurisdiction extended to adult prisons (public and private), court custody centres and prisoner transportation arrangements. The core responsibilities were to carry out comprehensive inspections of all individual prisons in the state; such inspections could either be announced or unannounced. Each prison or custodial service was to be inspected at least once every three years, though at the discretion of the Inspector inspections may be more frequent than this. The on-site phase of an inspection typically lasts for six days. The Office was also empowered to conduct 'thematic reviews' of prison services - i.e. assessments of system-wide issues.

In 2003, the above provisions were re-enacted and the jurisdiction was extended to juvenile detention centres. This was done by enactment of the [Inspector of Custodial Services Act 2003](#), which replaced the earlier provisions in the Prisons Act and the Court Security and Custodial Services Act 1999.

All Reports are tabled in Parliament. Tabled Reports are available here on the Office's website. The Office can also advise Parliament and the Minister on criminal justice policy issues arising out of these inspections, as well as recommending the development and improvement of standards across the custodial system. The Office is also to have regard to national and international experience in setting its own priorities.

A process has been developed to inform and consult with the community in relation to the Office's work and findings. Meetings are regularly held with a constituted [Community Reference Group](#) that is composed of representatives from a variety of community groups.

This Office has a core [staff](#) of twelve. Staff may be supplemented for particular inspections by persons seconded from other Government agencies or by contracted experts. For example, a medical practitioner from the Department of Health usually assists in assessing the quality of prisoner health services and security experts are sometimes contracted. The ethical standards applicable to persons involved in inspections are stipulated in the [Office Code Of Conduct](#) and [Conflict of Interest Guidelines](#).

The program of [Announced Inspections](#) for the forthcoming year is detailed in this Office's [Annual Report](#). Unannounced Inspections can occur if the Inspector believes one is warranted; as of January 2004 there have only been two occasions when this has been considered necessary – at the Special Handling Unit of Casuarina Prison (Report No. 1) and at Eastern Goldfields Regional Prison (Report No. 4).

Inspections Officers maintain a continual inspection process of custodial services by conducting [Prison Liaison](#) visits between inspections. This allows the Office to maintain constructive contact with custodial service providers and to continually monitor the progress, or otherwise, of services.

Only one other Australian state (Victoria) has an inspectorate, though most have Internal Audit or Monitoring Units. The Western Australian Office is unique, however, in that it is the only one that possesses statutory autonomy and direct access to the Parliament. This model is designed to ensure that the Inspector's activities remain independent and that, in the public interest, the conduct of custodial operations in Western Australia is transparent and fully accountable.

The Office also manages the [Independent Prison Visitors Scheme](#) and the [Independent Detention Centre Visitors Scheme](#) . Initially, this was done by administrative arrangement on behalf of the Minister for Justice. The 2003 legislative amendments brought this function directly within the statutory jurisdiction of the Office. The activities of the Independent Visitors are coordinated with and supplement prison Inspections.

The Inspectorate co-ordinates with other relevant statutory bodies. In particular, this Office is required to pass on individual prisoner complaints, if appropriate, to the West Australian Ombudsman. The Office also has close working arrangements with other Government Departments and agencies”.

It is the author's view that while both of the above jurisdictions, Victoria and Western Australia, have performance monitoring systems that are superior to the other Australian jurisdictions, these

systems do not appear to be integrated into a holistic governance model that incorporates a *continuous improvement* strategy within the respective corrections departments.

In considering the need for an integrated governance model that includes good practice in performance monitoring of the delivery of correctional services, irrespective of whether the services are delivered by public or private sector providers, the author believes that it is necessary to consider existing and potential models against the following criteria, presented as questions in the context of this paper:

1. Is their clarity relating to *purchaser* and *provider* roles with contracts covering price or budget, operating specifications and performance standards in place?
2. Is the potential for *regulatory capture* avoided?
3. Where *public* and *private* providers are operating within the one correctional system, are both providers monitored/ audited to the same standard by monitors or an agency that is independent from both the *purchaser* and the *providers*?
4. Does the independent monitoring/ audit system provide the *purchaser* with objective, quantifiable and timely management information that allows the *purchaser* to effectively manage the contracts with the providers?
5. Is the independent monitoring/ audit system subject to *systemic* oversight by a statutory body that reports to Parliament, such as an Ombudsman or Auditor General;
6. Are all reports by the independent monitors made available to independent agencies of scrutiny such as Ombudsman and Auditor General?
7. Does the *purchaser* and or the independent agencies of scrutiny release regular public bulletins detailing performance outcomes?
8. Is there effective linkage between the *providers'* internal compliance monitoring systems and the independent monitoring/ auditing system?
9. Is there effective linkage between the *purchaser* and the *providers'* prisoner complaints handling system and the independent monitoring/ auditing system?
10. Is the monitoring/ auditing system an integral part of the purchaser's *continuous improvement strategy* for the correctional system as a whole?

