



LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

# THE PROPOSED ACT PRISON FACILITY: PHILOSOPHY AND PRINCIPLES

**Second interim report in the prison series**

**Report No. 4 of the  
Standing Committee on Justice  
and Community Safety**

**October 1999**



## **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 matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.2, 28 April 1998, p 15.

## **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**

### **Data Collection**

#### *Recommendation 1*

2.32. The committee recommends that the Government:

(i)immediately identify gaps in data on current and future ACT prisoners needed for future planning and evaluation purposes; and

(ii)initiate strategies to rectify these gaps such as conducting surveys;

(iii)develop an ACT Prisoner Data Report for the information of bidders and the general community;

(iv)provide the Standing Committee on Justice and Community Safety with a data sample as at 30 June 1999 of the information in Paragraphs 2.23-2.26; and

(v)engage the Australian Institute of Criminology to investigate the reasons for the 22 per cent increase in the rate of imprisonment for the ACT over the past two years for report to the Standing Committee on Justice and Community Safety.

### **Guiding philosophy**

#### *Recommendation 2*

3.22. The committee recommends that the guiding philosophy of the prison facility be directed towards rehabilitation, restorative justice and reintegration into society.

#### *Recommendation 3*

3.23. The committee recommends that all prisoners/detainees should have individual case management plans setting out ways to achieve rehabilitation based on development of employment, education and social skills to be achieved before release.

## **Staff and training**

### *Recommendation 4*

3.37. The committee recommends that the ACT Government:

- (i) place considerable emphasis on staff selection and quality and training of staff in the tender specification process and that this be one of the key criteria to be evaluated in the selection of successful tenderer; and
- (ii) initiate legislation which sets out minimum training requirements for prison officers.

## **Programs**

### *Recommendation 5*

3.49. The committee recommends that;

- (i) the project brief emphasise that prison programs should be aimed at reducing recidivism rates and contributing significantly to the rehabilitation of prisoners meeting the educational, employment and social skill deficits of prisoners;
- (ii) the project brief should request bidders to present program ideas which address the needs of detainees and prisoners on short sentences in addition to those on long sentences;
- (iii) the contract require that all programs should be independently evaluated in terms of rehabilitation outcomes; and
- (iv) the contract include financial incentives and penalties based on program outcomes

## **Work programs**

### *Recommendation 6*

3.61. The committee recommends that:

(i)the project brief and contract include specific requirements for the amount and type of work to be provided/organised by the successful tenderer; and

(ii)the ACT Prison Project Community Committee be invited to contribute ideas on the type of work to be provided before the building contract is finalised;

(iii)prisoners be given meaningful work opportunities which will give them skills in demand in the local employment market so they have real employment opportunities upon release and will be less tempted to commit crimes;

(iv)work opportunities should be free of gender-stereotyping and designed to reflect the needs of different minority groups within the prisoner population; and

(v)financial incentives be provided in the contract so operators receive payments when prisoners achieve employment for certain periods after release.

## **Avoiding deaths in custody**

### *Recommendation 7*

3.77. The committee recommends that to minimise prison suicides;

(i)the prison philosophy embrace the ‘responsibility’ model and protective programs rather than the ‘control’ model; and

(ii)prison management facilitate a program of prisoner support based on the UK Listener model.

## **Health**

### *Recommendation 8*

3.90. The committee recommends that:

(i)the project brief require the provision of thorough health assessments to include drug and alcohol, psychiatric, physical, sexual abuse history and blood-borne diseases assessments be conducted when prisoners first enter the facility, on an annual basis and upon release; and

(ii)the contract to include financial performance incentives and penalties to reflect changes in the health status of prisoners.

*Recommendation 9*

3.91. The committee recommends that:

(i)the Department of Justice and Community Safety devise a health corrections strategic plan for the information of bidders; and

(ii)the project brief require bidders to explain how they will provide health services and ensure the seamless integration/coordination of corrections and health services.

*Recommendation 10*

3.106. The committee recommends that the ACT Government provide the bidders with detailed information on the known drug/alcohol history and addictions of prisoners expected to be housed in the ACT facility to assist planning for building design and management.

*Recommendation 11*

3.107. The committee recommends that the ACT Government seriously consider establishing a Drug Court.

*Recommendation 12*

3.108. The committee recommends that the ACT Government ensure that drug and alcohol programs for prisoners are planned so there is a continuity of care through to the post-release period.

*Recommendation 13*

3.109. The committee recommends that:

(i)prospective bidders be invited to include information on how they would achieve rehabilitation in drug-addicted prisoners and to detail what they have achieved in their other prisons including evaluation of their drug rehabilitation programs; and

(ii)the project brief should indicate a preference for the inclusion of separate drug detoxification and drug rehabilitation centres in the prison complex; and

(iii)that the ACT Government facilitate the involvement of the Prison Project Community Committee in the development of policies on the use of drugs in the prison and on the design of appropriate detoxification and rehabilitation programs.

## **Families and children**

### *Recommendation 14*

3.115. The committee recommends that

(i) the project brief include the requirement that the prison be designed to be child-friendly and visitor accommodation should be designed to welcome family visits; and

(ii) bidders be required to submit a Plan for Families and Children which outlines how the building design and prison management will cater for families and children.

## **Female prisoners and detainees**

### *Recommendation 15*

3.127. The committee recommends that the project brief clearly inform prospective tenders that:

(i) female prisoners should have equal access to any resources, services, programs (including employment and education) and staff compared with men; and

(ii) female prisoners will also need access to gender-specific and specialist women's programs, services, health practitioners and staff.

### *Recommendation 16*

3.128. The committee recommends that the project brief require that prospective bidders be required to submit a Plan for Female Prisoners and Detainees which demonstrates how they will meet the needs of this category of prisoners/detainees in terms of building design and provision of facilities, programs and staff.

## **Indigenous prisoners and detainees**

### *Recommendation 17*

3.137. The committee recommends that the project brief require that prospective bidders provide information on how they intend to work with indigenous prisoners to achieve significantly higher rates of rehabilitation than under the present system and that this be taken into account in the assessment of project proposals.

### *Recommendation 18*

3.138. The committee recommends that:

(i) bidders for prison design, construction and management should be required to explain how they intend implementing RCIADIC recommendations as part of a Plan for Indigenous Prisoners and Detainees and this should be considered as a factor in the selection of the successful builder of the prison and the prison operator; and

(ii) the Aboriginal Justice Advisory Committee should be consulted in this process; and

(iii) the ACT Government and the prison operator should be required to submit an annual report to the ACT Legislative Assembly on the implementation of the RCIADIC recommendations.

### **Remand**

#### *Recommendation 19*

3.149. The committee recommends that the project brief require prospective bidders to provide a Plan for Detainees when tendering for the building, designing and management of an ACT prison complex which provides for separation of detainees from the mainstream prisoner population.

### **Federal prisoners and detainees**

#### *Recommendation 20*

3.151. The committee recommends that the ACT Government provide detailed advice to the Standing Committee on Justice and Community Safety on how funding is provided for Federal prisoners in state/territory prisons and an assurance that the ACT will not face additional liability if the ACT facility houses federal prisoners.

### **Post-release transition**

#### *Recommendation 21*

3.161. The committee recommends that:

(i) the project brief require that the prison operator be required to have some responsibility for post-release transition and programs and performance incentives and penalties be included in the contract to promote the success of this stage;

(ii)the Government consult with the ACT Prison Project Committee about possible post-release programs and the role of Government in implementing and funding these programs; and

(iii)the Government initiate research into prisoner activity in the post-release period (including parole breaches) under the current system and use this information in the design of future post-release programs.

### **Who the facility will house**

#### *Recommendation 22*

3.168. The committee recommends that the ACT prison facility should cater for:

- all security levels of prisoner (minimum, medium and maximum);
- male and female prisoners
- remand and sentenced prisoners ;
- regional prisoners; and
- prisoners with psychiatric conditions.

### **Timing**

#### *Recommendation 23*

3.172. The committee recommends that the new ACT prison facility be filled with prisoners and detainees at a controlled rate in stages for different categories of prisoners, and that the project brief invite submissions on how gradual accommodation should be managed.

### **Research**

#### *Recommendation 24*

3.177. The committee recommends that the project brief highlight the importance of the prison facility having a research culture which:

- (i)influences the programs and practices in the prison; and
- (ii)encourages researchers to conduct research into the facility.

### *Recommendation 25*

3.178. The committee recommends that the contract include incentives and penalties to encourage research.

### *Recommendation 26*

3.179. The committee recommends that the ACT Government:

(i) provide a legislative basis ensuring access for researchers to the prison; and

(ii) ensure that appropriate funding is made available for research and evaluation of programs.

## **Ownership**

### *Recommendation 27*

4.25. The committee recommends that a decision on ownership of the prison facility be deferred until comparative costs are available on public and private financing, design, construction and management.

## **The competitive tendering process**

### *Recommendation 28*

4.92. The committee recommends that starting from 1 December 1999, the ACT Government provide a quarterly written report to the Standing Committee on Justice and Community Safety detailing expenditure on consultants, work commissioned and outcomes achieved.

### *Recommendation 29*

4.106. The committee recommends that the Government:

(i) initially seek expressions of interest from experts for the project direction team to develop the project brief and subsequently design and manage the tender process;

(ii) develop and provide the Standing Committee on Justice and Community Safety with a cost benefit analysis comparing the relative merits of public and private financing, design, construction and management of the prison (to include costs and benefits of submitting a public bid) which extrapolates Australian prison data into an ACT scenario;

(iii) make a decision (based on an evaluation of the results of the cost benefit analysis) on whether the Government will submit a public bid for financing, design, construction or management of the prison facility;

(iv) advise the Standing Committee on Justice and Community Safety of its decision; and finally

(v) invite bids for the financing, design, construction and management of the prison through a transparent competitive tendering process.

### **Accountability**

#### *Recommendation 30*

5.15. The committee recommends that:

(i) the project brief clearly communicate that the ACT Government supports an open and transparent prison system and there will be no provision for commercial confidentiality in the contract;

(ii) the preparedness and demonstrated ability of prison operators to provide an open, transparent prison system be a key selection criterion in the selection of the successful tenderer;

(iii) the contract be drafted so it includes reporting requirements against specified criteria and excludes any provision protecting commercial confidentiality;

(iv) the contract be published by the Government and made available on the Internet; and

(v) the ACT Government's position on commercial confidentiality in relation to the prison facility be enshrined in relevant legislation.

#### *Recommendation 31*

5.18. The committee recommends that the Government should draft legislation which outlines the role and respective responsibilities of administrative review mechanisms such as the Official Visitor, the Ombudsman, the Community Advocate and complaints and appeal mechanisms and which provides a framework for a high standard of accountability and monitoring.

#### *Recommendation 32*

5.19. The committee recommends that before inviting expressions of interest from bidders for the financing, building, design and operation of the prison, the Government consult with Standing Committee on Justice and Community Safety about;

- (i) how it intends enforcing full transparency of information in the tender process and in the design and operation of the prison; and
- (ii) how it proposes to provide for all aspects of accountability.

*Recommendation 33*

5.31. The committee recommends that the Department of Justice and Community Safety produce a discussion paper presenting options for linking incentives and sanctions with rehabilitation outcomes to be presented to the Standing Committee on Justice and Community Safety by February 2000.

*Recommendation 34*

5.32. The committee recommends that contracts with the prison operator include, inter alia:

- (i) quality and outcome measures for work and education programs, staff training and prisoner rehabilitation;
- (ii) incentives and sanctions to direct activity toward rehabilitation outcomes and reductions in recidivism rates;
- (iii) Government responsibility for monitoring performance, punishment decisions and sentence management; and
- (iv) a requirement for an on-site Government monitoring presence.

*Recommendation 35*

5.33. The committee recommends that a draft contract be submitted to the Standing Committee on Justice and Community Safety for comment before it is signed by parties to the contract with sufficient lead time to allow comment by the committee.

**Evaluation**

*Recommendation 36*

5.38. The committee recommends that:

- (i) the ACT Government design and fund a data collection program for the purpose of obtaining baseline data which can be used for comparative analysis of outcomes once the prison complex is established in the ACT;
- (ii) design of the data collection program should begin immediately so that data is collected one year before the ACT prison opens in 2001; and

(iii)the ACT Government present a detailed evaluation strategy to the Standing Committee on Justice and Community Safety for comment before November 2000.

### **Coordination and alternative sentencing options**

#### *Recommendation 37*

5.44. The committee recommends the ACT Government draft a Corrections Strategic Plan which provides for:

- (i)co-ordination between the prison and other corrections services; and
- (ii)mapping of the respective roles and inter-relationships between all corrections agencies and accountability mechanisms.

#### *Recommendation 38*

5.51. The committee recommends that the Corrections Health Board develop a draft discussion paper on ACT Drug Policy and the ACT prison which:

- (i)explores options for removing drug addicted prisoners from the criminal justice system by providing options for rehabilitation;
- (ii)includes information on the number of places for drug rehabilitation in the ACT and the number of people currently receiving the option of rehabilitation as an alternative to a prison sentence; and
- (iii)invites community comments;

with a final paper incorporating community comment to be publicly released before November 2000.

#### *Recommendation 39*

5.59. The committee recommends that the ACT Government produce a discussion paper on alternative sentencing options which:

- (i)canvasses cost comparisons in relation to imprisonment;
- (ii)canvasses comparative rehabilitative outcomes from alternative sentencing options and imprisonment; and
- (iii)includes detailed descriptions of alternative sentence options.

## **Prevention**

### *Recommendation 40*

5.66. The committee recommends that the ACT Government:

(i)conduct a workshop with community representatives to develop strategies to reduce the number of juvenile offenders who move into the adult criminal justice system; and

(ii)produce a discussion paper outlining such strategies which includes provision for evaluation and that this paper be tabled in the ACT Legislative Assembly by November 2000.

## **Community participation and consultation**

### *Recommendation 41*

6.8. The committee recommends that the Government establish a community advisory body to participate in the design of the ACT prison facility to comprise a membership at least half of which are not government officials.

### *Recommendation 42*

6.9. The committee recommends that the ACT Government:

(i)recognise the significant role of the Standing Committee on Justice and Community Safety in the design phase of the ACT prison facility; and

(ii)submit the project brief to the committee for comment before it is released to bidders.

### *Recommendation 43*

6.15. The committee recommends that the project brief invite bidders to put forward ideas on how they would achieve effective community involvement in the design and management of the prison.

### *Recommendation 44*

6.16. The committee recommends that a community consultation committee be established to participate in the ongoing operation of the prison facility and broader corrections issues. The tender specifications should include selection criteria on this.

*Recommendation 45*

6.22. The committee recommends that the ACT Government instigate a consultation with current prisoners, detainees, parolees and those on community orders, to ascertain the factors in building design and prison management and programs which assist and hinder their rehabilitation. This information should be fed into the tender specification process.

*Recommendation 46*

6.24. The committee recommends that:

(i)the project brief seek information from bidders on how they would consult with prisoners in the operation of the prison and how they have done so in other prisons; and

(ii)the ACT Government collect information from other Australian prisons about how they consult with prisoners.



# 1. INTRODUCTION

## **Background to the inquiry**

1.1. The provision of an ACT prison is a matter of considerable importance to the ACT community because of costs, complexity and social impacts of the project.

1.2. This inquiry was initiated because the committee wanted to be involved in the policy development and scrutiny of the process establishing the ACT prison. The committee also wanted to ensure opportunities were available for community involvement in the design and operation of the prison.

1.3. The building of an ACT prison provides an opportunity to build on human potential, not just to build buildings. It is therefore imperative that the philosophy and principles underpinning the prison are properly developed and understood before decisions are made about the building.

1.4. This report addresses most of the inquiry's terms of reference. It provides the committee's view on what the guiding philosophy of the prison should be. It also emphasises the critical importance of providing a framework for a high level of community involvement, openness, accountability and intra-government coordination. It also reflects the committee's views on whether the prison should be publicly or privately designed, owned and managed.

1.5. This is the second interim report for this inquiry. The committee's first interim report, tabled on 1 July 1999, explained why an ACT prison is justified and recommended the establishment of an ACT prison complex which should include a remand centre. That report recommended that the Government consult with this committee on major decisions, provide a briefing to the committee every two months on progress towards the establishment of the prison and invite expressions of interest in the provision of project direction services. The report also recommended that the prison should be located at either Kinlyside or Symonston.

## **Future reports**

1.6. The committee will continue to monitor Government activity towards establishing an ACT prison over the next two years.

1.7. The Government has indicated in its submission and media releases that certain things will happen after it receives a final report from the committee. For example 'upon the final report of the Standing Committee on Justice and Community Safety, a broad based prison project community committee will be established.' The committee wishes to make it clear that our final report will not be brought down within the next few months. The committee intends monitoring the prison project throughout its implementation and is likely to bring down a final report just before the prison is opened in 2001.

1.8. We expect to receive bimonthly reports<sup>1</sup> from the Government and to be involved in the tender specification process. The committee will closely monitor the Government's use of consultants, the opportunities for community involvement and the Government's plans for ensuring accountability and freedom of information. We will also continue to gather information on international 'best-practice' in relation to prison programs and practices.

### **Conduct of the inquiry**

1.9. The committee advertised for submissions in October 1998 and continued to accept submissions until June 1999. Fifty submissions were received. (see Appendix A for details)

1.10. Public hearings were held on 17 March 1999, 18 May 1999 and 10 June 1999 and were attended by 38 people and sixteen organisations. (see Appendix B for details)

1.11. The committee also visited proposed prison sites, inspected the Belconnen Remand Centre and inspected nine interstate prisons. (see Appendix C for details)

### **Government activity to date**

1.12. To date the Government has produced two submissions to this inquiry: one on siting and one addressing the general terms of reference.

1.13. The Government, through the Minister for Justice and Community Safety has issued press releases from time to time putting forward ideas for the

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<sup>1</sup> Standing Committee on Justice and Community Safety, *Inquiry into the establishment of an ACT prison: justification and siting*, first interim report, p15, Recommendation 2.

prison.<sup>2</sup> For example, the Minister for Justice and Community Safety recently announced a trial of electronic monitoring which he envisages being used for home detention and tracking prisoners within the prison.<sup>3</sup> The Minister also announced that the new facility would be 'the most accountable in Australia, with private-sector or other Government operators expected to relinquish commercial-in-confidence status on a range of areas to enable better scrutiny and oversight by the community.'<sup>4</sup>

1.14. The Government has also conducted three prison workshops. The first workshop, held on 29 July 1998 was on 'Strategies for Reducing Self-harm in Custody'. The second workshop on 'The Prison Regime: Prison Programs, Industries and Other Activities' was held on 30 September 1998. The third workshop on 'Corrections Health' was held on 9 June 1999. These workshops included representatives from prisons and corrective services policy units from most jurisdictions in Australia. They provided an opportunity for the ACT to learn about practices in other prisons. The Government has also commissioned research on suicide and self-harm and intends to commission research on rehabilitation and prisoners with special needs.

1.15. The Government has also announced that an ACT Prison Project Community Committee will be established.<sup>5</sup> This initiative is strongly supported by the committee.

1.16. The committee endorses the Government's willingness to involve the community, and to explore innovative ways of doing things and also its commitment to research. The committee notes, however that the Government's approach to date has been piecemeal and that a vision statement which provides an integrated and detailed set of principles and policies for the prison is yet to be released.

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<sup>2</sup> Mr Gary Humphries MLA, Media Release, 14 June 1999, 23 June 1999 and 18 August 1999

<sup>3</sup> Mr Gary Humphries MLA, Media Release, 18 August 1999

<sup>4</sup> Mr Gary Humphries MLA, Media Release, 23 June 1999

<sup>5</sup> ACT Government, *Submission*, p12.

## **Acknowledgments**

1.17. The committee expresses its appreciation to the large number of Canberra citizens and community organisations who have participated in this inquiry. The committee acknowledges the assistance provided by officers of the Department of Justice and Community Safety.

## 2. PROFILE OF ACT PRISONERS AND DETAINEES

2.1. Planning for the ACT prison will need to include careful consideration of information about the expected numbers of prisoners and detainees and the types of crimes which have resulted in their incarceration.

