



LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

THE A.C.T PRISON PROJECT: OPERATIONAL MODELS, STRATEGIC PLANNING AND COMMUNITY INVOLVEMENT

Fourth report in the prison series

**Report No. 16 of the
Standing Committee on Justice
and Community Safety**

August 2001

Resolution of Appointment

That—

The following general purpose standing committees be established to inquire into and report on matters referred by the Assembly or, matters that are considered by the committee to be of concern to the community...

...a Standing Committee on Justice and Community Safety to examine matters related to administration of justice, legal policy and services, registrar and regulatory services, electoral services, consumer affairs, corrective, emergency and police services and fair trading and any other related matter .

Legislative Assembly for the ACT, Minutes of Proceedings, No.2, 28 April 1998, p 15 as amended in Minutes of Proceedings, No.70, 25 November 1999, p 622.

Terms of Reference

The Standing Committee on Justice and Community Safety has resolved to inquire into and report on the establishment of a prison in the ACT with particular reference to:

- (1) the justification for the prison;
- (2) the process used by the ACT Government to establish the prison including the use of consultants;
- (3) the philosophical approach of the prison and whether it should be publicly run or privately run;
- (4) community involvement in the development, design and siting of the prison;
- (5) Australian and international best practice models for prisoner rehabilitation and avoidance of deaths in custody;
- (6) cost effectiveness issues in the establishment and running of the prison;
- (7) any other related matter.

Committee Membership

Mr Paul Osborne MLA (Chair)

Mr John Hargreaves MLA (Deputy Chair)

Mr Harold Hird MLA

Mr Trevor Kaine MLA

Secretary: Ms Fiona Clapin

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List of Recommendations

Recommendation 1

The committee recommends that the next Assembly establish an inquiry into the prison project to ensure the parliament continues its watching brief over the project.

Recommendation 2

The committee recommends that the Government provide a detailed response to the Prison Community Panel's report, *Getting it Right* and that this be tabled in the Legislative Assembly

Recommendation 3

The committee recommends that the Government seek a written response from the Prison Community Panel on the Rengain report and that this be tabled in the Legislative Assembly.

Recommendation 4

The committee recommends that the Government ensure a community panel is operational during the design/tendering stage of the prison project.

Recommendation 5

The committee recommends that the Government consult with the relevant Assembly standing committee about the membership of the proposed Community Panel which will oversight the operations of the prison.

Recommendation 6

The committee recommends that the Government develop a whole-of-government strategic policy framework on crime prevention which emphasises non-custodial sentencing options and diversionary programs for drug-addicted offenders.

Recommendation 7

The committee recommends that the Government:

- (i) initiate a review of sentencing options available in the ACT with the aim of assessing the viability and resourcing of current options; and**
- (ii) in consultation with judges and magistrates, determine if there is the need to develop further non-custodial sentencing options, particularly diversionary programs for drug-addicted offenders or if there is a need to provide more places in detoxification and rehabilitation programs.**

Recommendation 8

The committee recommends that the Government conduct a review to ascertain if there are sufficient beds available for detoxification and drug rehabilitation so that ACT heroin addicts can access treatment when required.

Recommendation 9

The committee recommends that the Government:

- (i) review the prisoner number capacity required in light of the need for a strengthening of non-custodial sentencing options and the possible impact of an increased commitment to early intervention programs; and**
- (ii) demonstrate a stronger commitment to non-custodial sentencing options (including diversionary programs for drug-addicts) through increased resourcing of these options.**

Recommendation 10

The committee recommends that the Government:

- (i) commission an independent evaluation of the financial costings contained in the Rengain report; and that**
- (ii) the independent evaluation closely examine the validity of all the assumptions underlying the costings.**

Recommendation 11

The committee recommends that the Government adopt the hybrid operating model:

- (i) with public-sector managers to be responsible for discrete parts of the prison's operations;
- (ii) with services to be provided through a competitive tendering model; and
- (iii) with the public sector adequately resourced so it can tender for different contracts.

Recommendation 12

The committee recommends that the Government:

- (i) develop the details of the hybrid model drawing on lessons from other jurisdictions; and
- (ii) provide the detailed concept to the Community Panel and the relevant Assembly committee for comment.

Recommendation 13

The committee recommends that if the Government proceeds with a contract covering custodial staff with a private operator, it should include a clause providing for current custodial staff to maintain their current conditions of employment through 'transition of business' clauses in contracts.