The term regulatory capture used in 2 above has been described by Harding as:

"Regulators come to be more concerned to serve the interests of the industry with which they are in regular contact than the more remote and abstract public interest. A number of overlapping factors predispose regulators to capture including:

- *being recruited from the same professional background as persons being regulated;*
- *working in an environment where the disparity between the resources of the regulator and the size of the job to be done means that short-cuts must be found and discretions must be exercised; and*
- *working in a culture where there is little organisational support for a firm approach towards regulation".*

Harding points out that in areas of public administration, strong *regulatees* can capture weak *regulators*. The author of this paper argues that strong prison officers unions (*the regulatee*) has

captured correctional administrators (*the regulator*) in Australian jurisdictions in the past and almost certainly are holding some captive at present.

Harding also identifies that when the *regulator* operates in the same business as the *regulatees*, and has delegated the achievement of its goals and the discharge of its responsibilities to them, any failure by the delegates is tantamount to failure by the agency itself. This creates in the *regulator* a vested interest in its delegates (*the regulatees*) appearing to be doing a satisfactory job.

In the author's view, where a Department of Corrective Services argues in favour of *public* providers as against *private* providers, it is often an indication of this vested interest at work and that *regulatory capture* has occurred.

The author believes that at present no Australian jurisdiction's correctional services system of governance would be able to meet the above 10 criteria in full.

In the context of the Terms of Reference of the New South Wales Legislative Assembly Public Accounts Committee's current inquiry into value for money from New South Wales correctional centres, in the author's opinion, a useful analytical framework to conduct an initial macro test of the robustness of the New South Wales Department of Corrective Services governance system, that should be driving *value for money initiatives*, would be as follows:

Criteria	Questions	Yes/No	Comment
Is their clarity relating to <i>purchaser</i> and <i>provider</i> roles with contracts covering price or budget, operating specifications and performance standards in place?	Does a governance document exist that prescribes <i>purchaser</i> and <i>provider</i> roles? Do the providers at each of the publicly operated correctional centres operate under a contract covering budget, operating specifications and performance standards?		A <i>No</i> answer to either or both of these questions could indicate that there may be a fundamental problem with the system of governance.
Is the potential for <i>regulatory capture</i> avoided?	Is the Department for Corrective Services an advocate for a policy of either the <i>public</i> or <i>private</i> sector as the desired provider?		A <i>Yes</i> answer could indicate that <i>regulatory capture</i> has occurred with the <i>provider</i> from the <i>desired sector</i> having captured the Department. It could also indicate a failure in understanding the role of <i>purchaser</i> which is to obtain the most cost effective correctional service from the best available sources. On the other hand a <i>Yes</i> answer might not reflect the views of Departmental officers, but instead be a reflection of government policy which they are charged with implementing.

<p>Where <i>public</i> and <i>private</i> providers are operating within the one correctional system, are both providers monitored/ audited to the same standard by monitors or an agency that is independent from both the <i>purchaser</i> and the <i>providers</i>?</p>	<p>Does the Department understand the need for this to occur?</p> <p>Is a system as envisaged by this criterion in place?</p>		<p>A <i>No</i> answer to these questions could indicate a lack of understanding of the concept of public sector governance and the responsibilities of a <i>purchaser</i> of services on behalf of government..</p>
<p>Does the monitoring/ audit system provide the <i>purchaser</i> with objective, quantifiable and timely management information that allows the <i>purchaser</i> to effectively manage the contracts with the providers?</p>	<p>Does the Department have in place contracts with both <i>public</i> and <i>private</i> providers that include rewards and sanctions based on performance?</p> <p>Does the monitoring/ audit system provide objective, quantifiable and timely management information that allows the Department to effectively manage the contracts with both the <i>public</i> and <i>private</i> providers?</p>		<p>A <i>No</i> answer to this question could indicate that the Department's governance system is fundamentally flawed.</p> <p>A <i>No</i> answer to this question could mean that the monitoring system is inefficient and or ineffective.</p>
<p>Is the monitoring/ audit system subject to <i>systemic</i> oversight by a statutory body that reports to Parliament, such as an Ombudsman or Auditor General</p>	<p>The criterion is the first question; and</p> <p>If not, does the Department favour such an approach?</p>		<p>A <i>No</i> answer to the first question could indicate that the monitoring/ audit system has not been tested by independent agencies and or exposed to the test of public scrutiny. Systems that have not had these tests applied are usually found to be deficient.</p> <p>A <i>No</i> answer to the second question could indicate a closed Departmental culture that is not prepared to be judged on its performance.</p>
<p>Are all reports by the independent monitors made available to independent agencies of scrutiny such as Ombudsman and Auditor General?</p>	<p>The criterion is the first question; and</p> <p>If not, does the Department favour such an approach?</p>		<p>A <i>No</i> answer to either question could indicate a closed Departmental culture that is not prepared to be judged on its performance.</p>
<p>Does the <i>purchaser</i> and or the independent agencies of scrutiny release regular public bulletins detailing performance outcomes</p>	<p>The criterion is the first question; and</p> <p>If not, does the Department favour such an approach?</p>		<p>A <i>No</i> answer to either question could indicate a closed Departmental culture that is not prepared to be judged on its performance.</p>