### **ACT prisoners in the NSW prison system**

2.2. In 1998/99 there was an average of 125 ACT prisoners in the NSW prison system, comprising an average of 116 males and 6 females. Throughout the year the number of males ranged from 111 to 124 and females from 5 to 7.<sup>6</sup> This compares with an average total of 118 prisoners in the previous year and 110 in 1996/97.

2.3. These prisoners included those sentenced for the following crimes:

- 13 per cent for homicide (between 15 and 17 prisoners);
- 17 per cent for non-sexual assault (between 16 and 28 prisoners);
- 12 per cent for armed robbery (11-17 prisoners);
- 12 per cent for unlawful entry (13-17 prisoners);
- 11 per cent for sexual offences (11-16 prisoners);and
- 11 per cent for drug offences (11-16 prisoners).<sup>7</sup>

2.4. The remaining 24 per cent of prisoners were incarcerated for a range of other offences including handling stolen goods, vehicle theft and property damage.

2.5. Data collected on a sample of ACT adult prisoners in May 1997 provides some information about their characteristics:

- 92 per cent were male, 8 per cent female;
- 80 per cent born in Australia;

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<sup>6</sup> Source: Correspondence from Minister for Justice and Community Safety, 2 September 1999, Attachment C-ACT Government Prisoner Statistics

<sup>7</sup> *ibid*

- 82 per cent from an English speaking background;
- 6 per cent Aboriginal or Torres Strait islanders;
- age range 18-53 years (average age 31 years);
- 52 per cent had not completed secondary education nor gained any post-school qualifications;
- 73 per cent were unemployed;
- 77 per cent had a history of drug and alcohol abuse;
- 54 per cent were convicted of a non-violent offence;
- 33 per cent had some history of mental illness;
- 56 per cent had a juvenile criminal record;
- 25 per cent were being held at Goulburn Correctional Centre;
- the average length of sentence was eight years;
- the average length of the non-parole period for 100 of this sample was 3 years and 4 months<sup>8</sup>

### **ACT detainees in the remand system**

2.6. In 1997/98 the average daily occupancy rate of Belconnen Remand Centre was 36.68 detainees. This included 3.04 indigenous males, zero indigenous females and 4.45 non-indigenous females. The average daily occupancy rate of non-indigenous females has continued to rise since 1995.<sup>9</sup>

2.7. An analysis of a small sample (35) of ACT detainees held in the Belconnen Remand Centre conducted in May 1997 revealed the following information:

- 91 per cent were males and 9 per cent were females;

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<sup>8</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p10.

<sup>9</sup> ACT Department of Justice and Community Safety *Annual Report 1997/98*, Volume 1, p31

- 69 per cent were Australian born and from an English speaking background;
- 17 per cent were Aboriginal or Torres Strait Islander;
- age range 19 to 69 years;
- 74 per cent were unemployed;
- 77 per cent had not completed secondary education or gained any post school qualifications;
- 77 per cent had a history of drug and alcohol abuse, 57 per cent of detainees were identified as heroin users;
- 29 per cent had a history of some form of mental illness;
- 31 per cent had a juvenile record; and
- 54 per cent had been charged with a non-violent offence.<sup>10</sup>

## **Periodic Detention Centre**

2.8. The Symonston Periodic Detention Centre provides a custodial program for those offenders sentenced under the Periodic Detention Act 1995.

2.9. In 1997/98, there was an average of 80.29 periodic detention orders current on any one day at the Symonston Periodic Detention Centre. This compared with 26.05 in 1995/96.<sup>11</sup>

2.10. Some 34 per cent of those who completed periodic detention orders re-offended in the ACT and had their cases finalised before 30 June 1999, excluding fines.<sup>12</sup>

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<sup>10</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p11.

<sup>11</sup> ACT Department of Justice and Community Safety *Annual Report 1997/98*, Volume 1, p32.

<sup>12</sup> Source: Attachment A, ACT Recidivism Study, Correspondence from Minister for Justice and Community Safety to Chair, Standing Committee on Justice and Community Safety dated 2 September. (sample size-103)

## Community service orders

2.11. In 1997/98 833 offenders were supervised on community-based orders and they completed 27,749 hours of community work.<sup>13</sup>

2.12. The recidivism rate for community corrections orders was 16 per cent for those who completed orders in 1995/96 and slightly higher for those completing orders in 1996/97, at 18 per cent (sample sizes-456 and 462 respectively). The recidivism rate for men remained relatively constant at 17 per cent for those who completed in 1995/96 and 18 per cent for those who completed in 1996/97. However the rate rose for female offenders from 11 per cent to 18 per cent during the same period.<sup>14</sup>

## Crime in the ACT

2.13. In 1997/98, 59 per cent of crime reported to the police fell into the burglary/fraud/theft category, 19 per cent related to property damage, 10 per cent to good order, 5 per cent against the person, 1 per cent robbery/extortion and 6 per cent other.<sup>15</sup>

2.14. A recent ABS report, *Crime and Safety*, has revealed a large increase in Canberra's personal crime rates with sharp rises in burglary, sexual assault and assault. The Chief Police Officer, Mr Bill Stoll, attributed the increases to increases in domestic violence, alcohol abuse and the breakdown of the family unit.<sup>16</sup>

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<sup>13</sup> ACT Department of Justice and Community Safety *Annual Report 1997/98*, Volume 1, p32.

<sup>14</sup> Source: Attachment A, ACT Recidivism Study, Correspondence from Minister for Justice and Community Safety to Chair, Standing Committee on Justice and Community Safety dated 2 September.

<sup>15</sup> AFP *Annual Report 1997/98*, p9.

<sup>16</sup> *The Canberra Times*, Thursday 26 August 1999, p1.

## The ACT in relation to Australia-wide trends

2.15. The ACT has the lowest rate of imprisonment in Australia. The rate is 30 per cent less than that of the next lowest jurisdiction (Victoria) and 59 per cent lower than the national average.<sup>17</sup>

2.16. There has been a nationwide trend to increases in prisoner numbers. This follows 20 years of data indicating a slow and predictable rise in numbers. The Government's Discussion Paper attributed the increase to increases in crime and police clear up rates.<sup>18</sup>

2.17. Professor Biles informed the committee that prisoner numbers across Australia had increased from fewer than 9,500 in 1984 to well over 19,000 in 1998.<sup>19</sup> Even taking into account the increase in population, the rate has increased over 15 years from 83.8 to 136.7 per 100,000.<sup>20</sup>

2.18. Prisoner numbers have not increased at a uniform rate across Australia. In South Australia, the number of prisoners decreased by 9 per cent in last 2 years. (South Australia had a wide use of home detention). The number of prisoners in the Northern Territory also decreased. But other states saw significant increases. For example, in Queensland there has been a 40 per cent increase in the prison rate and a 50 per cent increase in the actual number of prisoners in last 2 years. The ACT had the next highest increase with our imprisonment rate increasing by 22.5 per cent in last 2 years.<sup>21</sup>

2.19. Consideration of prisoner trends must form an important part of the planning for the ACT prison complex.

2.20. A major challenge for planners is to predict the numbers and characteristics of the future prison population. Prison experts acknowledge the difficulties of predicting how many prisoners will need to be catered for with the building of a new facility. The ACT Government's discussion paper predicted a total inmate population of 130 by the year 2000. This prediction is based on trends over the last 20 years. Half of these inmates would be classified as low security, while another quarter would be held on remand. The remaining quarter would be medium to high security inmates.<sup>22</sup> The Government has estimated that the median number of ACT prisoners to the

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<sup>17</sup> ACT Attorney General's Department Discussion Paper, (1996) *The possible establishment of a correctional facility in the ACT*, piii.

<sup>18</sup> *ibid*

<sup>19</sup> *Transcript*, 18 May 1999, p68.

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> ACT Attorney General's Discussion Paper, (1996) *The possible establishment of a correctional facility in the ACT*, piii.

year 2020 will have risen to 290, with a predicted minimum of 221 prisoners and a predicted maximum of 325 prisoners.<sup>23</sup>

2.21. Concern has been expressed by some that building a correctional facility in the ACT will make imprisonment a more attractive sentencing option to ACT courts. The committee recognises the dangers in this but does not see it as inevitable. If the Government is able to provide for realistic alternatives such as home-based detention, drug rehabilitation and early intervention to stop juveniles progressing to adult offenders, the ACT should not see a significant increase in prisoner numbers. Failure to do so will result in an increase.

## Data for planning

2.22. The ACT Parole Board informed the committee that they have comprehensive records regarding ACT prisoners which could be used to identify the characteristics of prisoners likely to be housed in the new facility.

2.23. The Board has information on: age, sex, education and employment background; nature of offences; lengths of sentences; non-parole periods; numbers requiring 'at risk' categorisation; numbers requiring maximum security; rehabilitation needs and attitudes; medical needs; numbers with drug problems prior to and since their first custodial sentence; family factors; numbers taking up parole opportunities; numbers succeeding on parole; and numbers who re-offend after release whether they have been subject to parole or not.<sup>24</sup>

2.24. The Government should take advantage of this information in the planning stages for the prison. At a minimum, they should initiate a data paper which consolidates this information and which can be provided to bidders.

2.25. Further information which should be included in the data paper includes the proportion of ACT prisoners who have served previous sentences and the average length of incarceration of detainees. While fifty-eight per cent of Australian prisoners have served a previous sentence<sup>25</sup> the latest information on ACT recidivism rates indicates a recidivism rate of 31 per cent for ACT prisoners.<sup>26</sup>

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<sup>23</sup> ACT Government, *Submission*, p9

<sup>24</sup> ACT Parole Board, *Submission*, p2.

<sup>25</sup> Productivity Commission, *Report on Government Services 1999*, p536.

<sup>26</sup> Source; ACT Recidivism Study-included in Correspondence from Minister for Justice and Community Safety to Chair, Standing Committee on Justice and Community Safety dated 2

2.26. Other information which could be included in the data paper would be the number of current prisoners in different levels of security and their length of sentences. From this planners could gauge the characteristics of some of the future prison population. The committee understands that currently 15 ACT prisoners are in maximum security prisons, 24 in medium security prisons and 86 prisoners in low security prisons. Sixty-nine prisoners have less than 12 months to serve, twenty-seven have 12 months to 2 years to serve, seventeen have 2 to 5 years to serve and twelve prisoners have greater than 5 years to serve.<sup>27</sup>

2.27. The information already known to the ACT Parole Board and other key information such as recidivism rates and lengths of sentences/incarceration should be collected by the ACT Government and used in the planning of prison programs and as baseline data in the evaluation of the prison programs.

2.28. The Standing Committee on Justice and Community Safety considers it would be helpful for it to also receive this information.

## **Conclusion**

2.29. This chapter sets out basic information on prisoner profiles. The committee expects that ACT Corrective Services will produce more detailed prisoner data information for the guidance of prospective bidders. Work should begin now in identifying any gaps in information such as health status, drug history, and juvenile offender history. There is a need for a new survey to be conducted of ACT prisoners in NSW prisons to build up a more detailed profile of current prisoners, because some of these are likely to be incarcerated in the new prison.

2.30. This information is essential for those planning the design of prison buildings and programs and for the Government to use as the basis for comprehensive corrective services strategic planning. This information will also be needed as baseline data so the success of prison programs can be more easily evaluated once the prison is established.

2.31. Research is also needed to explain why the ACT has experienced a 22 per cent increase in the rate of imprisonment in the ACT over the past 2 years. This research should investigate the underlying reasons for the

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September. The study is based on a sample of 103 ACT prisoners who completed sentences in 1996/97 and had their cases finalised before 30 June 1999.

<sup>27</sup> Source: Reply by Minister for Justice and Community Safety to Question on Notice 181 from Mr John Hargreaves, dated 22 September 1999.

increase and include analysis by type of crime and assessment of changes in sentencing patterns.

***Recommendation 1***

**2.32. The committee recommends that the Government:**

**(i) immediately identify gaps in data on current and future ACT prisoners needed for future planning and evaluation purposes; and**

**(ii) initiate strategies to rectify these gaps such as conducting surveys;**

**(iii) develop an ACT Prisoner Data Report for the information of bidders and the general community;**

**(iv) provide the Standing Committee on Justice and Community Safety with a data sample as at 30 June 1999 of the information in Paragraphs 2.23-2.26; and**

**(v) engage the Australian Institute of Criminology to investigate the reasons for the 22 per cent increase in the rate of imprisonment for the ACT over the past two years for report to the Standing Committee on Justice and Community Safety.**

### 3. PHILOSOPHICAL FRAMEWORK AND PRINCIPLES FOR THE FUTURE ACT PRISON COMPLEX

3.1. The Government has enunciated a progressive and ambitious vision for the prison. It wants a 'world-class' prison. The Minister has made it clear that the prison should be about more than bricks and mortar and that it should be about rehabilitating prisoners and re-integrating them into society.<sup>28</sup>

3.2. The Minister for Justice and Community Safety has put forward ideas about the philosophy of the prison in media statements released from time to time over the past year. He envisages: the creation of a community board (including former prisoners) to oversight the management of the prison; use of performance bonuses in the contract for prisoners who do not re-offend after release, or who gain employment or educational or industry qualifications; and use of penalties for drug offences, escapes and deaths in custody.<sup>29</sup> The Minister has also suggested that technology would be used to improve facilities and reduce the interface between custodial staff and prisoners, and the prison would have open-plan accommodation arrangements, be the subject of close monitoring by government and non-government agencies and scientific data would be used to develop new programs.<sup>30</sup>

3.3. The committee notes that the Government is yet to announce a detailed vision statement which details a comprehensive plan. There is a need for a blueprint to be developed by Government which will provide a guiding philosophy and principles for those tasked with designing, building and managing the prison. The absence of a blueprint has hampered the committee's considerations. It is noted that the Government appears to lack cohesion in its approach by its piecemeal approach to programs to be contained within the facility and its preoccupation with siting and funding issues.

3.4. This section fleshes out some of the ideas put forward by Government and adds ideas provided through the inquiry process by community representatives and committee members. We suggest the Government will use the ideas presented here as the basis for its blueprint.

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<sup>28</sup> Mr Gary Humphries MLA, Minister for Justice and Community Safety, *Media Release*, 23 June 1999.

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

## Guiding Philosophy-Rehabilitation, Restoration and Reintegration

3.5.The committee envisages that the guiding philosophy of the prison will be directed towards rehabilitation, restorative justice and reintegration of prisoners into the community. The Minister for Justice and Community Safety has given some support for this approach by stating:

A correctional centre should be about more than bricks and mortar-it should be about effective management of the welfare of prisoners, rehabilitating them and re-integrating them into society when they have served their sentence.<sup>31</sup>

3.6.Prisons are expected to achieve diverse objectives including deterrence, punishment, rehabilitation, reparation and containment. The way prisons are designed and managed needs to balance these diverse objectives. Prisoner security needs to be maintained according to community expectations. Long-term community needs for lower crime levels must also be addressed through programs which give prisoners skills so they are less likely to re-offend upon release. Or in the words of Pamela Burton:

Punishment is achieved by restricting the liberty of the offender by incarceration. Thereafter, I suggest that rehabilitation and protection of the public are consistent aims. While it might be said that the public is protected by the incarceration of an offender, that protection only exists for the period of incarceration. Unless something positive occurs while the offender is in prison, the risk is merely deferred, not removed.

3.7.ACTCOSS identified the role of prisons similarly in the following comments:

It is important to distinguish between the deprivation of freedom through imprisonment, which is the responsibility of the judiciary; and, the treatment of people in corrective facilities, which is the responsibility of the executive arm of government. It is the Council's view that the community's desire for collective retribution or punishment is sufficiently determined by the judiciary and that the treatment of people in corrective services should reflect a strong rehabilitative philosophy.<sup>32</sup>

3.8.The committee accepts that the confinement and lack of freedom **is** the punishment. This leaves rehabilitation and reparation as the major tasks of prison management. Once prisoners have been confined, the emphasis should be on reintegration into society and development of social and employment skills and training in appropriate psychological responses to situations. This will be best achieved if the prison environment is free of violence and the threat of violence. The aim should be to rehabilitate the prisoners so they can become useful members of society. The activities and programs in the prison should be based on meeting the objectives of rehabilitation and restoration.

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<sup>31</sup> *ibid*

<sup>32</sup> ACTCOSS, *Submission*, p5

3.9.The UN Standard Minimum Rules for the Treatment of Prisoners set the standard for prison management based on rehabilitation and reintegration:

Rule 65-The treatment of prisoners shall have as its purpose the establishment of the will to lead law abiding and self-supporting lives after release. The treatment shall be such which will encourage prisoners' self-respect and responsibility.

Rule 66-To these ends, all appropriate means shall be used including religious care, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

3.10.Prisoners Aid has outlined six critical benchmarks for the prison<sup>33</sup>:

- a focus on rehabilitation as the rationale and reason d'être of the prison;
- emphasis on the dignity of the prisoner as the key to rehabilitation;
- high quality staff who are educated professionals;
- access for families and friends;
- a community orientation;
- cost efficiencies.

3.15.The emphasis on these factors is supported by the committee and it is expected that the Government's blueprint will reflect their importance.

3.11.Bishop Power gave evidence that very often prisoners come out of prison 'a whole lot worse because of all the pent-up anger that is there because of the other crimes that they are introduced to and often because of victimisation that they are subject to'.<sup>34</sup> Clearly, the ACT has an opportunity to move away from this culture.

3.12.Rehabilitation means working with offenders to stop them continuing to commit crimes.<sup>35</sup> Effective rehabilitation strategies should result in less cost to the community over the long term as there should be less crime and fewer people incarcerated.

3.13.The concept of rehabilitation was the subject of widespread disillusionment in the 1970s and 1980s; at that time many people working in

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<sup>33</sup> Prisoners Aid, *Submission and Transcript*, 17 March 1999 pp30-32.

<sup>34</sup> Bishop Power, *Transcript*, 17 March 1999, p22.

<sup>35</sup> Howells K and Day A, Australian Institute of Criminology, Trends and Issues Paper No.112, *The Rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems*, May 1999.

the corrections industry believed 'nothing works'. Recent work by Canadian researchers has suggested that the most effective programs target factors which are both amenable to change and directly related to the offending itself including anti-social attitudes and feelings, self control and problem solving skills and substance abuse.<sup>36</sup>

3.14. The ACT prison facility should develop a new prison culture right from the beginning. It should be a busy prison with many activities directed at rehabilitation. Prisoners and detainees should have significant time out of their cells with limited lockdown periods. The building design should include as many separate 'houses' as possible for small groups of people, so they can experience living in a 'normalised' environment.

3.15. Individual case management plans will assist in achieving rehabilitation of prisoners. The case management plans should be implemented from the prisoner's first day and continue until after release. The post-release period should be planned for and integrated with the prison period.

3.16. Other important elements are high-quality management and staff, emphasis on work programs and a prevailing culture of continuous improvement. Prisoners should be rewarded when achieving certain educational, work and social skills. Prisoners should know that it is not acceptable to stagnate or regress. The culture of the ACT facility should be as far away as possible from the old-style prison 'as a school for crime' and should reject the notion of 'warehousing'. The culture should promote the self-esteem of prisoners and give them a sense of hope for themselves and their futures.

3.17. The prison facility should also accommodate the spiritual needs of prisoners. Bishop Randerson gave evidence that prison chaplaincies now operate in a more open and inclusive way, with spirituality a broader concept than religion and including things such as the purpose and meaning of life and goals and values.<sup>37</sup>

3.18. Incentives should be put in place so the prison operator is motivated and rewarded for improvement in quality outcomes. Some of these will be difficult to measure but reductions in recidivism are measurable. It is suggested that the Government consider provisions in the contract to include a low base payment for food and housing with a significant part of financial payments related to demonstrating improvements in prisoners' skills and reductions in recidivism. This means that the prison management's performance will be assessed more on the quality of the outcomes than has occurred in most prisons to date.

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<sup>36</sup> *ibid*

<sup>37</sup> Bishop Randerson, *Transcript*, 17 March 1999, p28.