Recommendation 14

The committee recommends that the Government take full steps to:

- (i) investigate the ideas put forward by community representatives from the ACT Intersectoral Women's Prison Group when designing facilities for female offenders;
- (ii) consult extensively with Women's policy units and community representatives in other jurisdictions about proposed models for ACT female offenders; and

- (iii) ensure that the needs of female offenders are not marginalised in the planning stage because of their smaller representation.

Recommendation 15

The committee recommends that the Government initiate consultation with prisoners to assist in the design of the ACT prison.

1. INTRODUCTION

To date, the committee has produced three interim reports for this inquiry: one on the siting of the prison (July 1999); one on general philosophical and strategic issues (October 1999); and one reporting on committee travel to WA, SA and NT (December 2000).

Purpose of this report

This is the final report on the prison project. It includes the committee's recommendations on the appropriate model for the operation of the prison as well as comments on the Rengain report and on the work of the Prison Community Panel.

The inquiry to date

The committee has devoted considerable attention to the prison issue during this Assembly.

In its three reports to date it has made 56 recommendations. The Government has supported 49 of these recommendations.¹

Expenditure on the prison represents a major commitment of public funding. The project is a complex one, spanning finance, accountability, planning and social needs issues.

At the onset of the inquiry, the then Minister for Corrective Services, Mr Humphries advised the committee he wished to develop major decisions on the prison project in concert with the committee. Early into the inquiry he told the committee the Government would accept the committee's recommendation on whether the prison should be privately or publicly operated.

More recently, the newly appointed Minister for Corrective Services, Mr Moore, has publicly stated he would give careful consideration to this committee's recommendation on who should operate the prison.

The committee believes its work has influenced Government policies on the prison project. For example while the Government, from the outset, has maintained a strong preference for private sector ownership, financing and operation, the committee has maintained an open mind and assessed the evidence on its merits. The committee has for some time supported public ownership and public financing, a position more recently adopted by the Government.

¹ Supported is defined as 'agreed', 'agreed in principle' or 'agreed with qualification'. Of the remaining 7 recommendations, 4 were 'noted' and 3 were 'not agreed'.

The committee ensured that the ACT community was given an opportunity to influence the project by suggesting a community panel for the design phase. The committee also ensured that the important issues of alternative sentencing options, crime prevention, early intervention and post-release options remained a part of community debate about the prison.

At this stage the Government's timetable for the implementation of different stages of the prison project is unclear, although it seems it is aiming for the prison to open in 2004.

Significantly, the funding for the prison has not been budgeted for or appropriated.

The committee considers it imperative that parliamentary oversight of the prison continue in the next Assembly. This could be either through a Standing Committee or a Select Committee depending on the wishes of the new Assembly.

Recommendation 1

The committee recommends that the next Assembly establish an inquiry into the prison project to ensure the parliament continues its watching brief over the project.

Inquiry process

The conclusions and recommendations in this report are drawn from the committee's experience in scrutinising the prison project over the past three years.

The committee received a briefing from Rengain Consultants on 12 June 2001.

The committee also invited the Chair of the ACT Prison Community Panel - Mr Jim Leedman and Mr Don Allan - a Panel member who wrote a dissenting report - to address the committee, and they did so on 12 June 2001.

The committee expects that, before making any final decisions, the Government will seek the community's views on the Rengain report through the Community Panel.

2. THE PRISON COMMUNITY PANEL

Background

In its second report, the committee recommended that the Government convene a community panel to oversee the design phase of the prison. This recommendation was in response to the strong community interest demonstrated by a wide range of organisations making submissions to the inquiry.

To its credit the Government established a community panel with broad membership.

The panel was tasked with providing views on:

- the general philosophy that would underpin the operation of the prison;
- the facilities, programs and services in the prison;
- the general design of the prison;
- monitoring of the prison;
- prison industries;
- recreational facilities;
- rehabilitation of prisoners; and
- community initiatives to provide for continuity of care.

The Panel reported in December 2000.

The Panel's report

Overall, the views expressed in the Panel's report were consistent with the views expressed in the committee's three reports on the prison project.

With regard to ownership and operating models, the Panel reported the majority of its members preferred that the ACT Government be the operator.² The Panel was of the view that if the Government proceeded with a private operator model, the owner and operator should not be the same entity.³

The dissenting report by one of the Panel's members, Mr Don Allan, makes it clear that while a 'substantial majority' of the Panel preferred the ACT

² An ACT Prison-*Getting it Right*, Report of the ACT Prison Community Panel, December 2000, p 4.