<p>Is there effective linkage between the <i>providers'</i> internal compliance monitoring systems and the independent monitoring/ auditing system?</p>	<p>Does each of the public and private correctional centres have in place operating specifications and performance standards?</p> <p>Does each centre have in place an internal compliance system to monitor performance against standard?</p> <p>Is the internal compliance system founded in a risk assessment conducted to Australian Standards?</p> <p>What is the interface between these internal compliance systems and the independent external monitoring system?</p>		<p>A <i>No</i> or <i>not in place</i> answer to any of these questions could indicate a significant failure in governance by the <i>purchaser</i> and <i>provider</i>.</p>
<p>Is there effective linkage between the <i>purchaser</i> and the <i>providers'</i> prisoner complaints handling system and the independent monitoring/ auditing system?</p>	<p>Do the public and private <i>providers'</i> prisoner complaints handling systems provide for adequate recording, investigation, timely and effective resolution of complaints?</p> <p>Does the <i>purchaser</i> have a management information system in place that monitors the public and private <i>providers'</i> attention to prisoner complaints?</p> <p>Is there a system in place that interfaces the prisoner complaints handling systems for the <i>public</i> and <i>private</i> provider's institutions with the independent external monitoring system?</p>		<p>A <i>No</i> or <i>not in place</i> answer to any of these questions could indicate a significant failure in governance by the <i>purchaser</i> and <i>provider</i>.</p>
<p>Is the monitoring/ auditing system an integral part of the purchaser's <i>continuous improvement strategy</i> for the correctional system as a whole?</p>	<p>Does the purchaser have a <i>continuous improvement strategy in place</i>?</p> <p>Can Departmental leadership speak with <i>frankness</i> and <i>openness</i> about the existing challenges facing the Department and with <i>passion</i> about their vision for the future and their strategies to achieve their vision?</p>		<p>The quality of the responses to these questions will give an indication as to the strength of the conceptual underpinning of any <i>continuous improvement strategy</i> and the level of commitment by Departmental leadership to culture change leading to a more efficient and effective system of corrections in New South Wales.</p>

	<p>Was Departmental Leadership's vision for the future developed in consultation with significant internal and external stakeholders?</p> <p>Are the strategies for change founded in an understanding of the existing custodial/ Departmental culture and clarity of vision by Departmental leadership for a desired future state for the delivery of correctional services in New South Wales?</p> <p>Does the Department have evidence of the level of internal and external stakeholder involvement in the strategy, the issues stakeholders have raised and the Department's strategic response to these issues?</p> <p>Who are the members of the <i>guiding coalition</i> for the strategy?</p> <p>Within the overall strategy, what is the sub-strategy for communicating the change vision and empowering staff to take action to achieve the vision?</p> <p>In terms of the <i>continuous improvement strategy</i>, what is the Department's conceptual model for the use of <i>public</i> and <i>private</i> providers to facilitate service delivery improvement?</p> <p>Is there a genuine sense of urgency held by senior Departmental management for culture and operational change?</p> <p>What cultural changes have been achieved to date and how have these been <i>anchored</i> in the new culture?</p>		
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In deciding whether to embark on a significant change program, particularly in an environment where stakeholders exist with entrenched views and considerable industrial muscle, the following threshold questions need to be answered:

- Is the perceived need for change based on strong evidence with potential benefits quantified?
- Is the need for change clearly understood by the decision makers?
- Is there is broad based support for change from significant external stakeholders? and
- Do the people to be entrusted with leading the change program own the vision and will they be resolute in pursuing it?

Concerning the threshold question, *is the perceived need for change based on strong evidence with potential benefits quantified*, this evidence needs to be generated by the governance system. In the case of New South Wales where a *private* provider is operating beside the *public* provider it is essential that the governance system provides and is seen to provide, objective, quantifiable data that allows for meaningful comparison of the benefits and shortcomings of each provider.

13. A Suggested Next Step in Considering the Issue of Value for money from New South Wales Correctional Centres

To assist the Legislative Assembly to determine *where to from here*, the author suggests that the initial step, to provide clarity in relation to the extent and nature of any change program, should be to conduct a review of key macro governance elements relevant to the Department of Corrective Services using the framework outlined in this paper. Such a macro review could be conducted relatively quickly and would identify any missing essential planks in the governance system.

For example, if the Department, the correctional service *purchaser*, does not have in place with its *public* providers at the various correctional centres, specifications, performance indicators and contracts with cost of service delivery fixed on the same basis as is in place for the *private* provider; and if service delivery by both providers is not monitored objectively, to the same standard by an independent agency then vital objective data to inform change is missing and the governance system is seriously flawed.

If the above example was found to be fact this, considered together with other data gathered from the macro governance review, would inform development of a holistic change management strategy which would include development of a robust governance system.

The author has no knowledge of the *Way Forward* program, but if this program is a *change management* or *continuous improvement program*, its conceptual basis could also be tested against the principles of good governance and culture change outlined in this paper.

14. References

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