3.19. Prisoners and detainees should also have incentives and rewards. For example work release could be considered a privilege, so could accommodation in certain styles of housing within the facility. People should have different goals to strive for within the prison environment. A system of incentives will help motivate people towards positive outcomes. The importance of such incentives for prisoners was highlighted in conversations with staff at the Borallon Prison in Queensland.<sup>38</sup> Mr Brenton Holmes from Anglicare echoed this view and stated that the prison design should be based on unit management as this reflects the progress of a prisoner from one unit to the next, earning privileges and incurring responsibilities along the way.<sup>39</sup>

3.20. Reparation to victims and to society as a whole should also be seen as a significant part of the prison's work. The Victims of Crime Coordinator has suggested that prison authorities should look to develop opportunities for victim/offender reparation during the term of the offenders' sentence.<sup>40</sup> Bishop Power pointed out that restorative justice means the reintegration into the whole of the community and where prisoners have become dislocated from the community, the importance of trying to restore that. In Bishop Power's view, the more people have contact with their families and other visitors, the better it will help them reintegrate into society. Society as a whole will benefit from that because if they are better people and more at peace they are less likely to re-offend.<sup>41</sup>

3.21. Bishop Power also highlighted the fact that many people see all prisoners as being potentially dangerous and life threatening and although some are, this is only a fairly small minority.<sup>42</sup> The committee sees the need for community education to promote a realistic view of the level of threat posed by prisoners in the ACT facility. This is particularly necessary for those residents living near the prison. If the ACT community is less fearful of prisoners, there is more chance for greater community involvement with the prison and more chance that prisoners will be reintegrated into the community.

## ***Recommendation 2***

**3.22. The committee recommends that the guiding philosophy of the prison facility be directed towards rehabilitation, restorative justice and reintegration into society.**

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<sup>38</sup> Committee visit to Borallon Prison in Queensland, 31 March 1999.

<sup>39</sup> Mr Brenton Holmes, *Transcript*, 17 March 1999, p36.

<sup>40</sup> Ms Robyn Holder, *Submission*, p3.

<sup>41</sup> Bishop Power, *Transcript*, 17 March 1999, p22-3.

<sup>42</sup> *ibid*, p23.

### ***Recommendation 3***

**3.23. The committee recommends that all prisoners/detainees should have individual case management plans setting out ways to achieve rehabilitation based on development of employment, education and social skills to be achieved before release.**

### **Staff and Training**

3.24. The quality of prison staff emerged as one of the most significant factors in the success of a prison. Prisoners Aid stated that the 'quality of staff can make or break a prison'.<sup>43</sup>

3.25. When visiting interstate prisons we observed how high-quality individual staff could make a difference, particularly the forward thinking and leadership of the senior executives.

3.26. Committee members were invited to participate in a courtroom drama role-play at the Mount Gambier Prison which included prisoners and prison officers acting different roles as part of an education course. The skills and enthusiasm of the staff member who organised the role-play were obvious to all and the prisoners clearly appreciated the fact that this officer was making a difference in their lives. We were satisfied that this was not stage-managed.

3.27. The committee observed other staff in other prisons who were similarly enthusiastic about their jobs and making a difference.<sup>44</sup> There are many people who are inspired to want to make a difference in prisoner's lives and to activate their human potential. The ACT prison should be managed so that these top-quality officers are attracted to working in the ACT. Employment conditions should be such that the ACT attracts and retains the best in the industry.

3.28. There is an argument, usually put by private operators, that staff employed by private prison operators are superior to those employed by the public sector. The committee observed high quality staff at both privately and publicly managed prisons. For example there were some outstanding staff at the Lotus Glen Prison in Queensland, a publicly managed prison.

3.29. The CPSU claimed that some private prison staff are underpaid and do not have the necessary experience and training to effectively carry out their

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<sup>43</sup> Prisoners Aid, *Submission*

<sup>44</sup> eg at Lotus Glen Prison, Queensland

jobs.<sup>45</sup> The committee received evidence that some private operators will intentionally exclude staff because they have had public sector experience.<sup>46</sup>

3.30.The committee believes there is no justification for excluding staff with public sector experience from working in the ACT facility because of this experience. Evidence was received from a frequent prison visitor that there are a 'great number of very committed officers' at Belconnen Remand Centre 'with a deep concern for the welfare of detainees out there'.<sup>47</sup>

3.31.The committee does not believe that either type of prison necessarily attracts superior or inferior staff. Good management and staff selection processes and good employment conditions are likely to be more significant factors in attracting high quality staff, in particular, the choice of the facility director.

3.32.The committee was impressed with case-management strategies used in some prisons. This entails a prison officer taking responsibility for a number of prisoners, dealing with inquiries, providing assistance and handling most day-to-day issues. This approach has the potential to provide more job satisfaction for staff and improve prisoner's attitudes and outcomes.

3.33.Staff should reflect the cultural and gender representation in the prisoner population. For example, there is a need for indigenous staff. The Government should develop strategies which guard against difficulties in recruiting indigenous staff in two years time. Further, in a mixed gender prison, an appropriate gender mix of staff is imperative.

3.34.The committee also identified training as a significant factor in the success of some prisons. Currently officers at Belconnen Remand Centre receive eight weeks training.<sup>48</sup> In South Australia, prison officers, including those employed at private prisons, must attend Government-designed training courses. Other states have different training requirements. It would be useful if the Government collected information on the training practices and requirements in other Australian jurisdictions as well as international practices as a basis for designing appropriate training for ACT prison officers. The Government should legislate for compulsory minimum training requirements for prison officers rather than leaving this to the discretion of a private operator. These minimum requirements should also be included in the project brief.

3.35.Evidence was received that training for all prison staff should include education on drug and alcohol issues, sexual assault, eating disorders,

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<sup>45</sup> CPSU, *Submission*

<sup>46</sup> *ibid*

<sup>47</sup> Mr Ian Morse, *Transcript*, 18 May 1999, p108

<sup>48</sup> CPSU, *Transcript*, 18 May 1999, p85.

mental health, dual diagnosis, loss and grief, self harming behaviours, racism and homophobia.<sup>49</sup> This appears to be a reasonable suggestion. The committee suggests that training programs also include communication and conflict resolution skills as well as evidence of information on successful programs and strategies for addressing recidivism.

3.36. The committee cannot overemphasise how important staff selection and training is and how important it is that this is recognised in the tender specification stage.

#### ***Recommendation 4***

**3.37. The committee recommends that the ACT Government:**

**(i) place considerable emphasis on staff selection and quality and training of staff in the tender specification process and that this be one of the key criteria to be evaluated in the selection of successful tenderer; and**

**(ii) initiate legislation which sets out minimum training requirements for prison officers.**

#### **Programs**

3.38. Australian prisons provide educational and social development programs with the aim of providing prisoners with the opportunity to develop skills and positive social behaviours. Some programs include specific treatment programs that address offence related behaviour. Programs run in Australian prisons include drug and alcohol, anger management, cognitive skills, domestic violence, self-harm, sex offender, victim awareness, cultural, and numeracy and literacy.

3.39. The committee believes that programs such as these, if correctly targeted, have the potential to contribute significantly to the rehabilitation and social reintegration of offenders. This view is supported by recent research by the Institute of Criminology.<sup>50</sup>

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<sup>49</sup> WAOD, *Submission*, p4

<sup>50</sup> Howells K and Day A, Australian Institute of Criminology, Trends and Issues Paper 112, *The Rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems*, Canberra, May 1999.

3.40. The committee considers that programs must be based on international best practice, prior to consideration of siting, funding arrangements or whether the facility should be managed by the public or private sector. It is the success of these programs, as evaluated over a reasonable period of time, which should recommend one system over another.

3.41. Boredom is a major problem in prisons. When visiting prisons the committee observed that prisoners in prisons without many programs appeared very bored. The committee was told that programs and activities reduce isolation and encourage a more positive outlook.<sup>51</sup>

3.42. One frequent prison visitor told the committee:

The inmates are crying for work reforms. They want the skills that they need because they have been taken out of a lifestyle from young ages, from 9, 10 upwards, and have been put into custody. Their whole life cycle has been locked up. They have been incarcerated for a long time so they have lost the opportunity to learn to live as people. They are taught something in gaol. They are taught how to steal, how to take drugs, how to look after themselves, and how to survive daily in gaol. They come out of prisons and have no means of support. They have got nothing. They have got no skills, nothing to get a job with, and therefore they go back and re-offend and go back in.<sup>52</sup>

3.43. The ACT needs to have a new type of prison which accommodates innovative programs designed to encourage rehabilitation. Most programs will be run by the prison management. Recent research by the Australian Institute of Criminology has identified the types of programs which are most effective. These are programs which are well grounded in psychological theory and/or research and are based on cognitive and behavioural methods.<sup>53</sup>

3.44. There is also scope for harnessing community interest, expertise and resources to also run programs. This could include both volunteer and paid community contributions. The type of programs which could benefit from community participation include anti-violence, sport, meditation, art, theatre, crafts, child-rearing and work skills. Submissions to the inquiry have suggested programs which can be provided on a voluntary basis by community members. For example, the Alternatives to Violence Project offered to provide anti-violence workshop to prisoners and staff.<sup>54</sup>

3.45. Prisoners should also have real opportunities to gain post-secondary and tertiary qualifications. The Senate's Employment, Education and Training

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<sup>51</sup> WAOD, *Submission*, p5.

<sup>52</sup> Mr Paul Brandy, Transcript, 18 May 1999, p128.

<sup>53</sup> Howells K and Day A, Australian Institute of Criminology, Trends and Issues Paper 112, *The Rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems*, Canberra, May 1999.

<sup>54</sup> Alternatives to Violence, *Submission*

References Committee *Report of the Inquiry into Education and Training in Correctional Facilities* is a useful reference for those planning the education programs for the ACT prison. The prison should develop a culture where learning is encouraged.

3.46. It is important that programs are properly evaluated. The Australian Institute of Criminology has recently highlighted the lack of evaluation of Australian prison programs. The Institute could only identify three evaluations of prison programs, none of which would meet the criteria for inclusion in a meta-analysis<sup>55</sup>. The committee is aware of two further evaluations: Charles Sturt University has recently undertaken a two year study on the successes and failures of programs at Junee; and there is an evaluation of the Cadell Drug Free Unit in a South Australian prison. The Government should be collecting such evaluations on Australian and international programs in preparation for designing its own programs and the ACT prison management should ensure that their programs are properly evaluated.

3.47. One challenge for those designing programs is how to accommodate prisoners with short sentences (4-8 months) and detainees. Maureen Cane pointed out that many people with drug addictions are in prison for an average of 4-5 months and that this means there is a rapid turnover of prisoners in the system.<sup>56</sup> Program design must take into account the needs of prisoners on short sentences and bidders should be requested to explain how they will meet the needs of these prisoners.

3.48. The committee envisages that initial assessments of prisoners will include appropriate targeting of programs so that prisoners will be less likely to re-offend and will have the skills to help them become responsible citizens upon release. The prison operator should face incentives and penalties linked to program outcomes.

### ***Recommendation 5***

**3.49. The committee recommends that;**

**(i) the project brief emphasise that prison programs should be aimed at reducing recidivism rates and contributing significantly to the rehabilitation of prisoners meeting the educational, employment and social skill deficits of prisoners;**

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<sup>55</sup> A 'meta-analysis' is a set of statistical procedures designed to accumulate experimental and correlational results across independent studies that address a related set of research questions.

<sup>56</sup> Ms Maureen Cane, *Transcript*, 17 March 1999, p16.

**(ii)the project brief should request bidders to present program ideas which address the needs of detainees and prisoners on short sentences in addition to those on long sentences;**

**(iii)the contract require that all programs should be independently evaluated in terms of rehabilitation outcomes; and**

**(iv)the contract include financial incentives and penalties based on program outcomes**

## **Prison industries**

3.50.The importance of well-organised work opportunities for prisoners cannot be over estimated as a major contributing factor in the success of a prison and success for prisoners reintegrating into society upon release

3.51.Work programs in prisons generally include service industries (such as cooking, prison maintenance), horticulture and manufacturing industries. Some prisons, such as Lotus Glen in Queensland use some of the farming produce to feed prisoners and thus lower the operating costs of the prison.

3.52.Prison industries operate under the principle of competitive neutrality. Because they have access to cheap labour they have to be careful about taking away jobs and profit from outside industries. Work programs need to be designed so they do not compete unfairly with commercial interests. Private prisons are generally regulated so they cannot use profit generated from prison industries, although outside contractors can make profits from prison industries.

3.53.Remuneration for prisoners' work was an issue for some who gave evidence to the inquiry. Across Australia prisoners are paid at rates ranging from \$5.50 per day to \$50 per week. The ACT Council of Churches suggests that prisoners could be self-supporting, make contributions to families, offering financial reparations for crimes and save for their release if they were paid a fair wage.<sup>57</sup> The Council sees this as an issue which requires deeper consideration and community debate. The committee supports this call for community debate and suggests this could be facilitated through the ACT Prison Project Community Committee.

3.54.The committee observed the benefits of work programs when visiting interstate prisons. Conversations with staff and management confirmed the

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<sup>57</sup> ACT Council of Churches, *Submission*

value of busy prisons. We were particularly impressed with a prison farm at the Lotus Glen Correctional Centre, a public prison located near Cairns in Queensland. The committee witnessed many types of work programs when visiting prisons. Some were excellent but some clearly did not involve skill development and were not considered to be good models for the ACT. As Professor Biles said:

Convicted prisoners must be offered meaningful work, and we have to define meaningful work. Sewing mail bags and sweeping the yard is not doing meaningful work which is going to help people get employment elsewhere. It has to be tied to the labour market and the real community.<sup>58</sup>

3.55. Attempts should be made to provide innovative work programs, not just traditional prisoner work. These work programs should take into account skills likely to be needed in the local economy in the future, not skills that are becoming outdated. Particular attention should be given to work available for female prisoners. They should not have to suffer from reduced choices because they are fewer in number. Other minority groups in the prison facility should also be appropriately catered for. Prisoners and their advocates should be consulted about what sort of work skills prisoners would like to acquire which would make them less likely to commit crimes upon release. These ideas should be fed into the design of work programs.

3.56. The involvement of industry is vital to the success of work-related programs. Before the prison opens, it is suggested the Government investigate how local businesses could be involved in the prison's work programs.

3.57. The committee would like to see prisoners being involved in work projects benefiting the community such as environmental regeneration projects. This could assist in meeting the 'reparation' objective of the prison and give the prisoners a sense of self-esteem from making a contribution to the community.

3.58. Evidence was received in the inquiry about the importance of work release programs in assisting prisoners reintegrate back into the community.<sup>59</sup> The committee acknowledges that these programs are very important and should be encouraged. However, work release programs do provide opportunities for prisoners to escape and commit crimes and such incidents have caused community alarm and outrage in other jurisdictions. Both the prison operator and the Government have a key responsibility in ensuring that prisoners with histories of violent, sexual or predatory crimes are properly assessed before being allowed on work release programs. The Government

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<sup>58</sup> Professor David Biles, *Transcript*, 18 May 1999, p81.

<sup>59</sup> eg Victims of Crime Coordinator, *Submission*

may also like to consider involving the community advisory body in some of these decisions.

3.59. Committee members note that some prisons have experienced problems because the original prison design did not allow enough room for industries. This points to the inappropriateness of concentrating on siting and financing prior to development of programs, program outcome targets and evaluation mechanisms. Planning needs to take account of the need to accommodate separate classifications and to separate protection prisoners and remand prisoners. This aspect of the building design will need very careful attention and can only be developed after a work program strategic plan has been developed. The committee suggests it may be useful to involve the community advisory body in developing ideas for the work program.

3.60. The committee suggests that there is provision in the contract for outcomes of work programs to be independently measured and evaluated. Professor Biles has outlined a suggestion that financial incentives be provided so prison operators receive a reward for prisoners who are employed for a certain length of time upon release.<sup>60</sup> This is a good suggestion and should be seriously considered by the Government.

### ***Recommendation 6***

**3.61. The committee recommends that:**

**(i) the project brief and contract include specific requirements for the amount and type of work to be provided/organised by the successful tenderer; and**

**(ii) the ACT Prison Project Community Committee be invited to contribute ideas on the type of work to be provided before the building contract is finalised;**

**(iii) prisoners be given meaningful work opportunities which will give them skills in demand in the local employment market so they have real employment opportunities upon release and will be less tempted to commit crimes;**

**(iv) work opportunities should be free of gender-stereotyping and designed to reflect the needs of different minority groups within the prisoner population; and**

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<sup>60</sup> Professor David Biles, *Transcript*, 18 May 1999, p81.

**(v)financial incentives be provided in the contract so operators receive payments when prisoners achieve employment for certain periods after release.**

### **Avoiding deaths in custody**

3.62.Of deaths in custody in Australian prisons over the past 19 years, there were 367 suicides, 257 from natural causes, 60 homicides, 85 accidents or drug-related and 18 other deaths.<sup>61</sup>

3.63.Recent research by the Australian Institute of Criminology revealed that the rate of suicide in Australian prisons is up to 15 times worse than in the general population.<sup>62</sup> The suicide rate in Australian prisons has trebled in the nineteen years to 1998. Half of all suicide victims had been on remand. Hanging was responsible for 93.8 per cent of suicides.

3.64.The prison should be designed so it limits opportunities for deaths in custody. The committee found that while building design may have some impact, it is the quality and direction of management philosophies and practices which will have the greatest impact in limiting the numbers of suicides in custody.

3.65.In 1998 there were 11 deaths in private prisons, 57 deaths in public prisons. Of this total of 68, 34 were suicides, including 5 in private prisons and 29 in public prisons.<sup>63</sup>

3.66.The ACT Government has commissioned a literature review titles 'Suicidal Behaviour in Prison' from the Australian Catholic University.<sup>64</sup> This review concluded that:

- suicidal behaviour is increasing in prisons;

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<sup>61</sup> Dalton, V, Australian Institute of Criminology, Trends and Issues Paper 126 (1999), *Suicide in Prison 1980-1998: National Overview*.

<sup>62</sup> *ibid*

<sup>63</sup> Biles, D and Dalton,V, Australian Institute of Criminology Trends and Issues Report no. 120 (1999), *Deaths in Private Prisons 1990-99: A Comparative Study*,p4.

<sup>64</sup> Australian Catholic University, *Suicidal Behaviour in Prisons: A Literature Review*, March 1999, (attachment in ACT Government Submission)

- the focus should not just be on suicide prevention, but on developing and strengthening protective factors such as family support/visits, constructive activity within the prison system, and support from other prisoners and custodial staff;
- the focus on 'screening' instruments aimed at identifying those most at risk of self harm has been largely discredited by the literature;
- rather than screening, the focus should be on assessment, prevention, development of protective programs, treatment and management strategies; and
- research suggests that safe cells should not be constructed at the expense of a human environment, as a cell that is clinical in appearance is more likely to reinforce a prisoner's sense of isolation and depression;
- the ACT prison should be based on the 'responsibility' model (which involves a different relationship between staff and prisoners) rather than the 'control' model (evident in traditional hierarchical, rule-based prisons).

3.67. The literature review noted that the Listener Scheme established in the UK was one successful strategy for reducing suicide and self-harm. This scheme involves local Samaritans (like Lifeline) selecting, training and supporting prisoners to befriend other prisoners who were experiencing difficulties and distress while in custody. The trained listeners generally had maturity, knowledge of the system, status with prisoners and staff and a real concern for their fellow prisoners. The committee was impressed with this scheme and would like to see something similar in the ACT prison.

3.68. Participants at the National Workshop on 'Suicide and Self Harm' organised by the Department of Justice and Community Safety, agreed that it was impossible to construct a totally 'suicide proof' cell.<sup>65</sup>

3.69. The committee was particularly interested in comparing suicide rates in private and public prisons.

3.70. A recent study by the Australian Institute of Criminology, *Deaths in private prisons 1990-99: A Comparative Study* provides interesting information about deaths in custody in Australian prisons.<sup>66</sup> It found that public and private prisons have similar death rates for all causes of death including suicide; that death rates are higher in remand and reception prisoners rather than long term prisoners; and that death rates are higher in the first few year's of a prison's operations. Their examination of deaths in Australia's three

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<sup>65</sup> ACT Government, *Submission*, p23.