³ *ibid*, p5.

Government to be the operator, the word 'substantial' was edited out in the final version of the report.

The Government is yet to provide a formal response to the Panel's report although it has indicated in press releases that it supports the report in general terms.

The committee believes it is important that the Government provide a detailed response to the Panel's recommendations and encourages it to do so.

Recommendation 2

The committee recommends that the Government provide a detailed response to the Prison Community Panel's report, *Getting it Right* and that this be tabled in the Legislative Assembly

The committee understands that the Community Panel has not been active since the release of its report in December last year.

The committee had understood that the original plan was for the Community Panel to continue to be operational until the prison opened, when it would be reconfigured to move into its role of overseeing the operations of the prison.

While it may be appropriate to alter the membership of the Panel in the near future to make it more manageable, it is not appropriate that the Panel cease working altogether, as it appears to have done recently.

It would be remiss of the Government not to obtain the Panel's views on the Rengain report. While it is commendable that the community was given an opportunity to provide ideas on the prison design during the beginning of the design phase, it is also important that their views are considered during the next stages of the process.

The committee urges the Government to invite the Panel to provide its response to the Rengain report in the near future.

Recommendation 3

The committee recommends that the Government seek a written response from the Prison Community Panel on the Rengain report and that this be tabled in the Legislative Assembly.

Recommendation 4

The committee recommends that the Government ensure a community panel is operational during the design/tendering stage of the prison project.

The committee, in its second report, recommended that a Community Panel be established to oversight the operation of the prison. The Panel, in its report has also recommended that the Community Panel assume a monitoring and advisory function when the prison becomes operational and that this would require the composition and membership of the panel to be altered.

It would be appropriate for the Assembly, through its committees, to have input into the proposed membership of the next Community Panel.

Recommendation 5

The committee recommends that the Government consult with the relevant Assembly standing committee about the membership of the proposed Community Panel which will oversight the operations of the prison.

Conclusions

The committee was impressed with the quality of the report produced by the Community Panel and agrees with most of its contents.

Based on the evidence provided by Mr Don Allan, the committee does, however, have some concern that departmental officials may have tried to influence the contents of the report to bring it more in line with the Government position.

It is apparent that the Panel agreed the report would state categorically that 'a substantial majority' of the Panel supported a publicly managed prison but the final report did not include the word 'substantial'.

The committee urges the Government to ensure there is no attempt to interfere with future publications by community representative groups.

3. THE RENGAIN REPORT

Background

The committee recognises that there is general consensus about the outcomes wanted for the prison by the community and the two major political parties. There is general agreement amongst key stakeholders and community representatives that the ACT should build a cost-effective best-practice prison with a high standard of rehabilitation services aimed at reducing recidivism.

There are still diverging views, however, on the best way to achieve these outcomes.

It should also be acknowledged that there are some people in the ACT who do not believe the prison should be built, but it seems this is a minority view.

Summary

The report *ACT Prison Project* by Rengain Consultants was presented to the Minister for Corrective Services on 17 April 2001 and released to the public on 30 May 2001.

The report compares the alternatives for accommodating ACT remandees and prisoners in terms of cost-effectiveness and economic, social and correctional benefits.

It concludes that the provision of a comprehensive correctional facility has more social and correctional benefits than is the case under the current arrangements where ACT prisoners are sent to NSW prisons. In particular the provision of a new facility for all categories of prisoners will make it easier to achieve whole-of-government objectives for crime prevention and community safety than is possible under the current system.

In relation to financial benefits, the report concludes that over a twenty-year period, the direct cost to the ACT of constructing, maintaining and operating a comprehensive correctional facility would not be disadvantageous compared with the cost of retaining the current arrangements over the same period.

In relation to economic benefits, Rengain predicts that a significant number of direct and indirect jobs would be created with the establishment of a new facility and this would inject very substantial value into the ACT economy.

The report recommends that the facility should be designed to accommodate 480 prisoners (including periodic detention) and that it have the capacity to be extended so it could accommodate 600 prisoners.

The report recommends an operating philosophy of 'throughcare' based on whole-of-government objectives for crime prevention and community safety having regard for the principle of restorative justice.

The report makes recommendations on the ownership, financing and operation of the prison and on the relative merits of public, private and hybrid operational models.

The report provides a comparative costing for five different ownership/operational models. The cost estimates for the first four options are very similar. According to Rengain, a publicly owned/private operated facility would cost \$240,730m over 20 years. A publicly owned prison with hybrid operations would cost \$241,608m. A BOOT facility would cost \$243,698m and a publicly owned/publicly operated facility would cost \$250,965m. Continuing with the current arrangements and building a remand-only facility would cost \$295,400.

Rengain recommends that the models of operation which provides the best outcomes for the ACT are either the 'hybrid' or the 'private' models. On balance, Rengain recommends that the financial analysis indicates a publicly owned facility with a private sector operator is the preferred option, delivering the best balance of risks and costs.

The report recommends that the ACT Government call for separate tenders for the design/construction and operation of the facility and that the Design and Construct delivery model be adopted as the most efficient method of delivering the correctional centre.

Key issues

The key issues in the report which require a committee response here are:

- is the operating philosophy right?;
- are the underlying assumptions correct?;
- will the recommended models for prison design, ownership, financing and management be the best way to achieve the ACT's social, financial and economic objectives in relation to crime prevention and corrections?

Operating philosophy

Rengain proposes the ACT prison's operating philosophy be:

Based upon cognitive change programs aimed at improving the habits, beliefs, attitudes and expectations of prisoners such that their chances of re-entering society as law-abiding citizens are enhanced...it is recommended that prisoners' progress through the correctional system

and re-entry into the community be supervised under a “throughcare” model.⁴

Rengain also stressed the importance of the prison being designed as part of whole-of-government crime reduction strategy in a criminal justice system based on restorative justice principles.⁵

The committee supports the operating philosophy of the prison enunciated by Rengain. This philosophy is consistent with recommendations made in previous committee reports and in the Community Panel’s report.

However, it is clear that the Government needs to further work to flesh out its whole-of-government crime prevention strategic policy framework. This should include clear specification of the outcomes the Government expects to achieve from various sentencing options and a clear description of the range of sentencing options available to the courts, of which prison should be the last resort. It should also include an evaluation strategy which provides for feedback from magistrates and judges about their confidence in various sentencing options and the views on where there are gaps.

It is particularly important that the whole-of-government crime prevention strategic framework emphasises the role of diversionary programs for drug-addicted offenders.

The committee has urged the Government to do this in every report to date on the prison project and in other reports on the draft budget and annual reports but is not convinced that this work has been done.

Without a clear detailed whole-of-government strategic framework, there is a danger that the prison could push attention and resources away from non-custodial sentencing options.

Another important part of such a strategic framework is community education so people understand that investment in crime prevention (and rehabilitation), rather than concentrating on punishing offenders, is in their interests.

Again the committee urges the Government to do this strategic planning work. It may be appropriate to contract out this policy work if the department is unable to give it effect.

⁴ Rengain Consultants, *ACT Prison Project*, 17 April 2001, p35.

⁵ Rengain Consultants, *ACT Prison Project*, 17 April 2001, p20.

Recommendation 6

The committee recommends that the Government develop a whole-of-government strategic policy framework on crime prevention which emphasises non-custodial sentencing options and diversionary programs for drug-addicted offenders.

The committee has asked the Government to consult with ACT magistrates and judges about the adequacy of current sentencing options on a number of occasions but is not confident that this work has been done.

It is particularly important that this work be done soon to guard against the net widening which often occurs with the establishment of a new prison.

The ACT really needs a thorough investigation of the adequacy of our sentencing options.

The committee is particularly concerned about whether the ACT's diversionary programs for drug-addicts are sufficiently resourced. It is imperative that people addicted to heroin have immediate access to rehabilitation programs when they are in a state of mind where they wish to give up heroin.

The Government should do this work, by engaging a consultant if necessary, and ensure the report is tabled in the Assembly.

Recommendation 7

The committee recommends that the Government:

- (i) initiate a review of sentencing options available in the ACT with the aim of assessing the viability and resourcing of current options; and**
- (ii) in consultation with judges and magistrates, determine if there is the need to develop further non-custodial sentencing options, particularly diversionary programs for drug-addicted offenders or if there is a need to provide more places in detoxification and rehabilitation programs.**

Validity of assumptions

The key assumptions in the report which require examination are:

- the estimate of prisoner numbers; and
- the cost estimates for different options;

The Rengain report assumes that the prison will need to accommodate 480 prisoners (including remand, sentenced and periodic detention) and assumes that 330 will be accommodated when the prison opens in 2004. The report also assumes that the overall layout of the proposed facility should be designed to accommodate an increase to 600 prisoners, if required.