<sup>66</sup> Biles, D and Dalton, V, Australian Institute of Criminology Trends and Issues Report no. 120 (1999), *Deaths in Private Prisons 1990-99: A Comparative Study*,

largest remand and reception prisons (two private and one public) in their first 20 months of operation revealed that the death rate was about 3 times the national average for all prisons and the suicide rate was about 4 times the national average.

3.71. The Institute of Criminology has recently released information on deaths in custody in Australian prisons.<sup>67</sup> This information is included in the following tables.

**Table 2: The distribution of deaths and suicides in private prison custody 1990-99 by private prison only<sup>68</sup>**

|                     | Borallon Qld | Arthur Gorrie Qld | June, NSW | Mt Gambier SA | Deer Park, Vic | Fulham, Vic | Port Phillip Vic | Total Aust |
|---------------------|--------------|-------------------|-----------|---------------|----------------|-------------|------------------|------------|
| Prisoner years      | 2,974        | 3,321             | 3,472     | 405           | 316            | 1,141       | 984              | 12,613     |
| Deaths              | 1            | 13                | 9         | 0             | 2              | 0           | 12               | 37         |
| Deaths per 1000/y   | 0.34         | 3.91              | 2.59      | 0             | 6.33           | 0           | 12.2             | 2.93       |
| Suicides            | 1            | 10                | 2         | 0             | 1              | 0           | 5                | 19         |
| Suicides per 1000/y | 0.34         | 3.01              | 0.58      | 0             | 3.16           | 0           | 5.08             | 1.51       |

**Table 3: Deaths and Suicides in Private Prisons 1990-99 by Company<sup>69</sup>**

| Company | Total Deaths | Prisoner years | Death rate per 1000 prisoner years | Total suicides | Prisoner years | Suicide rate per 1000 prisoner years |
|---------|--------------|----------------|------------------------------------|----------------|----------------|--------------------------------------|
|         |              |                |                                    |                |                |                                      |

<sup>67</sup> ibid

<sup>68</sup> ibid, p 5

<sup>69</sup> ibid

|         |    |        |      |    |        |      |
|---------|----|--------|------|----|--------|------|
| CCA     | 3  | 3,290  | 0.91 | 2  | 3,290  | 0.61 |
| ACM     | 22 | 7,934  | 2.77 | 12 | 7,934  | 1.51 |
| Group 4 | 12 | 1,389  | 8.64 | 5  | 1,389  | 3.60 |
| Total   | 37 | 12,613 | 2.93 | 19 | 12,613 | 1.51 |

3.72. The committee was interested to note that CCA had the lowest suicide rate while Group 4 had the highest rate of suicide in custody.

3.73. The committee also considered the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). This 1989 report made 330 recommendations on the management and treatment of suicidal behaviour in prisons. A number of key reports have drawn attention to the inadequate implementation of RCIADIC recommendations. These include the 1995 *ATSIC Social Justice Report*, the 1995 Council for Aboriginal Reconciliation's *Social Justice Report*, the 1996 *ATSIC Keeping Aboriginal and Torres Strait Islander People Out of Custody* report and the 1999 *ATSIC Report to the United Nations*. The ATSIC report claimed that while Aboriginal deaths in police custody had declined, there had been a commensurate increase in the number of Aboriginal deaths in prison and that overall, the response of governments to the RCIADIC recommendations have had little effect on the total number of Aboriginal deaths in custody.<sup>70</sup>

3.74. The committee believes prospective bidders for the design, construction and management of the prison should be required to indicate how they intend to implement RCIADIC recommendations and this be included as a criterion in the selection of successful bidders. The ACT Government's Aboriginal Justice Advisory Committee should be consulted on the selection of successful bidders for design, construction and management of the prison.

3.75. The committee was informed that female prisoners are four times as likely to commit suicide compared with women in the general community.<sup>71</sup> Self-harm was also higher amongst female prisoners compared with male prisoners. Clearly the prison design and management will need to develop strategies to change this trend.

3.76. The committee supports the responsibility model rather than the control model in minimising prison suicides and self-harm. The UK Listener model seems to provide a good strategy for addressing these problems. The project brief should emphasise the importance of prison providers minimising suicide

<sup>70</sup> This information was brought to the committee's attention by Mr Fred Leftwich and Mr Jim Jeffrey in their submission

<sup>71</sup> WAOD, *Submission*, p8.

and self-harm and should request bidders to provide information and how they intend to achieve this. Financial incentives and penalties relating to incidences of suicide attempts and incidences of self-harm should be included in the contract.

### ***Recommendation 7***

**3.77. The committee recommends that to minimise prison suicides;**

**(i) the prison philosophy embrace the ‘responsibility’ model and protective programs rather than the ‘control’ model; and**

**(ii) prison management facilitate a program of prisoner support based on the UK Listener model.**

### **Health care**

3.52. Health issues will need close attention in planning for the ACT prison. Data presented earlier in this report revealed that 77 per cent of ACT prisoners in NSW prisons had a history of drug and alcohol abuse and 33 per cent had some history of mental illness. Of remand prisoners, 29 per cent had a history of mental illness. For Australian prisoners as a whole:

- 70 per cent smoke;
- 33-41 per cent continue to use marijuana;
- 20-25 per cent continue to use heroin;
- 8-40 per cent use alcohol;
- 64-69 per cent share needles (usually multiple times);
- 33-66 per cent are Hepatitis C carriers and 33-46 per cent have been exposed to Hepatitis B; and
- in 1997, 24 people in custody in Australia were HIV positive.<sup>72</sup>

3.78. The ACT established a Corrections Health Board to help coordinate health services in corrections. The Board meets monthly and has representation from government and community agencies. The committee

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<sup>72</sup> Dr Wendall Rosevear, ‘Heal rather than punish’, *Australian Medicine*, 19 October 1998, p12.

notes that the current representation on the Board comprises mostly government representatives. The Board has no statutory basis and operates in an advisory capacity only.

3.79. The Board advised the committee that ‘there is a real need to recognise and factor health services into the planning for the new facility because the custodial population is one that has significant and serious health problems’.<sup>73</sup> The Board believes that planning for a health service should start now.

3.80. The Board also argued that the provision of health care is a fundamental basic human right and that it should apply to all people in custody at a standard that is comparable to that in the general community. The Board noted that the provision of health care for the prison population should also be considered as a means of protecting the broader community. The Board advised that health provision should be provided by the general health system, independent of the correctional and custodial system. The Board also supports health screening and risk assessment for all detainees, to minimise the risk of self-harm.

3.81. The Board alerted the committee to the absence of useful health data on local residents so they had to rely on NSW surveys for their information. According to the Board, between 60 and 80 per cent of that custodial population have a substance abuse problem; between 33 and 50 per cent of people in custody have mental health problems and between 13 and 18 per cent have developmental disabilities.<sup>74</sup>

3.82. Currently provision of health care at the Belconnen Remand Centre (BRC) is the responsibility of the Department of Health and Community Care.<sup>75</sup> Health staff in the BRC are rotated from other parts of the health system so they are not captured by the custodial sector.<sup>76</sup> One major deficiency of the current arrangements is that remand prisoners with serious psychiatric conditions can only be accommodated at the BRC whereas these types of detainees in NSW would not be in the remand centre but a specialist mental health care facility. With the building of a new ACT correctional facility this problem can be addressed.

3.83. One of the major challenges for the prison design will be how to care for prisoners and detainees with mental illness. One option is the provision of a segregated special care facility for those with mental illness. Another option is to make arrangements for another jurisdiction to take ACT prisoners with serious psychiatric conditions

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<sup>73</sup> *Transcript* p113, 18 May 1999

<sup>74</sup> *ibid*

<sup>75</sup> *Transcript*, 18 May p115

<sup>76</sup> *Transcript*, 18 May 1999, p118

3.84. The committee prefers the option where the ACT takes responsibility for prisoners with mental health problems. These people may well be the people most in need of close contact with friends, families, health practitioners and other community supports. The idea of 'exporting' people with mental health problems may be administratively more appealing in the short term but positive long term outcomes for both prisoners and the ACT community will be better achieved if the ACT can closely control their rehabilitation and treatment programs. The committee acknowledges that there may be some severe cases where the prisoner or detainee would be able to receive more intensive and higher quality care in another jurisdiction's prison. This option should not be entirely closed off but only considered in exceptional circumstances.

3.85. The committee believes the ACT government should investigate best practice models for the treatment and management of prisoners with mental health problems and use this information in the management of the ACT prison. Some obvious measures include: the coordination of prisoner files and information from previous periods of incarceration and from time spent in the outside community; consultation with families of prisoners with mental illness; formation of strong relationships with community-based mental health service providers; prison staff to be well-trained in dealing with mental health problems; continuity of care from assessment stage to post-release programs; and the proper management of prisoners who are taking medication.

3.86. It was put to the committee that there is a need for female general practitioners so that female detainees and prisoners can see a female GP and that Aboriginal detainees and prisoners should also have access to Aboriginal health workers and preferably to an Aboriginal GP.<sup>77</sup> The Government should consider this matter further.

3.87. The National Prison Workshop 3 on Corrections Health, attended by correctional officers from around Australia, canvassed health issues such as smoking, mental health, alcohol and drug problems, tattoos, sports injuries, boxing and blood-borne diseases. These issues all require policies. There was a common view that health treatment should be seen as part of a prisoner's rehabilitation.<sup>78</sup>

3.88. The committee believes that planning and coordination of health services should be a key issue for those planning the prison. The Department of Justice and Community Safety should develop a strategic plan to ensure the successful integration of these two policy areas.

3.89. Health assessments and screening should be mandatory for all prisoners when they are first taken into custody and should include screening and

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<sup>77</sup> *Transcript*, 18 May p115

<sup>78</sup> National Workshop 3 Corrections Health, 9 June 1999

assessment of drug and alcohol, psychiatric (including medication history), physical, sexual abuse history, and blood-borne diseases. These assessments should also take place on an annual basis and upon release.

### ***Recommendation 8***

**3.90. The committee recommends that:**

**(i) the project brief require the provision of thorough health assessments to include drug and alcohol, psychiatric, physical, sexual abuse history and blood-borne diseases assessments be conducted when prisoners first enter the facility, on an annual basis and upon release; and**

**(ii) the contract to include financial performance incentives and penalties to reflect changes in the health status of prisoners.**

### ***Recommendation 9***

**3.91. The committee recommends that:**

**(i) the Department of Justice and Community Safety devise a health corrections strategic plan for the information of bidders; and**

**(ii) the project brief require bidders to explain how they will provide health services and ensure the seamless integration/coordination of corrections and health services.**

## **Drugs in the prison facility**

3.92. The issue of how drugs and prisoners with drug addictions will be managed in the prison is critical and will require serious planning.

3.93. We know that over 70 per cent of ACT prisoners in NSW prisons have a drug history.<sup>79</sup> It has also been reported that over 50 per cent of BRC detainees use heroin.<sup>80</sup>

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<sup>79</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p10.

<sup>80</sup> *ibid*, p11

3.94.The Health Workshop conducted by ACT Corrections revealed there are divergent views on the issue of drug control in prisons.<sup>81</sup>

3.95.Ms Pamela Burton gave evidence to the committee that one view is that drug-addicted offenders should be dealt with in special drug courts and be treated rather than sentenced to prison. Ms Burton advised that if this policy was adopted a 300-bed facility would not be required in the ACT.<sup>82</sup>

3.96.The committee believes the Government should seriously consider establishing a Drug Court in the ACT.

3.97.Ms Burton gave evidence that an alternative approach to a drug court is to allow drugs in prison on a controlled basis with incorporation into the prison design of a drug dispensary, a safe injecting room and a needle exchange.<sup>83</sup> Another option is a strong policy of 'no drugs in prison' which would require resources and programs for effective rehabilitation to be incorporated into the prison's physical and managerial design.<sup>84</sup>

3.98.Both Ms Burton and Mr John Hynds (ACT Parole Board) emphasised the importance of effective staff selection in reducing the illicit entry of drugs into the prison.<sup>85</sup> Ms Burton also suggested that a drug-free unit may be an effective initiative for those prisoners who genuinely want to use their time in custody to become drug-free.

3.99.Drug-related issues which will need policies include injecting rooms, provision of needles, use of naltrexone, methadone and condoms.

3.100.There are also legal issues which need to be addressed in relation to drug use in the prison. Ms Maureen Cane suggested that some people in the prison (including prisoners and detainees) may find themselves in danger they did not face before entering prison and this may result in legal liability for the Government.<sup>86</sup> For example a prisoner may contract HIV from sharing a needle. The Government will need to consider these issues when devising drug policies for the prison.

3.101.The detection of drugs in the ACT prison will also require attention. This can be done through use of intelligence, sniffer dogs and technology such as x-ray searching of visitors. The committee inspected an impressive

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<sup>81</sup> Source; Correspondence from Minister for Justice and Community Safety to Chair, Standing Committee on Justice and Community Safety dated 2 September Attachment B Notes on the National Workshop 3 Corrections Health, 9 June 1999.

<sup>82</sup> Ms Pamela Burton, *Submission*, p3.

<sup>83</sup> *ibid*

<sup>84</sup> *ibid*, p4

<sup>85</sup> Ms Pamela Burton, *Submission*, p5 and Mr John Hynds, Transcript 18 May 1999, p145

<sup>86</sup> Ms Maureen Cane, *Transcript*, 17 March 1999, p16.

high-tech monitoring tool for the detection of drugs through urinalysis in the Arthur Gorrie Remand Centre in Queensland.<sup>87</sup>

3.102. Detoxification programs will need to be implemented by the prison. Evidence was received that detoxification should not be a rigid regime but tailored to an individual's needs.<sup>88</sup> Some people will have a heroin addiction only, many others will have a poly-drug addiction and others will suffer mental illness as well as drug addictions. There is likely to be a greater need for detoxification in the remand system. The question of whether a separate detoxification building is needed should be the subject of consultation with the ACT Prison Project Community Committee and community drug organisations.

3.103. The committee believes drug policies in prisons should reflect the drug policies in the outside community and that drug rehabilitation programs should be a high priority and well resourced. Prisoners should have good access to drug and alcohol counsellors and effective programs. Both detoxification and rehabilitation programs and facilities should be provided in the ACT prison. Drug and alcohol programs should be based on best-practice models which have been evaluated and shown good results. Consideration should be given to providing a drug-free unit which could be associated with privileges to provide incentives for prisoners to remain drug-free. However if there is a drug-free unit, prisoners in that unit should also have access to counselling, treatment and support to recover from drug addictions. The committee received evidence that drug-free units in other states sometimes do not provide the necessary support services and the ACT should not make this mistake.<sup>89</sup>

3.104. Evidence was received that prisoners with drug and alcohol problems also need support upon release.<sup>90</sup> The committee was informed that support is crucial in the first week of release; prisoners are in danger of overdosing at this time if their tolerance has dropped while in prison<sup>91</sup>. The programs should be planned so there is a continuity of care through to the post-release period.

3.105. The Prison Project Community Committee should be invited to contribute to the development of policies on the use of drugs in the prison.

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<sup>87</sup> Visit to Arthur Gorrie Remand Centre, 31 March 1999

<sup>88</sup> Ms Deborah Felton, *Transcript*, 17 March 1999, p19.

<sup>89</sup> Ms Sukalpa Goldflam, *Transcript*, 18 May 1999, pp98-9.

<sup>90</sup> *ibid*, p100-01

<sup>91</sup> *ibid*

***Recommendation 10***

**3.106.**The committee recommends that the ACT Government provide the bidders with detailed information on the known drug/alcohol history and addictions of prisoners expected to be housed in the ACT facility to assist planning for building design and management.

***Recommendation 11***

**3.107.**The committee recommends that the ACT Government seriously consider establishing a Drug Court.

***Recommendation 12***

**3.108.**The committee recommends that the ACT Government ensure that drug and alcohol programs for prisoners are planned so there is a continuity of care through to the post-release period.

***Recommendation 13***

**3.109.**The committee recommends that:

**(i)**prospective bidders be invited to include information on how they would achieve rehabilitation in drug-addicted prisoners and to detail what they have achieved in their other prisons including evaluation of their drug rehabilitation programs; and

**(ii)**the project brief should indicate a preference for the inclusion of separate drug detoxification and drug rehabilitation centres in the prison complex; and

**(iii)**that the ACT Government facilitate the involvement of the Prison Project Community Committee in the development of policies on the use of drugs in the prison and on the design of appropriate detoxification and rehabilitation programs.

**Families and visitor accommodation**

**3.110.**One of the major justifications for establishing an ACT prison is that families can more easily visit prisoners and so provide that level of emotional support which will contribute to prisoners' rehabilitation. But it is not sufficient just to locate the prison in the ACT. The Government will need to take

responsibility in ensuring the provision of adequate public transport. The prison operator will need to ensure visiting facilities are comfortable and appropriately designed.

3.111. The prison should have appropriate play areas for children and facilities for babies and infants. In short it should be child-friendly.<sup>92</sup> The committee is strongly of the view that prisoners who are parents should be given wide access to visits from their children. In most cases, this is likely to be beneficial for both the parents and the children.

3.112. A number of submissions provided suggestions on how visitor accommodation should be built.

3.113. Ms Maureen Campbell and Mr Tom Campbell, who have visited many prisons over the years, suggested that if the prison system is sincere about rehabilitation or making prisoners feel they are part of society, then attention should be given to ensuring family members, especially young wives and children, can do so in dignity, in an affordable way without being treated 'as scum'.<sup>93</sup> Their specific suggestions included: the prison should be readily accessible to regular public transport; the prison should be on a bus route which includes weekend services; and the bus stop must have adequate appropriate shelter for those waiting for buses recognising that the number could be substantial. They also noted that care must be taken in the design of places for visitors who make it to the front gate.<sup>94</sup>

3.114. The committee believes that the prison should be designed so that visitors, especially families and friends can visit as frequently as possible.

### ***Recommendation 14***

**3.115. The committee recommends that**

**(i) the project brief include the requirement that the prison be designed to be child-friendly and visitor accommodation should be designed to welcome family visits; and**

**(ii) bidders be required to submit a Plan for Families and Children which outlines how the building design and prison management will cater for families and children.**

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<sup>92</sup> Mr Leonard Barratt, *Submission*

<sup>93</sup> Ms Maureen Campbell and Mr Tom Campbell, *Submission*

<sup>94</sup> *ibid*

## Female prisoners

3.116. Female prisoners currently make up approximately 8 per cent of the ACT prison population and 9 per cent of the remand population.<sup>95</sup> The largest number of women incarcerated in NSW in the past 22 months was 12 and the Belconnen Remand Centre holds a maximum of four women detainees at any one time.<sup>96</sup>

3.117. Female prisoners have been sentenced to crimes ranging from break and enter to murder. Because they comprise such a small percentage of the total prison population and have been sentenced for such a wide variety of crimes, planning their accommodation and programs presents somewhat of a challenge.

3.118. The committee was informed that female prisoners are more stigmatised from being in the prison system than men and that they suffer more mental health stresses and have more worries concerning their children. Women may be seen by prison staff as problematic and manipulative. Many women prisoners have experienced past and recent sexual assault; one estimate is that 90 per cent of women prisoners have experienced sexual assault.<sup>97</sup>

3.119. Female prisoners may experience problems related to parenting and children. The committee was advised that concern for children's well-being are traumatic issues for women. The ACT prison should have appropriate arrangements for children and be 'children-friendly'. The option should be available for children to stay with their mothers in prison. Female prisoners should have the right to receive visits from their children. Female prisoners will need support and information on parenting and child custody issues. Children of prisoners will also need special support and this should be the responsibility of the Department of Justice and Community Safety.

3.120. The committee is very concerned at the possibility of women's needs being marginalised. As WAOD (Women's Alcohol and Other Drug Working Party) has pointed out, the small number of women incarcerated has often obscured public recognition of their needs and priorities.<sup>98</sup> It is imperative that planning for women's incarceration pays special attention to women's needs at the earliest stages through to when the prison is operational.

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<sup>95</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, pp10-11.

<sup>96</sup> WAOD, *Submission*, p2.

<sup>97</sup> WAOD, *Submission*, p5 (source Fitzroy Legal Centre 1995, Women and Imprisonment)

<sup>98</sup> *ibid*, p2.

3.121. Based on the 1994 census of the NSW prison population, women made up 5 per cent of that population. Eighty-seven per cent of women sentenced in NSW in 1994 were sentenced for periods less than 12 months. Women sentenced for more than 5 years comprised 3 per cent of the total women's prison population and were incarcerated for offences to the person and drug offences. The percentage of indigenous imprisoned women in NSW was 18 times higher than the percentage of indigenous women in general NSW population. Over 50 per cent of women prisoners had been in prison before. About three-quarters of NSW women prisoners were classified as minimum security, 23.2 per cent as medium security and 1.7 per cent as maximum security.<sup>99</sup>

3.122. Evidence was received that many women arrive at correctional facilities with a drug dependency and many turn up on very high drug doses and often with a severe polydrug dependency. Some female prisoners have dual diagnosis with both drug dependency and mental illness and if they experience withdrawal from drugs their psychiatric symptoms may manifest. Many female prisoners suffer from dependency on Benzodiazepines, which require a medically slow reduction scheme.

3.123. In WAOD's view, female prisoners need gender appropriate detoxification services, access to clean needles and kits to reduce infections rates of blood-borne diseases, information on safe using and safe sex and the supply of condoms etc without having to get permission/contact with staff.<sup>100</sup> WAOD suggested that for female prisoners on methadone, options should be offered for supported methadone withdrawal and a reduction regime in place pre-release. WAOD also recommends that access to 12 step programs is essential and groups should be provided for women on relaxation, self esteem and relapse prevention.

3.124. A number of submissions highlighted the importance of women receiving the option of accessing female health providers such as doctors and drug and alcohol counsellors.<sup>101</sup> The committee also considers it is important that female warders are recruited to work in a women's prison system.

3.125. The committee visited two prisons containing women prisoners. One prison in Victoria had women prisoners only, housed in group-house accommodation which was impressive, with about 4-8 women sharing a house with a common kitchen, living room. The other prison in Townsville, Queensland was a mostly male prison which included a women's area. It appeared that the women received less access to resources than the male prisoners and this might be a danger for the ACT with economies of scale operating in favour of the male prisoners. The committee was also alerted to

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<sup>99</sup> *ibid*

<sup>100</sup> WAOD, *Submission*, p3.

<sup>101</sup> Eg WAOD, *Submission*, p5. ACT Health Corrections Board, *Submission*

a design problem in the Townsville prison which resulted in problems with male and female prisoners heckling and being disruptive when they could see each other. Designers should ensure this does not occur in the ACT facility by segregating genders so that they do not see each other.

3.126. Based on information received in this inquiry<sup>102</sup>, the committee supports programs for women to deal with sexual assault. If strip searches are required they should be undertaken by female staff trained in Post-Traumatic Stress Disorder (PTSD).

### ***Recommendation 15***

**3.127. The committee recommends that the project brief clearly inform prospective tenders that:**

**(i) female prisoners should have equal access to any resources, services, programs (including employment and education) and staff compared with men; and**

**(ii) female prisoners will also need access to gender-specific and specialist women's programs, services, health practitioners and staff.**

### ***Recommendation 16***

**3.128. The committee recommends that the project brief require that prospective bidders be required to submit a Plan for Female Prisoners and Detainees which demonstrates how they will meet the needs of this category of prisoners/detainees in terms of building design and provision of facilities, programs and staff.**

## **Indigenous prisoners**

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<sup>102</sup> WAOD, *Submission*

3.129. There is a continuing high rate of incarceration of indigenous people in the ACT, as there is in prisons across Australia. In 1997/98, 8.3 per cent of detainees were Aboriginal.<sup>103</sup>

3.130. The committee considers that the main goals for the Government and prison operator will be to;

- reduce the proportion of indigenous people incarcerated through programs to reduce the recidivism rates; and
- provide for early intervention so indigenous people commit less crimes and fewer indigenous people are incarcerated in the first place.

3.131. The design of the prison should allow for consultation with the Aboriginal Justice Advisory Committee and bidders should be required to explain how their design reflects RCIADIC recommendations.

3.114. The prison operator will have primary responsibility for ensuring appropriate strategies are in place to increase the educational, employment and social skills of indigenous prisoners which are necessary to impact on recidivism rates. Examples of strategies which could be used include:

- employment of indigenous staff proportional to the numbers of indigenous prisoners;
- employment of an Aboriginal Liaison Officer;
- commitment to consult with Aboriginal prisoners and detainees about their needs and to consult with the ACT indigenous community;
- the provision of culturally relevant programs based on best practice in Australian prisons;
- provision of cultural support workers;
- the provision of support and visiting services for indigenous inmates and detainees to help prepare bail applications;
- protocols to deal with racism in the prison; and
- education for all prisoners on racism.

3.132. A submission from Mr Fred Leftwich and Mr Jim Jeffrey argued for the following to improve the situation of indigenous prisoners. Bidders for prison management should be required to explain how they intend implementing RCIADIC recommendations and this should be considered as a factor in the

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<sup>103</sup> ACT Department of Justice and Community Safety *Annual Report 1997/98*, Volume 1, p32.

selection of a prison operator. The Aboriginal Justice Advisory Committee should be consulted in this process. Following selection of the successful tenderer, the prison operator should be required to submit their plans for implementing RCIADIC to the general public for consultation. They should also be required to submit an annual report to the Legislative Assembly on the implementation of the RCIADIC recommendations. The committee supports these suggestions.

3.133. Some prisons, such as the Lotus Glen Prison, appeared to provide a culturally relevant environment, with programs in Aboriginal art and accommodation organised to provide cultural support for prisoners. Aboriginal artwork was displayed in prisoner's accommodation.

3.134. The committee suggests that the ACT Government research best practice for indigenous prisoners and provide this information to bidders for their consideration and to the Standing Committee on Justice and Community Safety for information

3.135. The matter of early intervention and prevention is mostly the responsibility of the ACT Government. The Government should take initiative in developing preventative strategies which deter young indigenous offenders from either beginning or continuing to engage in criminal conduct. Some of this work could be done in Quamby and some in the community. Members of the ACT's indigenous community have offered to provide information to the committee and/or Government on such strategies and the committee strongly suggests that government officials take advantage of this offer.<sup>104</sup> The ACT Council of Churches has strongly advised the Government to incorporate the wisdom of Aboriginal and Torres Strait Islander people in planning and operation of the prison.<sup>105</sup>

3.136. The ACT Government recently established an Aboriginal Justice Committee, comprising community representation. The committee views this as a positive step and strongly supports the involvement of this committee in the planning for the ACT prison.

### ***Recommendation 17***

**3.137. The committee recommends that the project brief require that prospective bidders provide information on how they intend to work with indigenous prisoners to achieve significantly higher rates of rehabilitation than under the present system and that this be taken into account in the assessment of project proposals.**

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<sup>104</sup> Mr Fred Leftwich, *Transcript*

<sup>105</sup> ACT Council of Churches, *Submission*

### **Recommendation 18**

**3.138. The committee recommends that:**

**(i) bidders for prison design, construction and management should be required to explain how they intend implementing RCIADIC recommendations as part of a Plan for Indigenous Prisoners and Detainees and this should be considered as a factor in the selection of the successful builder of the prison and the prison operator; and**

**(ii) the Aboriginal Justice Advisory Committee should be consulted in this process; and**

**(iii) the ACT Government and the prison operator should be required to submit an annual report to the ACT Legislative Assembly on the implementation of the RCIADIC recommendations.**

### **Prisoners with special needs**

3.139. The committee's attention was drawn to certain categories of prisoners with special needs.

3.140. Elderly prisoners, that is prisoners 50 years and over, comprise an increasing proportion of the prisoner population. The Australian Institute of Criminology has recently revealed that in 1997, inmates over 50 years in Australian prisons comprised 7.4 per cent of the prisoner population, compared with 4.1 per cent in 1987.<sup>106</sup> Sixty-six per cent of elderly prisoners were admitted to a correctional institution for the first time.<sup>107</sup> Elderly prisoners include first time inmates, repeat offenders and those who grow old in prison due to a long sentence. Elderly prisoners have specific needs, particularly in health care, which contribute to a higher management cost. Planning for the prison will need to take account of these special needs with the possible provision of preventative diet exercise and smoking programs, special nutrition/dietary care, housing and inmate aids. Reintegration into the community also poses special challenges if they have no family, friends or jobs.<sup>108</sup>

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<sup>106</sup> Grant, A, *Elderly Inmates: Issues for Australia*, Australian Institute of Criminology, Trends and Issues Paper No. 115, p1.

<sup>107</sup> *ibid*

<sup>108</sup> *ibid*

3.141. Another category of prisoners with special needs is very young prisoners, between the ages of 18 and 20. The Quakers have suggested that young prisoners be accommodated in separate areas and be provided with separate programs.<sup>109</sup> The committee considers this idea may have merit and the Government should give some consideration to how it will deal with young prisoners. In any case, planning for young prisoners should keep in mind the need to keep them safe from violent and sexual assaults and to reduce their exposure to hardened criminals. Young prisoners represent an opportunity for rehabilitation as they still have the potential to change away from criminal behaviour to become law-abiding, responsible members of the community.

3.142. Prisoners with intellectual disabilities also have special needs. ACTCOSS advised that a recent survey of NSW prisoners revealed that 12-13 per cent have intellectual disabilities.<sup>110</sup> It is likely that the ACT prison population has a similar proportion of prisoners with intellectual disabilities. The Government should investigate this as part of the planning process for the prison.

3.143. Prisoners from non-English speaking backgrounds may also require special attention. The Parole Board advised that we have a prison population which reflects our multicultural society and we need to understand what their special requirements are.<sup>111</sup> Some appropriate strategies may include the provision of interpreters, translated information and contact with cultural workers.

3.144. Prisoners with numeracy and literacy difficulties will also require special attention. The ACT facility should provide appropriate programs with the aim of all prisoners having adequate numeracy and literacy skills upon release.

3.145. Prisoners with mental illness are a key group requiring special programs and attention. This issue is discussed in paragraphs 3.83-3.85.

## **Remand Prisoners**

3.146. The committee learnt about the differences between detainees (remand prisoners) and sentenced prisoners. Detainees are usually more difficult to manage as they are uncertain about their future. They also have not been found guilty of a crime and need to be treated differently from sentenced prisoners.

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<sup>109</sup> Quakers, *Submission*

<sup>110</sup> ACTCOSS, *Submission* p10.

<sup>111</sup> ACT Parole Board, *Transcript*, 18 May 1999, p145.

3.147. Evidence put to the committee consistently supported the need to separate remand prisoners from sentenced prisoners.<sup>112</sup> The committee also received evidence that remand prisoners are more likely to be 'at risk' than sentenced prisoners.<sup>113</sup>

3.148. Planning for the ACT prison facility will need to take into account the different needs of sentenced prisoners and detainees. It will be necessary to segregate different classification levels and categories within the remand population. Detainees are usually incarcerated for short periods than other prisoners and will require tailored programs which reflect this.

### ***Recommendation 19***

**3.149. The committee recommends that the project brief require prospective bidders to provide a Plan for Detainees when tendering for the building, designing and management of an ACT prison complex which provides for separation of detainees from the mainstream prisoner population.**

### **Federal prisoners**

3.150. The committee understands that Federal prisoners are placed in state/territory prisons as the Commonwealth does not have any such facilities. The committee also understands that the Commonwealth provides funding for states/territories to house these prisoners through the Commonwealth grants Commission. The committee would appreciate receiving details of how this is arranged and an assurance that the ACT will not face any additional liability associated with the housing of federal prisoners in the ACT facility.

### ***Recommendation 20***

**3.151. The committee recommends that the ACT Government provide detailed advice to the Standing Committee on Justice and Community Safety on how funding is provided for Federal prisoners in state/territory prisons and an assurance that the ACT will not face additional liability if the ACT facility houses federal prisoners.**

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<sup>112</sup> For example, this was conveyed by prison officers and managers on visits to interstate prisons.

<sup>113</sup> *ibid*

## Prison food and exercise

3.152. When visiting interstate prisons, the committee observed many prisoners living in self-contained houses, housing 4-8 prisoners. These houses had their own kitchens and prisoners cooked either for themselves or shared the cooking.<sup>114</sup> Some prisons allowed for growing vegetables and these were used in food preparation. The committee found the option for prisoners to have more control over the diet and cooking appealing; it enables prisoners to adjust to a more 'normal' lifestyle and should assist reintegration into the community upon release. The committee was impressed with the idea of prisoners growing food within the prison and believes this should be encouraged in the ACT facility.

3.153. Mr Doug McIver alerted the committee to information on how food and chemicals can be a factor in behavioural disturbances. He gave examples of excessive sugar causing low blood sugar levels which can lead to violent acts.<sup>115</sup> Prison authorities should consider providing for nutritional diagnostic assessments and dietary advice, possibly through the assistance of community volunteers. These types of measures may assist in management of the prisoners' behaviour within the facility and assist some prisoners changing their behaviour upon release.

3.154. Exercise is another important factor identified as an important influence on mood and behaviour. Appropriate opportunities for exercise should help improve the overall mental health of prisoners. Organised sport could be run with the assistance of community volunteers.

## Post release programs

3.155. The committee received strong evidence that planning for post-release was a significant issue.<sup>116</sup>

3.156. The Parole Board advised it has noticed a significant increase in breaches of early parole by current ACT parolees.<sup>117</sup> They said many prisoners are 'manifestly unprepared by their experience in gaol for re-entry into the community, so they are almost doomed to failure unless intensive

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<sup>114</sup> eg Deer Park Women's Prison, Lotus Glen Prison, Borallon Prison and Fulham Prison.

<sup>115</sup> Mr Doug McIver, *Submission*

<sup>116</sup> eg Anglicare Social Justice Committee, *Submission and Transcript*, 17 March 1999, p37, ACTCOSS *Submission*, WAOD *Submission*

<sup>117</sup> ACT Parole Board, *Transcript*, 18 May 1999

supervision to overcome a lack of any preparation in the gaol system can be provided.<sup>118</sup>

3.157.The committee was informed repeatedly that prisoner post release programs need attention.<sup>119</sup> Mr Brenton Holmes drew the committee's attention to a 1996 Senate report which highlighted that few factors are more vital to the successful rehabilitation of offenders than the support they receive during the months preceding and following release from custody with the period immediately following release the most critical phase.<sup>120</sup>

3.158.The committee would like to see an improvement in post-release outcomes and this will require new policies and programs.

3.159.WAOD suggested the formation of a post-imprisonment support group for women and children covering housing, financial, legal and emotional issues.<sup>121</sup> WAOD noted that the risk of overdose and possible death is greatly heightened on point of release from the prison system. Bridging support (including relapse prevention skills) needs to be established before leaving prison so that on release the chance of a drug overdose is reduced. Upon release prisoners need adequate identification and support in accessing to Centrelink. Prisoners will need practical help such as clothing and hygiene supplies. Prisoners will require a preparation for release program. The first few days of release are found to be the most stressful. A halfway house may be appropriate for some prisoners and female prisoners should have access to a gender-specific halfway house.<sup>122</sup> These appear to be admirable suggestions which should be taken seriously by Government.

3.160.It is suggested that the Government consider linking responsibility for the outcomes of the post-release, parole period with responsibility for the prison outcomes. This may provide greater incentive for the prison operator to ensure the prisoners are adequately prepared for release. The Government should also consult with the ACT community about possible post-release programs and the role of Government in implementing and funding these programs. The Government could also initiate some research before the prison is established into the reasons for these breaches of early parole and this information could be used in the development of appropriate post-release programs.

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<sup>118</sup> Professor Hambly, *Transcript*, 18 May 1999, p142.

<sup>119</sup> eg Anglicare Social Justice Committee, *Submission and Transcript*, 17 March 1999, p37, ACTCOSS *Submission*, WAOD *Submission*

<sup>120</sup> Senate Committee on Employment, Education and Training, *Report of the Inquiry into Education and Training in Correctional Facilities*, April 1996.

<sup>121</sup> WAOD, *Submission*, p6.

<sup>122</sup> WAOD, *Submission*, p7

## ***Recommendation 21***

**3.161. The committee recommends that:**

**(i) the project brief require that the prison operator be required to have some responsibility for post-release transition and programs and performance incentives and penalties be included in the contract to promote the success of this stage;**

**(ii) the Government consult with the ACT Prison Project Committee about possible post-release programs and the role of Government in implementing and funding these programs; and**

**(iii) the Government initiate research into prisoner activity in the post-release period (including parole breaches) under the current system and use this information in the design of future post-release programs.**

### **Which prisoners should the facility house?**

3.162. The CPSU has highlighted that having only one single prison will create problems. They gave the example that prison management may need to be able to move prisoners around different levels of security and to different prisons, particularly in the management of difficult prisoners. This option is likely to be limited if the ACT has only one facility.<sup>123</sup>

3.163. One option for dealing with this issue is to invite expressions of interest from State governments and private operators to provide specialist options for transfer of a small number of prisoners. This could be for reasons of psychiatric or other specialist help needed and for management reasons when they have to be separated from other prisoners or can no longer be managed in the ACT facility. However care should be taken not to just export the most difficult psychiatric prisoners as a general policy- these may be the prisoners who are most in need of the opportunity to be located close to family, friends and local community support agencies. This option should only be exercised in exceptional circumstances. The prison operator should be

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<sup>123</sup> CPSU, *Transcript* p88

clear that they are expected to manage nearly all prisoners, including difficult prisoners.

3.164. Mr Ian Morse and Mr Bill Aldcroft suggested that the ACT prison should cater for regional NSW prisoners in addition to ACT prisoners.<sup>124</sup> This suggestion should be given serious consideration by the Government. It would enable regional prisoners to have closer access to their families and provide a source of revenue for the ACT Government. It may also provide for added flexibility in the design of the prison. If for example a 300-bed facility is built, but it only houses 180 ACT prisoners and detainees over the next few years, then allowing for regional prisoners would enable the operator to make the most of the prison capacity. The committee notes, with disappointment, that discussions have not commenced with NSW over possibilities in this regard.

3.165. Another important question is what security levels the prison should accommodate. In keeping with the principle that we need a local prison so our prisoners can access families and build community ties, the committee supports the prison catering for all levels of security.

3.166. Female prisoners should also be accommodated, although it is recognised that this will create some planning challenges for the designer. This is justified because these prisoners should have the opportunity for close family contact and they are more likely to be rehabilitated if the ACT has control over the prison conditions and programs.

3.167. The committee does not make a recommendation on the capacity of the prison. This is a matter for expert planners and should be done based on detailed analysis of prisoner data. The prison design should allow for flexibility, with significant amounts of spare land in the surrounding area which could be used to build new building in the future if necessary.

## ***Recommendation 22***

**3.168. The committee recommends that the ACT prison facility should cater for:**

- **all security levels of prisoner (minimum, medium and maximum);**
- **male and female prisoners**
- **remand and sentenced prisoners ;**
- **regional prisoners; and**

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<sup>124</sup> Mr Ian Morse, *Submission*, Mr Bill Aldcroft, *Submission*

- **prisoners with psychiatric conditions.**

## **Timing**

3.169. Evidence was presented to the committee that many of the problems in prisons relate to new prison being filled too quickly.<sup>125</sup> The recent report by the Australian Institute of Criminology on deaths in custody illustrated how more deaths occur in new prisons.<sup>126</sup> The problems at Port Phillip Prison have also been attributed to teething problems. The operator, Group 4 had only provided correctional services in Australia for a relatively short time and so may still be 'settling in' as far as routines are concerned.<sup>127</sup>

3.170. The ACT can learn a lot from the experiences of other jurisdictions on this matter. The Government has already indicated it is aware of this issue.<sup>128</sup>

3.171. The committee suggests that the prison facility be planned so that the numbers of inmates increases gradually. The prisoners to be housed include ACT prisoners transferred from NSW prisons, newly sentenced ACT prisoners and ACT detainees awaiting court hearings and/or sentences. The first part of the facility could be the remand centre and perhaps a women's facility. After this the men's facility could be slowly filled.