The report states that if a facility were to be opened now it would need to have a bed capacity of 280 to accommodate the current remanded and sentenced prisoner population.⁶

Rengain argues that planning for the prison should allow for a reasonable level of growth due to:

- the potential increase in numbers of prisoners sentenced and increases in length of sentences;
- the need for a high degree of segregation due to range of prisoners; and
- the need for capacity to absorb unplanned loss of availability of cells due to damage.

Rengain's prisoner estimates were lower than those of John Walker Crime Trends Analysis. The committee agrees with Rengain's view that prison capacity does not need to be as high as predicted by John Walker Crime Trends Analysis.

The committee does, however, question whether assumptions about prisoner numbers have taken into account positive impacts of current and future crime prevention and early intervention initiatives. Crispin Hull recently wrote in *The Canberra Times*⁷ that with police statistics showing a fall in the number of offences such as car thefts, burglaries, armed robberies and sexual assaults, the ACT may have no need to assume its current low imprisonment rate will need to increase.

The committee notes that a combination of intensive early intervention programs, successful crime prevention measures by the police and other agencies and a commitment to the resourcing of a range of diversionary and

⁶ Rengain Consultants, *ACT Prison Project*, 17 April 2001, p29.

⁷ Crispin Hull, 'Jailing rate rising too fast in the ACT', *The Canberra Times*, Thursday August 2 2001.

non-custodial community-based sentencing options could result in fewer people offending. This means the bed capacity required in the prison could be much lower than predicted. If the Government followed a policy of diverting drug crime offenders away from prison this could have a significant impact on projected prisoner numbers.

The committee understands that the task of projecting prisoner numbers into the medium and long term is a difficult one. It also understands the dangers of under-predicting, especially the danger of having an overcrowded prison. Despite this, it seems that assumptions that the prisoner population will increase are too pessimistic. The committee urges the Government to be more optimistic when estimating the prisoner population.

The committee discussed the question of prisoner numbers with the Rengain consultants in a private briefing and gained the impression that because of the economies of scale, there would not be much saved in capital costs with a reduction in the bed capacity. The committee still makes the point that a greater emphasis on non-custodial sentencing options would result in lower recurrent costs in the long-term as the cost of accommodating offenders in prison is so much higher than through alternative sentences.

It should always be remembered that prison should be a last resort. There are very real dangers that a prison built to any capacity will be filled to that capacity. The ACT needs to ensure this does not happen by strengthening other corrections options. The trend to a decrease in the usage of community-based sentencing over the past few years indicates that the Government is not fully committed to alternative sentencing options.

Recommendation 8

The committee recommends that the Government conduct a review to ascertain if there are sufficient beds available for detoxification and drug rehabilitation so that ACT heroin addicts can access treatment when required.

Recommendation 9

The committee recommends that the Government:

(i) review the prisoner number capacity required in light of the need for a strengthening of non-custodial sentencing options and the possible impact of an increased commitment to early intervention programs; and

(ii) demonstrate a stronger commitment to non-custodial sentencing options (including diversionary programs for drug-addicts) through increased resourcing of these options.

Cost-effectiveness

Rengain and the Government have recognised that a top-quality prison will require considerable expenditure of public money. Rengain has suggested it would cost about \$110million.

This is a considerable increase from the Government's estimate of the prison's cost of \$35million made a few years ago.

The committee understands that a world-class best-practice prison will require a considerable amount of public funding.

But how can we be sure this figure is accurate and is it worth spending \$110 million?

The Rengain report makes it clear that the costings it has relied on are only indicative costings.

The committee does not have the expertise to evaluate the accuracy of the figure. Rengain has indicated this figure will be tested in the marketplace.

The committee is of the strong view that the Government should obtain a second opinion to test the accuracy of the \$110million figure. This would require an evaluation of all of the assumptions which underlie the figure. This evaluation should be commissioned by Government and tabled in the Assembly before the Government proceeds with the project.

Recommendation 10

The committee recommends that the Government:

(i) commission an independent evaluation of the financial costings contained in the Rengain report; and that

(ii) the independent evaluation closely examine the validity of all the assumptions underlying the costings.

Rejection of current arrangements

The Rengain report considers the viability of extending the current arrangements (Belconnen Remand Centre) and rejects this option.

The committee agrees with this assessment. For reasons listed in previous reports and the Panel's report, this option is unacceptable on social grounds. Rengain provides financial evidence to show how it also compares unfavourably with alternative options of different combinations of publicly and privately owned and operated facilities.

Public and private models

The committee is pleased to see that Rengain has recognised the advantages of **public ownership** and **public financing** over the private alternatives.

It is particularly pleasing that the Government has accepted these findings and decided that the prison will be publicly owned and financed.

The Government had previously maintained a strong view that all aspects of the prison should be private.

Through its investigations the committee has had strong reservations about the superior cost-effectiveness of private financing and challenged Government officials (in public hearings and through correspondence) to provide evidence to support their claims. The Government remained defiant in the face of questioning from the committee, that private financing and private ownership were superior to the public alternatives. But the Government was unable to provide evidence to substantiate its position.

The committee was forced to recommend, in the strongest possible terms, that the Government provide it with a rigorous financial analysis to justify its position.

The Government engaged Rengain to do this work and the committee's concerns were vindicated by Rengain's analysis.

While the committee did not adhere to any particular ideological position through this inquiry, it was of the view that the Government's preference for a privately financed and operated prison has been based on ideological grounds rather than financial and criminological evidence.

The aspect of the prison project which remains contentious is whether the management (or operation) of the prison should be private or public or a mix of the two.

As with its preference for private financing, the Government has maintained a strong preference for a **privately-operated** prison.

Rengain has recommended that private operation is the superior model when compared with public operation or a hybrid model.

Rengain's argument supporting the private operator model is based on the likely superior efficiency of private operations, mainly due to the use of 'more

flexible work practices'. Rengain claims that public sector operators generally cannot match the cost efficiency of private operators because of 'inflexible attitudes of public sector unions to work practices and the generally higher pay and superannuation scales offered in the public sector'.⁸

The Government has also made it very clear, particularly when Mr Humphries was the Minister for Corrective Services, that private operation was its preferred position. The Government has gone even further than this in the 2001 Productivity Commission report where it stated the ACT prison would be run by a private operator.

Rengain does also give considerable support to the hybrid operator model and notes that this model 'could well provide the best of both worlds, that is, competent public sector management and private sector efficiency in delivery'. Rengain lists the advantages of the hybrid model as:

- ACT Corrective Services maintains management control in an environment where they are developing best practice through a whole-of-government approach to reducing crime, that could result in the need for flexibility in the delivery of services in the future;
- correctional management expertise maintained within the public sector;
- cost efficiencies achieved in delivery of services with risk relating to industrial relations transferred to the private sector;
- achieves high degree of operational flexibility with re-tendering of part of the system possible if necessary;
- achieves correctional operating culture change;
- local service providers have an opportunity to tender; and
- it is a viable compromise between those arguing for the merits of private versus public.

Rengain points out that the disadvantages of the hybrid model are that it is an untried model and there are risks associated with finding a competent management team.

Despite providing considerable support for the hybrid model, Rengain still favours the private operator model over the hybrid model because of cost-effectiveness.

⁸ Rengain Consultants, *ACT Prison Project*, 17 April 2001, p42.

In the view of the committee, Rengain's support for a privately-operated prison places too much weight on financial factors at the expense of other issues such as accountability, the need for Government control and the quality of rehabilitation outcomes.

In recent years, privately-operated prisons have come under strong criticism in reports such as:

- the Kirby report - *Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons* (October 2000);
- the Victorian Auditor-General's report - *Special Report No.60, Victoria's Prison System: Community Protection and Prison Welfare*;
- Paul Moyle's book, *Profiting from Punishment: Private Prisons in Australia: Reform or Regression?*;
- Victorian Coroner's report - *Port Phillip Findings*; and
- Phillip Flood's report – *Inquiry into Immigration Detention Procedures* (February 2001).

Recently, the Victorian Government decided to take over operations of the Deer Park Women's correctional Centre from a private operator because it was not satisfied with the performance of the private operator.

The committee has strong reservations about allowing our prison system to be fully operated by private prison operators. The minimal cost savings estimated by Rengain between the private model and the hybrid model would indicate no compelling cost-effectiveness grounds for choosing the private model.