## ***Recommendation 23***

**3.172. The committee recommends that the new ACT prison facility be filled with prisoners and detainees at a controlled rate in stages for different categories of prisoners, and that the project brief invite submissions on how gradual accommodation should be managed.**

## **Research**

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<sup>125</sup> This information was provided by prison officers in visits to interstate prisons

<sup>126</sup> Dalton, V, (1999) Australian Institute of Criminology, *Suicide in Prison 1980-1998: National Overview and Data in Private Prisons 1990-99: A Comparative Study*

<sup>127</sup> Biles, D and Dalton V, (1999) Australian Institute of Criminology, *Deaths in Private Prisons 1990-99: A Comparative Study*

<sup>128</sup> ACT Government, *Submission*

3.173. The prison facility should foster a research culture. The research culture should include a concentration on research within the ACT institution, including pilot programs to test innovative ideas and comparative studies with other prisons. It should also include an emphasis on research-based management so that programs and practices within the ACT facility are based on international best practice.

3.174. The Government has already signalled an emphasis on research-based programs. For example, the Minister for Justice and Community Safety has stated the Government will develop measures ‘using scientific data to develop new programs in the prison, building on experience in Australia and overseas, to promote rehabilitation and reduce recidivism’.<sup>129</sup> However the committee has seen little evidence of work towards this stated goal.

3.175. It will require a much more open philosophy on transparency of information and access to researchers than private operators in Australia have demonstrated to date. Anglicare’s Social Justice Committee and the CPSU pointed to anecdotal reports from researchers in corrections in Australia suggest that the operators of private prisons are extremely reluctant to cooperate in any way with that research.<sup>130</sup>

3.176. The research culture should incorporate an emphasis on evaluation using scientific data and this will need to be appropriately funded. The project brief and contract should provide for this emphasis on a research culture.

#### ***Recommendation 24***

**3.177. The committee recommends that the project brief highlight the importance of the prison facility having a research culture which:**

- (i) influences the programs and practices in the prison; and**
- (ii) encourages researchers to conduct research into the facility.**

#### ***Recommendation 25***

**3.178. The committee recommends that the contract include incentives and penalties to encourage research.**

#### **Recommendation 26**

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<sup>129</sup> Mr Gary Humphries MLA, Minister for Justice and Community Safety, *Media Release*, 23 June 1999

<sup>130</sup> Anglicare, *Submission* and CPSU, *Submission*

**3.179. The committee recommends that the ACT Government:**

**(i) provide a legislative basis ensuring access for researchers to the prison; and**

**(ii) ensure that appropriate funding is made available for research and evaluation of programs.**



## **4. PUBLIC AND PRIVATE MODELS**

4.1. The question of whether the ACT prison should be 'public' or 'private' is one of the most contentious aspects of the inquiry.

4.2. Although the question has been commonly framed as a stark choice between a public or private prison, the reality is there are many variations of public/private ownership and management. The terms 'public' and 'private' are sometimes used too loosely in discussions about prisons. There is actually a range of possibilities for different components of a corrective services system to be publicly or privately managed or owned.

4.3. The committee has given careful consideration to the philosophical, financial and quality implications of public and private management and ownership of the ACT prison facility with the aim of recommending arrangements which maximise the public interest. The committee has been limited in its inquiry to some extent, particularly in connection with financing costs, where no detailed information was available.

4.4. The elements which must be addressed to maximise the public interest include: rehabilitation and restorative methods and programs designed to reduce recidivism; efficiency; cost effectiveness; openness to community involvement; transparency of management; strong accountability arrangements; and capacity for co-ordination with other components of the broader corrective services system. Some of these desirable goals conflict with others. The arrangements for financing, design, construction, ownership and management must be such as to ensure the optimal outcome across all of these objectives.

### **1. BACKGROUND**

4.5. Australia has seen an increasing number of private prisons and increasing numbers of prisoners housed in private prisons over the past 5 years. Currently there are three private prison operators in Australia: Group 4; Corrections Corporation of Australia (CCA) and Australasian Corrections Management (ACM).

4.6. While private prisons in Australia housed approximately 18 per cent of the prisoner population in 1997, they are expected to house over 25 per cent by

2000.<sup>131</sup> Victoria and Queensland have demonstrated the strongest commitment to prison privatisation. Victoria houses a greater proportion of its prisoner population privately than does any other jurisdiction in the world, with 50 per cent of its prisoners in a private prison. If the ACT were to have a private prison we would be housing close to 100 per cent of our prisoners privately and this would be the highest rate in the world.<sup>132</sup>

**Table 4: Prison Developments in Australia, 1990-2000**<sup>133</sup>

| <b>Date</b> | <b>Prison</b>               | <b>Rated capacity</b> | <b>Cumulative numbers and percentages</b> | <b>Operator</b> |
|-------------|-----------------------------|-----------------------|---|-----------------|
| 1990        | Borallon (Qld)              | 240                   | 240 (1.9%)                                | CCA             |
| 1992        | Arthur Gorrie (Qld)         | 380                   | 620 (4.4%)                                | ACM             |
| 1993        | Junee (NSW)                 | 600                   | 1220 (8.0%)                               | ACM             |
| 1994        | Arthur Gorrie (Qld),Phase 2 | +198                  | 1418 (9.3%)                               | ACM             |
| 1995        | Mount Gambier (SA)          | 125                   | 1543 (10.1%)                              | Group 4         |
| 1995        | Borallon (Qld) Phase 2      | +185                  | 1728 (11.2%)                              | CCA             |
| 1996        | Arthur Gorrie (Qld),Phase 3 | +54                   | 1782 (11.5%)                              | ACM             |
| 1996        | Deer Park Vic               | 125                   | 1907 (12.2%)                              | CCA             |
| 1997        | Fulham Vic                  | 600                   | 2507 (14.7%)                              | ACM             |
| 1997        | Port Phillip, Vic           | 600                   | 3107 (18.3%)                              | Group 4         |

<sup>131</sup> Harding, Richard, (1998) Australian Institute of Criminology Trends and Issues Paper 84, *Private prisons in Australia: the second phase*

<sup>132</sup> This assumes a small number of prisoners may be sent to prisons in other jurisdictions under special contract arrangements.

<sup>133</sup> Harding, Richard, (1998) Australian Institute of Criminology Trends and Issues Paper 84, *Private prisons in Australia: the second phase*

## 2. FINANCING, DESIGN, CONSTRUCTION AND OWNERSHIP

4.7. The committee has considered the privatisation question with the understanding the ACT will need to choose between the following options:

- Full public sector financing, designing, ownership, building and managing the prison;
- Public sector financing, designing, building and ownership with a private operator managing the prison;
- Public sector financing, designing, ownership, building and management of the prison with privately run programs and services;
- Public ownership and private financing, designing, building and management;
- Private sector financing, designing, building and ownership and public sector management; and
- Private sector financing, designing, building, ownership and management.

4.8. The terminology commonly used to describe some of these models includes Design, Construct and Operate, Design and Construct (D&C), Build, Own, Operate (BOO), Build, Own, Operate and Finance (BOOF) and Build, Own, Operate and Transfer (BOOT) models.

4.9. The Government has stated a clear preference for private financing of the prison<sup>134</sup> and for the contracting of the construction and management of the prison from either the private sector or another state government department.<sup>135</sup> The committee understands that the competitive tendering process will allow for bidders to bid for different components; some may bid for all components, others may only bid for one aspect. The Government has signalled its opposition to an ACT public sector bid on the basis of cost of preparation of the bid and the lack of expertise available in the ACT's public sector.<sup>136</sup>

4.10. The committee has carefully considered the merits of public and private involvement in the financing, designing, building, and ownership of the prison below. The committee's analysis of public and private prison **management** is contained in pages 71-83 of this chapter.

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<sup>134</sup> Correspondence from Minister for Justice and Community Safety to Chair of Standing Committee on Justice and Community Safety dated 3 September 1999 and ACT Government, *Submission*

<sup>135</sup> ACT Government, *Submission*

<sup>136</sup> In private discussions with the committee

4.11. On the question of who should **finance** the prison, the Government argued that the cost of \$30-35 million for the prison is:

a cost which cannot be accommodated in the Budget at this time without significant impact. Private sector funding will ensure that the up-front construction costs will be borne by the private sector...with the construction costs being amortised over the 20 year life of the facility.<sup>137</sup>

4.12. The committee was not convinced that the Government's preference for private financing was based on strong evidence and sought further information from the Government.<sup>138</sup> It was particularly concerned that the ACT taxpayer would not have to pay any more than necessary for the financing of the prison.

4.13. The committee wrote to the Minister for Justice and Community Safety on 30 August 1999 seeking evidence that private financing of the construction costs would be cheaper than Government financing. The committee specifically asked the Government if the prison could be financed with public funds using part of the \$62 million budget surplus forecast for 2000/01 and if the Government had conducted a cost/benefit analysis comparing the real cost of public financing with private financing. The committee also sought evidence that a private financier could attract a more attractive financing arrangement than the Government with its AAA credit rating.

4.14. The Minister's responded with the following explanations:

- the operating surplus should not be considered a cash surplus and would be better used to provide for future capital works and to fund the ACT's superannuation liabilities and using \$35m from any budget surplus would be unpalatable;
- with direct Government funding of the prison, alternative uses of the funds would be forgone;
- if the Government borrowed the money using its high credit rating this would increase the Territory's level of liabilities, and increase the burden of debt redemption in the future years (the Government would also bear the risks, such as interest rate fluctuations, taxation legislation/change, building defects liability, building and plant durability, design suitability and design operability);
- the private sector is experienced in dealing with private financiers and competition may result in the real cost of private financing being less than the public sector cost of financing; and

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<sup>137</sup> ACT Government, *Submission*

<sup>138</sup> Correspondence from Chair of Standing Committee on Justice and Community Safety to Minister for Justice and Community Safety to, 31 August 1999 and briefing held on Monday 27 September 1999.

- economies of scale would mean private financing is more efficient than the Government attempting to estimate the cost of the construction of the prison and forgoing the benefit of a lower construction cost associated with the competitive tendering process.

4.15. In the Minister's view, the construction of the prison should be privately financed even though he admits, 'the Government has yet to undertake a detailed study comparing the cost of public sector financing of the prison construction and private financing'.<sup>139</sup>

4.16. The Government elaborated on its arguments in a briefing held on 27 September 1999 to discuss the financing of the prison.<sup>140</sup> The committee had expected the Government would provide hard quantitative evidence supporting private financing but was disappointed to hear only a re-iteration of the theoretical arguments presented in the correspondence. The committee was concerned that the Government has not undertaken a cost/benefit analysis of public and private financing using Australian data and extrapolating this to an ACT scenario before deciding that private is better. It is of the view that the Government is not in a position to decide against a public bid for financing until this cost benefit analysis has been completed, and neither is the committee.

4.17. The committee also questions the validity of some of the theoretical arguments presented by the Minister to substantiate a preference for private financing. The Government has stated that the cost of the prison, at \$30-\$35 million 'cannot be accommodated within the budget at this time without significant impact' and that 'using \$35 million from any budget surplus would be unpalatable'. It appears the Minister is claiming there is no money available for a socially responsible facility which will provide its own economic return to the community, but there is money available for grandstanding events such as the short soccer season at Bruce Stadium, a once every four year car race and a \$500,000 New Years Eve Party, to give some examples.

4.18. In evidence to the committee concerning the use of Australian private prison data, the Chief Executive of the Department of Justice and Community Safety said that a cost benefit analysis was not possible because in most jurisdictions, the data was subject to commercial in confidence restrictions. Information on the costs of three private prisons in Victoria has been published recently in a Melbourne newspaper.<sup>141</sup> The source of the information was quoted as from 'Prison Service Agreements between the Minister for Corrections and private prison contractors, released under FOI'. That information is summarised as follows:

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<sup>139</sup> Correspondence from Minister for Justice and Community Safety to Chair of Standing Committee on Justice and Community Safety, 2 September 1999.

<sup>140</sup> Private Briefing with the Standing Committee on Justice and Community Safety held on 27 September 1999 attended by Minister for Justice and Community Safety and government officials.

<sup>141</sup> *The Age*, 28 September 1999, 'Behind Private Walls', Features p13.

**Table 5: Costs of private prisons in Victoria**

| PRIVATE PRISON            | PORT PHILLIP                        | FULHAM              | DEER PARK<br>(WOMEN) |
|---------------------------|-------------------------------------|---------------------|----------------------|
| No of Inmates             | 600                                 | 600                 | 150                  |
| Cost to Build             | \$54 million                        | \$54 million        | \$16.5 million       |
| Annual Accommodation Fee  | \$8 million                         | \$8.4 million       | \$2.9 million        |
| Annual Corrections Fee    | \$14.2 million                      | \$15.9 million      | \$5.2 million        |
| Annual Performance Fee    | Max \$1.6 million                   | Max \$0.946 million | Max \$0.7 million    |
| Start up Fee              | \$4.3 million                       | \$2.7 million       | Nil                  |
| Local Council Concessions | \$2.4 million in rates and services | Nil                 | Nil                  |

4.19. These figures point to the availability of Australian private prison data to which Australian public prison data could be added and from which an extrapolation into an ACT scenario is possible.

4.20. The committee remains to be convinced that private financing of the construction is necessarily more cost effective than direct Government financing.

4.21. The **ownership** of the prison is a critical issue. The committee considered two options: firstly that the Government own the building from the outset; secondly that the building be privately owned for a 20 year period with ownership to be passed to the Government at the end of the 20 years.

4.22. The benefits of the first option include greater Government control and greater flexibility with the opportunity to change the prison manager if performance was unsatisfactory. The disadvantages may include forgone opportunity to transfer risk to the private operator and possibly forgone cost savings which may have been achieved through a private financing/ownership/construction/management tender. The second option has the benefit of transferring risk to a private operator but could result in less flexibility and control for Government and the acquisition of an obsolete 20 year-old building.

4.23. There have been submissions stating that public ownership is preferable to private ownership because of the community perception of responsibility for the administration as well as allocation of penal punishment. Prisoners Aid said:

*A government-operated prison reinforces the principle that prisoners are still part of the community and are not handed over to private managers.*

4.24. It is suggested that, before making a decision about the ownership of the ACT prison facility, the ACT Government should consult with the South Australian Government about its justifications for maintaining the Mount Gambier Prison in public ownership and with the Queensland Government about its reasons for deciding on Government ownership of the new SEQ1 and SEQW prisons.

### ***Recommendation 27***

**4.25. The committee recommends that a decision on ownership of the prison facility be deferred until comparative costs are available on public and private financing, design, construction and management.**

4.26. On the matter of prison **design**, it is noted that the private operators have generally supported a Design, Construction and Operate tender where the design is controlled by the requirements of the operator who would be running the facility. They assert that it gives much greater scope for innovation leading to superior performance at lower cost to the taxpayer whilst at the same time offering a level of accountability and risk transfer not available under the public system.<sup>142</sup> The committee supports the view put by Mr Ian Morse that the contract should leave some flexibility for design input from the operator but they should not have the power to make decisions about design.<sup>143</sup> The committee does, however, support the appointment of the operator of the prison before construction of the facility begins. The logic behind this view was demonstrated during the committee's visits to interstate facilities where it was clear that the design and construction will have an impact on what the operator can do. The operator has an interest in ensuring the prison design is consistent with their operating philosophy and management strategies. It is more cost-effective to incorporate this input during construction, rather than have to make changes later.

4.27. The **construction** of the prison clearly lends itself to contracting out.

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<sup>142</sup> CCA, *Submission*

<sup>143</sup> Mr Ian Morse, *Transcript*, p53

4.28. The question of whether the prison should be **managed** by a private or public operator requires consideration of numerous, complex issues and these are discussed in the next section.

### **3. PRIVATE VERSUS PUBLIC PRISON MANAGEMENT**

4.29. Only two submissions presented strong arguments in favour of a privately managed prison: the Government submission and one from a private operator. Of the remaining submissions, about ten presented strong arguments against having a privately managed prison and about forty expressed no strong preference for either a privately or publicly managed prison.

4.30. The main arguments **supporting** a privately managed prison are centred on cost-effectiveness and expectations of improvements in traditional prison culture with more scope for innovation. The main arguments **against** a privately managed prison are based on in-principle philosophical objections, concerns about reduced transparency and accountability, concerns about government coordination being impeded and questioning of the validity of cost savings purported to accrue from privately managed prisons

4.31. The arguments for and against privately and publicly managed prisons are considered below under the following six broad headings:

- ideology and philosophy;
- cost and efficiency;
- quality of the prison culture and programs;
- Government co-ordination, planning and control;
- accountability and transparency of information; and
- practicality.

#### **Ideology and Philosophy**

4.32. The committee received ideological objections to the ACT establishing a 'private' prison from Justice Action, the previous Official Visitor, the Quakers, the CPSU and Anglicare's Social Justice Committee.

4.33. The question of whether the State can or should delegate institutionalised disciplinary decisions to the private sector is a critical one. Anglicare's Social Justice Committee put the view that the control of corrections services must remain unequivocally within the public domain.<sup>144</sup> The CPSU opposes a private prison in the ACT because they believe the provision of correctional services is an essential Government service. The CPSU supports Moyle's view that:

power to allocate punishment is non-delegable within Australian society because governments exercise their power through the authority given to them by suffrage. Private companies do not have the same authority as governments to exercise these processes. Within a mixed economy, private companies represent their own proprietary interest which should not be confused with the exercise of political power based on authority given to governments by citizens. (1994, p3)<sup>145</sup>

4.34. Justice Action argued that profiting from the incarceration of public subjects is 'philosophically and morally repugnant'.<sup>146</sup> The Quakers are opposed to privately run prisons because they believe making a profit from prisoners is a 'form of slavery'.<sup>147</sup> Prisoners Aid expressed a preference for a government-run prison because it reinforces the principle that prisoners are still part of the community.<sup>148</sup>

4.35. Some submissions and witnesses highlighted inherent adverse effects related to the profit motive such as incentives for a capacity-driven prison mentality and services and programs provided to prisoners. For example Justice Action states a gaol built for 300 prisoners will receive tenders from the private sector based on an anticipated incarceration level conducive to maximising their profit and a 'capacity driven' prison mentality will be implicitly sanctioned.

4.36. The CPSU pointed out that private operators inevitably have a number of conflicts of interest. These include a vested interest in the rates of incarceration and recidivism, a vested interest in receiving only low security prisoners, prisoners without special problems such as psychiatric or infection problems and prisoners with no history of violence. The CPSU also noted that since public enthusiasm for imprisoning criminals is demonstrably variable, it might vary in response to publicity campaigns orchestrated and paid for by firms with a financial interest in locking more people up.<sup>149</sup>

4.37. However, the moral arguments do not all lie with those who oppose private prisons. According to Professor David Biles, there are two opposite arguments based on the public interest on the question of whether it is better to have public or private prisons. One argument is that it is immoral for

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<sup>144</sup> Social Justice Committee of Anglicare, *Submission*

<sup>145</sup> CPSU, *Submission*

<sup>146</sup> Justice Action, *Submission*

<sup>147</sup> Quakers, *Submission*

<sup>148</sup> Prisoners Aid, *Submission*

<sup>149</sup> CPSU, *Submission*

private interests to make a profit out of prison and the other that it is morally unacceptable for government to spend more money that it has to.<sup>150</sup>

4.38. The Government submission put the view that philosophical criticisms of private prisons are often based on confusion between the actual allocation of punishment and the administration of punishment and that the issue of motivation (profit or not) is not relevant to the justice or the effectiveness of the punishment. The Government conceptualised the role of the operator as administering punishment. The submission also states that problems with private prisons are over reported.<sup>151</sup> However the Government did not provide sufficient evidence to support this view.

4.39. Others supported a view that it may not be that important whether the prison is public or private and the real issue should be the philosophical approach of the prison. For example one submitter noted:

the debate between public and private cannot usefully be made in the absence of philosophical approach. If the community can agree on the philosophical approach of the prison, and is consistent in its interest in the success or otherwise of the approach and the management of the prison there may be little to choose between public and private.<sup>152</sup>

4.40. The committee does not have a unanimous view on the ideological and philosophical issues. Committee members can see merit in each side of the argument. The committee agreed that, on balance, taking into account issues of cost and political reality, the philosophical in-principle objections to private prisons are not strong enough to substantiate the case against having a privately managed prison in the ACT. However, if the ACT Government does decide to contract the building/design and/or management of a prison to a private operator, this should only be done with strong safeguards which ensure the public interest prevails over the profit motive. The Government must not abdicate its responsibility for the prison and its outcomes.

## **Cost and Efficiency**

4.41. The Government has claimed there are potential cost savings associated with a privately managed prison.

4.42. The Government has estimated that when compared with the costs of current arrangements with NSW, the costs of designing, constructing, financing and operating an ACT prison will result in a \$4.5 million saving over 20 years.<sup>153</sup> This translates to \$225,000 per year. The committee was not informed on what basis the figures were calculated. The Government has not

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<sup>150</sup> Professor David Biles, *Transcript*, 18 May 1999

<sup>151</sup> ACT Government, *Submission*

<sup>152</sup> Ms Hellen Cooke, *Submission*

<sup>153</sup> ACT Government, *Submission*

identified cost savings from private management in isolation from the designing, construction and financing.

4.43. The cost of building an ACT prison has been projected at between \$30 million and \$35 million. It is acknowledged that until the program definitions are completed, it will be hard to estimate exactly how much the prison will cost. However, given the significant costs of the Victorian prisons, all of which were built in recent years, there is some indication that the higher estimate of \$35 million may be underestimated.

4.44. The Government provided evidence of UK research which identifies savings between 9 and 22 per cent for private prisons compared with public prisons.<sup>154</sup>

4.45. Australasian Correctional Services (ACS) pointed out that private sector models enable competitive forces to be applied to most or all of the components of the procurement process, not just the construction phase. As a result, they say the cost of finance, design, construction and ongoing operational management have fallen significantly. According to ACS, the Victorian Government has indicated that savings of up to 40 per cent have been achieved against government benchmarks through the adoption of the BOO<sup>155</sup> process for new prisons in the state.<sup>156</sup> However the Victorian Auditor-General reported that there is still some uncertainty whether the cost savings expected to flow from the prison reforms will be realised.<sup>157</sup>

4.46. At this stage the committee is not convinced that a privately-managed prison would definitely be cheaper than a publicly managed prison. The question of cost is very complex and Australian researchers have been impeded in attempts to conduct comparative public/private cost research due to the commercial confidentiality restrictions imposed by private prison operators.

4.47. The CPSU argued that private operators have admitted that their profit comes from changes in labour force arrangements such as the removal of penalty rates, locality allowances, and the reduction in trained and experienced staff. According to the CPSU, the practice has been to hire casual non-unionised staff with no previous experience of the corrections industry. The CPSU sees this practice as representing a deskilling of staff. The CPSU pointed out private prison companies have developed an identifiable pattern of not employing individuals who have public sector experience as base-grade corrections officers. The CPSU also highlighted

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<sup>154</sup> *ibid*, pp16-17

<sup>155</sup> The terminology used for the models includes Design, Construct and Operate, Design and Construct (D&C), Build, Own, Operate (BOO), Build, Own, Operate and Finance (BOOF) and Build, Own, Operate and Transfer (BOOT) models.

<sup>156</sup> ACS, *Submission*

<sup>157</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, *p vii and p17*

concerns about the low staffing ratio of correctional officers to prisoner in private prisons. The CPSU believes the claimed efficiencies of private operators are not real but a transfer of conditions from employees. In the view of the CPSU, contracting out promotes casualisation of the workforce, loss of skills and working conditions, and is particularly disastrous for the employment conditions of women and other disadvantaged groups.<sup>158</sup>

4.48. Community Legal Centres recently raised concerns about under staffing and lack of training and the impact on reducing self-harm rates particularly in Victoria's private prisons:

The Federation is concerned about under staffing caused by cost cutting that mean that staff are rushed in carrying out their duties. We also are concerned that those who have been identified at being at risk of suicide and are on suicide and self-harm watch are not being watched the requisite number of times by overworked and under trained staff. For example, it has been reported in relation to Port Phillip Prison that in March they were only 8 custodial officers on of an evening for 600 men (Herald Sun 7.3.98). With this staff to prisoner ratio there would be no capacity to under take a 'Suicide watch' when required nor fulfil their legislative and legal responsibility relating to 'duty of care'.<sup>159</sup>

4.49. The committee has some concerns about private operators achieving 'cost savings' through transfer of conditions from employees. While the abolition of some inefficient practices will be in the public interest this should not be taken to the extreme whereby the Government endorses harsh and unfair conditions for prison employees so that a private operator derives increased profits. These issues will require careful consideration during the tender assessment process.

4.50. The issue of monopoly also raises doubts about the real savings likely to be achieved by private operators. The ACT faces challenges of fully benefiting from private sector efficiencies if we are to only have one prison complex run by one private operator with no prospect of real competition. There is no other jurisdiction in Australia with just one private prison and no competition from either a public or private prison. The tender specification process and contract drafting will need to build in provisions which guard against the dangers of monopoly.

4.51. The CPSU questioned whether public authorities have a persuasive cost incentive not to monitor the operation of private prisons because this cost would diminish the savings supposedly arising from the privatisation. The CPSU claims these 'savings' have public interest consequences and social costs for the community, in terms of possible prisoner escapes and lack of rehabilitation. Safety and security problems are directly related to low staffing levels, inadequate training of staff, high staff turnover, lack of adherence to safety and security procedures, lack of vocational training, lack of health services for prisoners and failure to inform prisoners of their rights and obligations. The CPSU claims that security problems described in 1994 NSW Ombudsman's

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<sup>158</sup> CPSU, *Submission*

<sup>159</sup> *ibid*

report on the Junee prison included an increase in the number of violent assaults, and serious riots which resulted in a 'population transfer' of 'difficult' inmates to Goulburn and less demanding inmates to Junee.<sup>160</sup>

4.52. The CPSU also pointed out that one of the largest underlying elements in cost saving in the industry is the downwards classification of inmates and prisons. A maximum security prisoner is much more expensive to manage than a medium security prisoner. In the view of the CPSU, these cost savings are being made at the expense of the safety of the inmates, public and workers.<sup>161</sup>

4.53. The committee also considered the extent of real benefits for a local economy if a private operator is foreign-owned. A small number of large companies make up the market as providers of private prison services and these companies are predominantly subsidiaries of North American based companies.

4.54. In summary, the committee has some concerns about the claims for superiority of private operators in terms of cost and efficiency and does not accept without reservations that the assumption that private management will result in cost savings has been proven. While the introduction of private operators into the Australian prison system appears to have resulted in some efficiency savings, the extent of these savings has not been accurately measured. It is important not to get carried away with rhetoric but to be able to test the validity of claims with hard evidence. In addition, cost should not be considered in isolation from other values such as the quality of staff, programs and practices and the need for Government co-ordination and accountability. The ACT Government must conduct a detailed cost/benefit assessment of the projected costs of a privately managed prison compared with a publicly managed prison which includes quantification of social issues and the costs of monitoring and accountability.

### **Quality and innovation**

4.55. Another argument put forward by proponents of private prisons is that privately-managed prisons result in better quality programs and more innovation in practices and programs.

4.56. While the Government has given strong support to this argument claiming that the advantages of private prisons include 'the changing of traditional prison culture' and 'more innovative operational standards' it did not provide the committee with strong evidence in support of this contention.

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<sup>160</sup> CPSU, *Submission*

<sup>161</sup> *ibid*

However the committee did accept that private operators had introduced improvements and also witnessed some quality programs and practices when visiting interstate privately managed prisons.<sup>162</sup>

4.57. The committee also received evidence of the poor standard of programs and practices in some publicly managed Australian prisons.<sup>163</sup>

4.58. The committee believes that, potentially, a public operator could take the benefits of lessons learned from private operations. One private operator, CCA, admitted that

There is no doubt that lessons learned from the private sector have been fed into the State system. Key elements such as work practices have had a major influence on the way in which State centres have been redefined (12 hour shifts, operational staffing, rosters etc). More subtle influences include demilitarisation of uniforms, abolition of rank structure, unit management, staff selection and training and distinguishing security staff from prisoner contact staff.

4.59. The CPSU asserts that there have been significant gains in efficiency, effectiveness and equity without competitive tendering, through award restructuring, job redesign, benchmarking, and other forms of continuous improvement. In their view, proper consultation and negotiations with unions and the workforce can produce savings without the extra costs and accountability problems incurred through contracting out.<sup>164</sup>

4.60. ACTCOSS suggested that profit motive may impact on: the length of time and environment in which prisoners in private prisons are allowed to socialise out of their cell; the level and nature of support service provision; access to external support and advocacy services; standards of food and hygiene; and the nature of recreational and other activities in prisons.<sup>165</sup>

4.61. There is a problem when 'innovative practices' mean a lack of training and supervision. The CPSU quoted an example of what can occur when the tendency to recruit employees without public sector experience is established as a recruitment policy:

Justice Healy noted that the plaintiff was often denied the advice of a supervisor when he badly needed advice and support. When the plaintiff was able to seek the advice of supervisors he found that there were few experienced officers in the system to guide him. Recruitment of officers from the old prison system was kept to a minimum because it was the desire of the defendant's company to keep what was called 'old prison guard culture' out of the new system. This caused a real problem for the plaintiff because when he needed guidance and was able to seek the advice of the supervisor he found that the supervisor often did not know do.<sup>166</sup>

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<sup>162</sup> Visits to Mount Gambier Prison, Borallon Prison and Fulham Prison

<sup>163</sup> eg Evidence on the NSW prison system in ACTCOSS, *Submission p 5*, Mr Bill Aldcroft *Submission, p2*, Mr Leonard Barratt *Submission p2*,

<sup>164</sup> CPSU, *Submission*

<sup>165</sup> ACTCOSS, *Submission*

<sup>166</sup> CPSU, *Submission*

4.62. The committee noted that recent research has revealed that rates of deaths in custody are similar in privately managed prisons and publicly managed prisons.<sup>167</sup>

4.63. The committee is satisfied that the entry of private prison operators into Australia has led to more innovative practices and programs. But this does not mean that only private operators can produce innovative practices. The committee witnessed innovative and successful programs at a publicly managed prison in Queensland and concluded that a privately managed prison is not essential for the introduction of innovative practices and programs. It is therefore not valid to conclude that a private operator will necessarily produce superior programs and practices compared with a public operator. The Victorian Auditor-General has reported that some provisions in Victorian prison contracts currently work against the delivery of high-quality services within a competitive environment.<sup>168</sup>

4.64. Operators will have the opportunity to provide evidence of their capacity to implement high quality, innovative programs through the competitive tendering process. The relative merits of different bidders should be assessed when this information is made available to the Government through a competitive tendering process.

### **Government co-ordination, planning and control**

4.65. Co-ordination by government is a key issue in the establishment of the prison and its significance should be recognised in any assessment of the merits of public and private operators.

4.66. The Australian Institute of Criminology advised that regardless of whether the prison is publicly or privately run, it is vital the duty of care of the ACT Government be fully retained and that no agreements abdicating this responsibility be undertaken in any form for any part of the operations.<sup>169</sup>

4.67. There is potential for Government to abdicate a full sense of responsibility for the prison and correctives services if a private operator is chosen to manage the prison. In addition, co-ordination of a range of prison-related services will require a concerted effort and commitment to strategic planning.

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<sup>167</sup> Australian Institute of Criminology, *Suicide in Prison 1980-1998: National Overview and Deaths in Private Prisons 1990-99: A Comparative Study*

<sup>168</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, pvii and p150

<sup>169</sup> Australian Institute of Criminology, *Submission*

4.68. Anglicare pointed out that when a function of government is contracted out, the perception is created that the function is somehow no longer part of the public realm, and government's responsibility for it tends to dissipate.<sup>170</sup>

4.69. The committee noted in its first interim report that building an ACT prison provides an opportunity for the ACT community and Government to take responsibility for prison programs and outcomes compared to the current system where responsibility lies with the NSW Government. This opportunity should not be wasted.

4.70. The committee considers that a privately managed prison need not necessarily lead to reduced Government responsibility, co-ordination or flexibility, nor will it necessarily lead to a downgrading of alternative sentencing options. There are dangers that these problems could occur under private or public management if the Government does not develop a detailed strategic plan which maps the role of the prison in relation to other components of the corrective services system. Regardless of the management arrangements, Government must take care that such degradation does not occur.

## **Accountability**

4.71. Perhaps the most serious potential drawback of private prisons is their history of hiding information from the public and this has implications for public accountability. Private prisons in Victoria have been notorious for secrecy.

4.72. Mr Bill Aldcroft, the previous Official Visitor commented:

The difficulties of monitoring any prison system are very great and these can only increase under privatisation, where the company and the individuals controlling the prison have a major agenda to make a profit from the enterprise above all considerations. Any corporation in control of a privatised prison would have a strong interest in keeping the community, individuals and lobby groups quite separate from information about their operations. The ACT government currently have little expertise in the management and operation of a prison and would therefore find it difficult to assess the performance of private operators.<sup>171</sup>

4.73. Anglicare's Social Justice Committee noted the difficulties in assuring accountability. For example, attempts made under Freedom of Information (FOI) in Victoria to gain information about private prisons have involved expensive and time-consuming proceedings in the Administrative Appeals Tribunal. They noted that when the Senate Estimates committee conducted its 1996 inquiry into education and training in prisons, no submissions or public evidence were provided by the companies involved in private prisons in

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<sup>170</sup> The Social Justice Committee of Anglicare, *Submission*

<sup>171</sup> Mr Bill Aldcroft, *Submission*

Australia.<sup>172</sup> The Social Justice Committee of Anglicare believes existing private operators in Australia leave much to be desired in terms of openness to public scrutiny and noted the contrast with the USA where federal and state laws generally require that government contracts with private companies be publicly accessible.<sup>173</sup>

4.74. Women's Electoral Lobby suggested that privately run prisons are not accountable to the community or subject to the checks and balances that public scrutiny provides to public institutions. Where a contractor's main goal is financial viability, the means of achieving this may be substantially out of step with the wishes and ideals of the society in which it operates and that society may be unable to exert any controls over its operations or influence its standards.

4.75. The CPSU expressed concern about 'commercial in confidence' clauses in contracts between governments and providers of private prison services. CPSU states confidentiality and exemption from FOI provisions for commercial reasons represents a substantial diminishing of public accountability. Private companies engaging in the provision of public services should not be exempt from modern public administration standards. Freedom of information legislation, intended to ensure that citizens have reasonable access to information about and reasons for government decisions affecting them or the public interest, does not apply to all contractors. The history of 'commercial in confidence' clauses has led to less access to information that should be freely and readily available to citizens. The CPSU suggests the current freedom of information legislation may need to be reviewed to allow greater access to information.<sup>174</sup>

4.76. Mr Ian Morse pointed out the dangers for the ACT Government where there is a single facility involved:

No matter how comprehensive the contract, control of the facility under a private management contract system is in the hands of the private contractor. A non-performing contractor or barely performing contractor can do a great deal to frustrate in this case, the ACT Government, whilst sticking to the letter if not the spirit of the contract. If the manager was in breach of the contract, the problems associated with taking over the facility with perhaps 300 inmates would be logistically enormous where no alternative facilities exist, as would be the case in say NSW and Victoria where the privately run facilities represent a small proportion of total facilities.<sup>175</sup>

4.77. The Victorian Auditor-General's Report No.60 reported that the secrecy provisions of section 30 of the Victorian Corrections Act 986 rendered any financial information relating to the Government's contract with private prison operators subject to commercial confidentiality. The Victorian Auditor General, while having access to commercially confidential information, does not have the power to specifically disclose financial information to Parliament.

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<sup>172</sup> The Social Justice Committee of Anglicare, *Submission*

<sup>173</sup> *ibid*

<sup>174</sup> CPSU, *Submission*

<sup>175</sup> Mr Ian Morse, *Submission*

He called for a strong and credible regulatory framework which features a 'truly independent Correctional Services Commissioner'.<sup>176</sup>

4.78. The committee is extremely concerned that private operators will wish to keep information about the ACT prison secret. The possibility of restrictions on the transparency of information is a problem for public accountability and for researchers.

4.79. The Government has stated that it intends having the most open, transparent, accountable prison system in the country.<sup>177</sup> The Government submission states that the legislative framework will be the primary monitoring and regulatory mechanism. It also states the prison could have a full time contract monitor at the facility who would have access to all areas of the institution and staff and inmates at all times. The committee supports the on-site monitor and the need for a legislative framework but is not satisfied the Government has provided sufficient detailed evidence to satisfy the committee that it can and will fulfil its commitment to enhanced accountability.

4.80. The committee believes the issue of accountability must be given the highest priority in the project brief and contract. The committee has detailed its recommendations aimed at ensuring high standards of accountability in Chapter 5. Problems with accountability could occur with both publicly and privately managed prisons, but can be overcome under both models with a strong commitment by Government.

## **Practicality**

4.81. There are practical considerations for the ACT Government to consider in addition to considerations of ideology, cost, quality, coordination and accountability. This issue is particularly relevant to the question of whether the ACT Government should bid for the management of the prison.

4.82. The CPSU questioned whether an in-house option would be possible given the limited history of correctional services in the ACT.<sup>178</sup> They note that ACT public sector experience is principally confined to remand, periodic and juvenile detention. They expressed concern that a level playing field does not exist while the established private companies have significant market power, resources, specialised knowledge and expertise in contract negotiation.

4.83. The Government has not explicitly discussed in its submission whether it intends placing an in-house bid. However this option has been effectively

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<sup>176</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, pvii and p14

<sup>177</sup> Minister for Justice and Community Safety, Media Release, 23 June 1999

<sup>178</sup> CPSU, *Submission*

ruled out based on the Minister's stated preference for a private prison in media releases and public statements.<sup>179</sup>

4.84. The committee recognises there could be a significant cost associated with any ACT Government bid for the management of the prison. This would include the cost of establishing arrangements to protect the probity of the tender process and the cost of putting the bid together. The ACT Government has limited experience in managing prisons and is unlikely to be successful in the competitive tendering process.

4.85. One member of the committee is of the view that the Government should put in a tender. He believes a publicly managed prison is preferable to a privately managed prison mainly because of superior accountability mechanisms likely to be associated with it. He also sees scope for superior government coordination with a publicly managed prison. He does not believe the arguments of superior cost and efficiency of private sector are substantiated by strong evidence. In particular, he recognises that a privately managed prison will require significant monitoring by public authorities which will come at a cost. He believes the opportunity to have a publicly managed prison is worth the small additional cost of putting together a tender. He argued that the limitations in ACT public sector experience could be countered by hiring in experts from outside the ACT.

4.86. The majority of the committee has reserved its decision on this issue until the Government is able to supply detailed costings.

4.87. The committee can see both benefits and problems in an in-house bid. On the positive side, it would give an opportunity for the ACT to have a publicly managed prison which could avoid some of the pitfalls of private prisons and emulate some of the good practices and programs of private prisons. On the other hand, there could be added costs in preparing a bid and in providing structures to ensure the probity of the tender process. The committee believes this decision is a matter for Government to decide after giving due consideration to the matters raised in this report and after conducting a rigorous assessment of the costs and benefits of submitting a 'public' bid.

#### **4. THE COMPETITIVE TENDERING PROCESS**

4.88. The Government has expressed a strong preference for a competitive tendering process to be established with tender specifications to be finalised in late 1999, a full tender conducted shortly thereafter and the preferred bidder identified in the second quarter of 2000. The Government expects

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<sup>179</sup> eg Mr Gary Humphries, Media release, 31 March 1999

construction to commence shortly after the preferred bidder is identified and will take 18 months with commissioning of the facility to be complete in October 2001.<sup>180</sup>

4.89. The Government also intends establishing a consultant team to develop the tender specifications and assist in the management of the tender process. The project team will comprise financial, legal, construction, planning, probity, corrections and public relations specialists.<sup>181</sup>

4.90. The committee supports the Government's plans for a competitive tendering process although it is noted that the Government has not clarified whether it intends tendering all aspects of the prison project, that is, financing, designing, constructing and management of the prison. A competitive tendering process potentially allows both public and private operators to compete for the financing, design, construction and management of the prison.

4.91. The committee also supports the Government's proposal to engage consultants to assist in the tender process. However the committee is interested in monitoring the use of consultants and would like to receive regular reports detailing expenditure on consultants, work commissioned and outcomes achieved.