The committee can see some virtue in the **public-operator model** but recognises that the lack of commitment to this model by the current Government would make it very difficult to implement. For this model to be successful in the ACT, it would have been necessary for the Government to have started building up expertise and skills to support such a model at least a few years ago. This committee has been urging the Government to do this for some time but to no avail.

It appears the Government made up its mind years ago that the prison would be privately operated and has not made the necessary investment in staff recruitment and training to support the alternative public model.

So on practical grounds, the committee recognises that it would be very difficult, at this stage, to implement a fully publicly operated prison in a jurisdiction such as the ACT which has very little experience in running prison systems.

The **hybrid model**, on the other hand, is a practical option, and it is one which has the committee's support.

The hybrid model would be innovative and aimed at capturing the best of the two worlds of public and private.

One advantage of the model is that it addresses the problem of lack of competition associated with a sole provider. The committee had previously expressed concern that if the ACT chose a private operator model, it would be the only jurisdiction in the world to have 100% of its prisoners under private management. Most other jurisdictions in Australia have a mixture of public and privately managed prisons. The advantage of the hybrid model is that it does not allow a monopoly by one company on the prison operations.

Another advantage of the hybrid model is that it lowers the risk associated with contracting out the whole operation to one private operator. With multiple contracts, the risk of the facility becoming dysfunctional because of contractual failure is minimised.

Another important advantage of the hybrid model is that it allows for local community-based agencies such as drug-rehabilitation services to tender for prison programs. As well as providing benefits to the local community it helps in facilitating throughcare, central to the prison's operating philosophy.

The other important advantages, which have been well-explained by Rengain in its report, include the capacity for a hybrid model to maintain management control in the public sector, to provide for flexibility in management and operations, to maintain correctional expertise in the public sector and to achieve cultural change.

The committee envisages there would be about four or five public sector managers responsible for discrete areas. For example there could be a Custodial Operations Manager, a Rehabilitation Programs Manager, a Community Relations and Restorative Justice Manager and an Ancillary Services Manager (eg catering and cleaning).

The committee considers that most of these areas could be subject to a competitive tendering process whereby both public and private sector agencies were able to tender for the work. This would of course, require a commitment from Government that the public sector would be adequately resourced to develop tender proposals.

The one area which may be difficult to outsource to the private sector is that of "custodial services". For a best-practice prison to function well, the custodial officers would need to be well-trained and able to function as case-managers. In the committee's view it would be preferable if this key function remained with the public sector, at least in the initial period of the prison. One member

of the committee felt it was not only preferable, but essential that the custodial services area remain in the public sector.

The committee would like to see a Crime Prevention Manager in the Department of Justice and Community Safety's policy unit, responsible for whole-of-government strategic planning (non-custodial sentencing, early intervention and post-release services). This position should be at a higher level than the CEO of the prison. This would assist in promoting integration and coordination of the different services within the prison and other services. The prime measure of this manager's performance should be reductions in recidivism rates over time.

The committee recognises that for the hybrid model to be effective there must be systems in place to ensure a high degree of coordination between managers. Coordination and communication would be critical to the success of such a model. In addition these public sector managers would need to possess high level competencies in contract management.

Recommendation 11

The committee recommends that the Government adopt the hybrid operating model:

- (i) with public-sector managers to be responsible for discrete parts of the prison's operations;**
- (ii) with services to be provided through a competitive tendering model; and**
- (iii) with the public sector adequately resourced so it can tender for different contracts.**

Recommendation 12

The committee recommends that the Government:

- (i) develop the details of the hybrid model drawing on lessons from other jurisdictions; and**
- (ii) provide the detailed concept to the Community Panel and the relevant Assembly committee for comment.**

The committee has some concerns about the prospects for current staff employed at the Belconnen Remand Centre with the establishment of the new prison.

Current staff at Belconnen Remand Centre should be given the opportunity to work in the new prison. These should also not have to suffer any reduction in their current conditions of employment.

Recommendation 13

The committee recommends that if the Government proceeds with a contract covering custodial staff with a private operator, it should include a clause providing for current custodial staff to maintain their current conditions of employment through ‘transition of business’ clauses in contracts.

4. OUTSTANDING ISSUES

Female offenders

The question of how to best accommodate the needs of the female prisoners is a challenging one. Because women prisoners comprise only a small proportion of the total prisoner population and have diverse needs it is difficult to come up with cost-effective arrangements for their management.

The Kirby report into the Victorian prison system explained clearly the issues involved in trying to design appropriate facilities for female prisoners:

While women make up a small minority of the total prisoner population, they are a diverse group with special needs. Generally, women offenders have more needs than similar male offenders and this is reflected in the range of between-gender differences that have emerged in corrections research. This is further reflected in the high number of mothers (who in most cases are the children's primary care provider) who make up the women's prison population. It is also mirrored in the rate of increase of young women offenders. Women have different physical, psychological, dietary, social, vocational and health requirements and need to be managed accordingly.⁹

Many studies detail significant numbers of incarcerated women reporting that they have been sexually or physically abused, and suggest survivors often turn to drugs to escape the painful memories of their abuse.¹⁰

The knowledge, skills and emotional demands required for staff working with women prisoners (are) very different from those required for working with male prisoners.¹¹

Women in the ACT community, through the Women's Alcohol and Other Drug Group (WAOD), have lobbied the Government to consider different models for accommodating female prisoners.

The Government convened an Intersectoral Reference Group on Women's Correctional Issues last year to facilitate the input of local women into the design of the prison.

Unfortunately, representatives on the group have publicly expressed discontent with how it is operating and argued that the Government was not listening to its views. These representatives have complained that their expertise was not sought by Rengain consultants and that the Rengain report drew some disturbing conclusions and recommendations which need to be tested by the community. In their view the model proposed by Rengain will not

⁹Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons, October 2000, pp73-74.

¹⁰ ibid

¹¹ ibid

meet the needs of women in any positive way and it fails to draw on best practice from other jurisdictions. Furthermore, the representatives were not satisfied that the model will provide for separate facilities, separate management, distinct programs and separate staff. They also question the claim that the numbers of female prisoners are increasing and that they are becoming more violent.¹²

The committee sought a response from the Minister for Corrective Services who advised he had 'instructed the ACT Prison Project Office to contact the disaffected members of the Group to establish a basis on which the important work of the Intersectoral Group could continue'. The Minister also advised that the Government was committed to ensuring that the detailed design of the women's correctional centre will meet the needs of women, and to this end has made every effort to address the concerns of the Intersectoral Reference Group'.

The committee urges the Government to ensure the views of community representatives on the Intersectoral Women's Reference Group are taken seriously and that they have the opportunity to provide design input to the consultants.

Until recently the ACT Government has not had a dedicated women's policy function within the Department of Corrective Services. In the 2001-02 budget the Government accepted a recommendation from this committee to fund a dedicated women's policy officer position and the committee presumes this will help the Government respond to community pressure for best-practice women's correctional facilities.

Other Australian jurisdictions such as NSW, Victoria and Western Australia have dedicated women's correctional policy units which have developed considerable expertise on the special needs of women. It is suggested that ACT correctional officials and consultants speak directly with staff in these units during the design phase of the prison to learn more about best-practice models for accommodating and managing female offenders.

The Government is urged to obtain design input from community representatives (mostly lawyers from community legal centres) who developed expertise when working with prisoners at the Victorian Deer Park Women's Correctional Centre.¹³ In addition the Government could benefit from consulting with consumer groups such as Sisters Inside, based in Queensland.

¹² Letter from Ms Kerrie Tucker to Paul Osborne (8/6/01) containing letters from Ms Jacqui Pearce on behalf of WAOD/Women and Prison Working Group to Ms Tucker (6/6/01) and from Ms Jacqui Pearce to Michael Moore, Minister for Corrective Services.

¹³ For example, Ms A George.

Recommendation 14

The committee recommends that the Government take full steps to:

- (i) investigate the ideas put forward by community representatives from the ACT Intersectoral Women's Prison Group when designing facilities for female offenders;**
- (ii) consult extensively with Women's policy units and community representatives in other jurisdictions about proposed models for ACT female offenders; and**
- (iii) ensure that the needs of female offenders are not marginalised in the planning stage because of their smaller representation.**

Consultation with prisoners and ex-prisoners

Both this committee and the Panel have recommended that the Government undertake consultation with prisoners during the design phase of the prison.

The Government is yet to undertake this consultation.

The committee believes that prisoners could contribute valuable information to the design of the prison and encourages the Government to initiate this work.

Recommendation 15

The committee recommends that the Government initiate consultation with prisoners to assist in the design of the ACT prison.

Paul Osborne MLA

Chair

6 August 2001