### ***Recommendation 28***

**4.92. The committee recommends that starting from 1 December 1999, the ACT Government provide a quarterly written report to the Standing Committee on Justice and Community Safety detailing expenditure on consultants, work commissioned and outcomes achieved.**

### **Assessment of bids**

4.93. The committee is aware of claims that research comparing relative costs between public and private sectors is flawed because it allegedly does not take all costs into account and is not sufficiently rigorous.

4.94. The CPSU pointed out that estimating the economic efficacy of contracting out of the running of corrections institutions is notoriously difficult. This is because each prison has a relationship of dependency with other elements of the same system. A prison is allocated a particular role in terms of the type of prisoners it will house, which programs it will run, whether it is

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<sup>180</sup> ACT Government, *Submission*

<sup>181</sup> *ibid*

involved in classification, remand, or takes special at risk prisoners. A prison gives and receives services from other elements of the system. The cost of a prison is therefore linked to the role allocated to it within the prison system. The variables which should be considered in the assessment process include:

- the numbers of prisoners and the gender mix;
- whether a prison takes minimum, low or maximum inmates;
- what cross subsidies to the private sector from the public sector are retained eg: dog squads, inmate transport;
- whether the private provider receives a training cost subsidy through the employment of former public sector custodial officers who have been trained and who might have taken packages;
- the wages comparison, overtime and penalty rates, casual or permanent staff;
- cost of redundancy packages;
- the basis of the contractual payments between a government and a private provider;
- the dual cost of regulation, for example, human rights commissioners and the monitoring costs of the contract purchaser; and
- the net cost to the Australian economy if profits are repatriated.

4.95. Assessments of costs in the tender assessment process should take into account the full costs including costs of redundancy payments for existing staff, whether profit will stay in the local ACT economy, the implications of monopoly, the number of local jobs to be created and the costs of government monitoring. Information on costs presented to the public should reflect the full costs and should not be designed to present a false picture of how private operators achieve cost savings. The committee expects the Government to consult with it about the selection criteria for cost assessment in the tender process.

## **5. CONCLUSIONS**

4.96. The committee has given careful and detailed consideration to the relative merits of 'public' and 'private' prisons. This consideration has included attention to both processes and outcomes.

4.97. The objective of Government decisions and activity should be to maximise the public interest. The public interest must predominate, not the interests of profit.

4.98. The Government should be aiming for a cost-effective, progressive, high-quality, transparent, accountable, community-centred prison system as its primary **outcome**. The committee did not receive evidence which precluded either public or private operators from achieving these goals. Each type of operator has advantages and disadvantages. There is no hard evidence (only assertions) available at this stage to justify not placing a public bid for management of the prison.

4.99. The **process** which the committee believes is likely to result in the optimum public interest is the competitive tendering process. This is the process suggested by the ACT Government. The tendering process should be flexible, allowing for bids for various combinations of financing, designing, construction and management. A well-designed, transparent process, which takes into account the full costs of establishing and maintaining the prison, should enable the superior operator or operators to be identified. The committee expects the Government to give serious consideration to the issues raised in this report when designing the competitive tendering process. In particular the process should provide for proper assessment against the key criteria identified in this report, ie philosophy, cost, quality, coordination, accountability and practicality.

4.100. Such a process has the potential to pit private operators against an ACT Government bid and possibly public authorities from other states.

4.101. The committee carefully evaluated the concerns of those opposed to private prisons. The majority of the committee found that the concerns about accountability and government coordination and other issues could be effectively addressed through implementation of the recommendations of this report. Another key factor influencing the committee's views is the recent research findings that privately managed prisons do not have higher rates of deaths in custody than publicly managed prisons.<sup>182</sup>

4.102. The committee cannot at this time give wholehearted, unreserved support to a privately managed prison. The committee has formed the strong view that a private prison would only be acceptable under a strict accountability framework, a strong Government commitment to coordination, strategic planning, promotion of the public interest over private interests, and when quantitative financial data is available to demonstrate its superior cost-effectiveness over a 'public' model.

4.103. The committee understands that some people will be disappointed it has not ruled out a privately managed prison. But we have come to a

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<sup>182</sup> Biles, D and Dalton V, Australian Institute of Criminology Trends and Issues Paper No.120, (1999), *Deaths in Private Prisons 1990-99: A Comparative Study*

judgement, after inspecting many public and private prisons that the perceived drawbacks of private prisons can be overcome. Even the problem of the profit motive driving certain outcomes which favour shareholders rather than community interests can be overcome with proper design and implementation of monitoring, accountability and coordination arrangements. Not only **can** it be done it **must** be done if a decision is made to establish a privately managed facility.

4.104. The committee also gave careful consideration to the financing, design, and construction of the prison. The committee found that the Government needs to do more work in developing comparative costings for private and public financing of the construction of the prison before a judgement can be made on which type of financing is more cost-effective.

4.105. At this stage the benefits of private financing are based on theoretical arguments rather than hard financial data. The Government has indicated this information will only become available through the competitive tendering process. If this is the case, it would be premature for the Government to express a preference for private financing until the financial data is publicly revealed. Should the ACT public sector be prevented from placing a bid, comparisons between the public sector and the private sector will not be possible. In addition, if the Government relied on a tender process which only sought bids from private operators to assess the viability of a public bid, this could undermine the probity of the tender process if the Government did decide to bid.<sup>183</sup> The comparative work needs to be done before private bids are sought for the financing, design, construction and management of the prison.

4.106. Regardless of whether the prison is publicly or privately financed and managed it is the committee's view that the operator of the prison should be appointed before construction of the facility begins so the design of the prison can take account of their management philosophy, strategies and programs.

4.107. This report includes many recommendations designed to ensure appropriate accountability and coordination. The committee urges the Government to accept all of these recommendations. The details of these arrangements will need to be developed by the Government in consultation with the community through the ACT Prison Project Community Consultation Committee and through the Standing Committee on Justice and Community Safety.

## ***Recommendation 29***

### **4.108. The committee recommends that the Government:**

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<sup>183</sup> The experiences of the Queensland Government in providing for probity of a prison tender process which includes both public and private bids is worthy of close examination by the ACT Government

**(i)initially seek expressions of interest from experts for the project direction team to develop the project brief and subsequently design and manage the tender process;**

**(ii)develop and provide the Standing Committee on Justice and Community Safety with a cost benefit analysis comparing the relative merits of public and private financing, design, construction and management of the prison (to include costs and benefits of submitting a public bid) which extrapolates Australian prison data into an ACT scenario;**

**(iii)make a decision (based on an evaluation of the results of the cost benefit analysis) on whether the Government will submit a public bid for financing, design, construction or management of the prison facility;**

**(iv)advise the Standing Committee on Justice and Community Safety of its decision; and finally**

**(v)invite bids for the financing, design, construction and management of the prison through a transparent competitive tendering process.**

## 5. ACCOUNTABILITY, CONTRACT SPECIFICATION, EVALUATION AND CO-ORDINATION

### Accountability

5.1. Building an ACT prison facility provides an opportunity to address accountability issues. Accountability relies on the implementation of appropriate arrangements for the provision of information, the ability to seek review of decisions and policies and the ability to apply sanctions. For parliamentary accountability to occur, parliament must have the power to obtain information. This power has been restricted in other states by strict application of commercial confidentiality provisions to information held by private prison operators.<sup>184</sup>

5.2. The Minister for Justice and Community Safety has publicly indicated that the ACT prison would be 'the most accountable in Australia, with private-sector or other Government operators expected to relinquish commercial-in-confidence status on a range of areas to enable better scrutiny and oversight by the community.'<sup>185</sup> The committee notes that the Government has not indicated exactly how they plan to achieve this. Nor is it clear what they mean by a 'range of areas'.

5.3. The committee received very strong and consistent evidence from the community that high standards of accountability and openness must be provided for in planning for the ACT prison facility. Submitters were particularly unimpressed by strict commercial confidentiality provisions applying to some private prisons in Australia.<sup>186</sup>

5.4. The Australian Institute of Criminology advised that accountability has been identified as an essential ingredient in best practice models for avoidance of violence, serious injury and/or deaths in custody.<sup>187</sup>

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<sup>184</sup> Eg Victoria

<sup>185</sup> Mr Gary Humphries MLA, *Media Release*, 23 June 1999

<sup>186</sup> Eg from current Official Visitor, Anglicare, Ombudsman, ACTCOSS in submissions

<sup>187</sup> Australian Institute of Criminology, *Submission*

## 5.5.The Law Society of the ACT was:

particularly concerned that the accountability and control issues need to be overcome in any establishment of an ACT prison ... accountability was the primary issue in both a public or private system...the standards should be set out in legislation, rather than based on a philosophical model<sup>188</sup>

5.6.The Social Justice Committee of Anglicare insists that concepts of public responsibility and accountability must be enshrined in the policy, administrative and operational frameworks. The Social Justice Committee believes that all aspects of the development and implementation of a corrections facility in the ACT must be open to public scrutiny. This should entail more than a simple monitoring on developments and progress to the Assembly. The conduct of the facility, once operational, must be rigorously monitored by a properly constituted public body whose report should be tabled in the Assembly.<sup>189</sup>

5.7.Anglicare's Social Justice Committee recommends that transparent mechanisms for the development and operation of an ACT correctional facility include: public consultation during the developmental stage with the establishment of a formal consultative committee comprising representatives of Government, community, legal and welfare organisations; establishment of a Statutory Board to monitor the operation of the facility and associated post-release services; and a requirement that the Ombudsman report to the Assembly every 3 years on the correctional facility.<sup>190</sup>

5.8.The CPSU suggested an independent commission or statutory authority should be established to ensure that the public interest and best practice approaches were applied at all times.<sup>191</sup>

5.9.Monitoring is an important element of an accountability framework. ACTCOSS highlighted the need for a strong and effective monitoring mechanism to assess the performance of corrective service providers. ACTCOSS believed this should include quarterly public reports to the Minister on staff numbers and training, inmate numbers and management, and the nature and level of contracted human services. They also recommended six-monthly consultation with inmates and detainees, contracted service providers, staff and management, to assess the ongoing performance of the whole system.

5.10.ACTCOSS supports accountability mechanisms such as: regular reports to the ACT community by Minister for Justice; regular community forums about corrective services; funding a corrections project officer and reference

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<sup>188</sup> The Law Society of the ACT, *Submission*

<sup>189</sup> Anglicare, *Submission*

<sup>190</sup> *ibid*

<sup>191</sup> CPSU, *Submission*

groups; funding of effective complaint handling and oversight mechanisms such as the Ombudsman, Official Visitor, Community Advocate and Health and Community Services Complaints Commissioner; mapping of the areas of responsibility of these people; and mandatory information provision to inmates outlining rights; details of complaints in the annual reports.

5.11. The Ombudsman suggested that the role of the Official Visitor should not be changed regardless of whether a new prison is privately run or public. The Ombudsman's office should maintain its current role of reviewing administrative actions and investigating complaints from individuals about defective administration or decision-making. The committee notes that this will require an amendment to the *Ombudsman Act* if the ACT has a private prison.<sup>192</sup>

5.12. A recent report by the Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare* contains interesting findings about the management of private prisons in Victoria. The Victorian Auditor-General calls for a more independent Correctional Services Commissioner which is effectively resourced to meet vital statutory responsibilities for the impartial monitoring of industry performance. The Auditor-General also found shortcomings in the accountability arrangements and provision of information on the prison system and that it compared unfavourably with the degree of public reporting on prison operations by other Australian jurisdictions. The Auditor-General called for future annual reports to include more extensive information.<sup>193</sup> These findings are particularly significant if the ACT Government espouses the Victorian model as one the ACT should be emulating.

5.13. The committee shares the concerns of submitters that the ACT should provide mechanisms for the highest standards of accountability. The key issues which need to be addressed are: access to information; mechanisms for monitoring; and mechanisms for complaints.

5.14. The committee believes that the public interest is more important than the interests of private operators wishing to maintain commercial confidentiality. The principle of commercial confidentiality should be considered secondary to the right of access to information by the ACT community through the ACT Legislative Assembly. Under no circumstances should the ACT follow the Victorian model of strict protections on commercial confidentiality. The project brief should clearly articulate this transparency position to prospective tenders. The contract should be a public document with no secret clauses. Strict reporting requirements should be included in the

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<sup>192</sup> Ombudsman, *Submission*

<sup>193</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, p7

contract and in relevant legislation, such as reports to the ACT Legislative Assembly and the community monitoring body.

### ***Recommendation 30***

**5.15. The committee recommends that:**

**(i) the project brief clearly communicate that the ACT Government supports an open and transparent prison system and there will be no provision for commercial confidentiality in the contract;**

**(ii) the preparedness and demonstrated ability of prison operators to provide an open, transparent prison system be a key selection criterion in the selection of the successful tenderer;**

**(iii) the contract be drafted so it includes reporting requirements against specified criteria and excludes any provision protecting commercial confidentiality;**

**(iv) the contract be published by the Government and made available on the Internet; and**

**(v) the ACT Government's position on commercial confidentiality in relation to the prison facility be enshrined in relevant legislation.**

5.16. On the issue of monitoring, the committee believes that the role and respective responsibilities of administrative review mechanisms such as the Official Visitor, the Ombudsman and the Community Advocate should be outlined in legislation. Adequate complaints and appeal mechanisms must be in place to deal with grievances from detainees and prisoners.

5.17. Monitoring of the ACT prison should include clearly defined performance indicators linked to outcomes. If the prison is to be managed by a non-government operator then government employees should be placed in the prison in the role of Government monitor, modelled on the Mount Gambier prison.

### ***Recommendation 31***

**5.18. The committee recommends that the Government should draft legislation which outlines the role and respective responsibilities of administrative review mechanisms such as the Official Visitor, the Ombudsman, the Community Advocate and complaints and appeal**

**mechanisms and which provides a framework for a high standard of accountability and monitoring.**

### ***Recommendation 32***

**5.19. The committee recommends that before inviting expressions of interest from bidders for the financing, building, design and operation of the prison, the Government consult with Standing Committee on Justice and Community Safety about;**

**(i) how it intends enforcing full transparency of information in the tender process and in the design and operation of the prison; and**

**(ii) how it proposes to provide for all aspects of accountability.**

### **Contract specification**

5.20. The specification of the contract or contracts for the financing, design, construction and management of the prison will be an important means of providing for accountability. The committee believes that the contract will require very detailed attention and monitoring, to ensure outputs and specified expected outcomes being purchased are being met. Transparency in the contract development and negotiation process will also be important.

5.21. ACTCOSS pointed out we will need a purchasing contract whether prison management is public or private.<sup>194</sup> The committee agrees with this. Even with public management, a purchasing contract would be needed.

5.22. The ACT can benefit materially from the experiences of the states in devising contracts for prisons. Professor Biles pointed out the ACT has the opportunity to come up with the most modern, progressive and clearly understandable prison contract in Australia.<sup>195</sup>

5.23. The Victorian Auditor-General found that the service delivery outcomes set out in contractual arrangements for Victorian prisons, used to determine the level of annual performance remuneration paid to private prison operators, were not encouraging service excellence. According to the Auditor-General, the outcomes were established on the basis of average and in some cases less than average results achieved in outdated prisons which had been

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<sup>194</sup> ACTCOSS, *Submission*

<sup>195</sup> Professor David Biles, *Transcript*, 18 May 1999, p77

identified for replacement.<sup>196</sup> The report also found that the outcomes were primarily quantitative and did not address key areas of qualitative performance such as the results of prisoner rehabilitation programs and the quality of staff training. In the Auditor-General's view, these shortcomings coupled with provisions which enable performance remuneration to be paid even where the service delivery outcomes have only been partly met, are not conducive to achieving improvements in the quality of services which were expected to flow from the establishment of new prisons.<sup>197</sup>

5.24. The Victorian Auditor-General noted that 'the circumstances experienced at Port Phillip Prison reinforce the significant risk which can accrue to Government from extensive reliance on a monitoring approach which has a heavy emphasis on confirming compliance with performance targets of a quantitative nature'.<sup>198</sup>

5.25. The Social Justice Committee of Anglicare has drawn attention to difficulties in contract specification. They note that a prison is a very special kind of government service, permeated by a host of complex, political, social, and moral considerations and with 'clients' who are extremely marginalised, about whom the community is often deeply ambivalent. Explicit knowledge of the values, expectations and objectives inherent in planning and delivering such a service, and moreover the articulation and specification of these in service contracts, is enormously challenging, and probably impossible to achieve.<sup>199</sup> ACTCOSS shared Anglicare's concerns about the difficulties in drawing up a contract for the prison.<sup>200</sup>

5.26. The Government submission envisages the contract may include performance standards covering staff training and conduct, safety and sanitation, security and disciplinary procedures, food and medical service requirements, vocational and educational standards, recreational programs and the use of inmate labour. Performance incentives may be linked to negative test results, the number of prisoners employed in prison industries or numbers who secure employment upon release, the number of prisoners who secure formal qualifications and complete vocational training courses and perhaps the number of prisoners who do not re-offend.<sup>201</sup>

5.27. There will need to be very detailed specification in the contract about what is expected of the operator and the respective roles and responsibilities of Government and the operator. The contract will also need to include financial incentives and penalties for monitoring and evaluation purposes and

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<sup>196</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, p5

<sup>197</sup> *ibid*

<sup>198</sup> *ibid*, p15.

<sup>199</sup> Anglicare, *Submission*

<sup>200</sup> Ms Lyn Morgain, *Transcript*, p3

<sup>201</sup> ACT Government, *Submission*

to direct the performance of the operator towards low recidivism rates. The committee understands that incentives and sanctions to influence recidivism rates have not been provided in other Australian prison contracts. The committee is of the opinion that such provisions in the ACT contract will be beneficial.

5.28. The Department of Justice and Community Safety should begin working on ideas for linking rehabilitation outcomes with incentives and sanctions in the contract. Because this has not been done before, this work will necessarily require creative flair and an openness to try innovative approaches. Some of these incentives and sanctions will be linked to the prison management and others including remissions and progression through different stages of accommodation and work will be designed to reward prisoners for behaviour which improves their chances for rehabilitation. The committee wishes to have the opportunity to consider these ideas before the contract is drawn up.

5.29. Professor Biles suggested that three particular tasks for Government should be specified in the contract. Firstly, that Government is responsible for monitoring every aspect of the performance of the private contractor. Secondly, that the Government maintains responsibility for all aspects of sentence management, including security ratings. Thirdly that the Government be responsible for all aspects of punishment and disciplinary matters.<sup>202</sup> The committee agrees with these suggestions. Members were impressed with the South Australian model at Mount Gambier Prison where a Government monitor works on site in the prison and has responsibility for punishment decisions. This is the model which should be followed, if the ACT has a privately managed prison.

5.30. The Victorian Auditor-General's recent report into Victorian prison management identified numerous problems with contract specification including the absence of minimum standards for the case management of individual prisoners. Those charged with developing contract specification for the ACT prison facility should ensure the ACT takes account of the issues raised in this report and does not replicate the problems with Victorian contracts.

### ***Recommendation 33***

**5.31. The committee recommends that the Department of Justice and Community Safety produce a discussion paper presenting options for linking incentives and sanctions with rehabilitation outcomes to be**

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<sup>202</sup> Professor David Biles, *Transcript*, 18 May 1999, p77.

presented to the Standing Committee on Justice and Community Safety by February 2000.

***Recommendation 34***

**5.32.**The committee recommends that contracts with the prison operator include, inter alia:

**(i)**quality and outcome measures for work and education programs, staff training and prisoner rehabilitation;

**(ii)**incentives and sanctions to direct activity toward rehabilitation outcomes and reductions in recidivism rates;

**(iii)**Government responsibility for monitoring performance, punishment decisions and sentence management; and

**(iv)**a requirement for an on-site Government monitoring presence.

***Recommendation 35***

**5.33.**The committee recommends that a draft contract be submitted to the Standing Committee on Justice and Community Safety for comment before it is signed by parties to the contract with sufficient lead time to allow comment by the committee.

**Evaluation**

**5.34.**Evaluation of the prison should be given a high priority through development of a clear monitoring and evaluation strategy and a clearly defined map of relationships between the private operator and government agencies in the prison contracts.

**5.35.**For evaluation to be adequate, the groundwork must be laid with a well-planned and extensive data collection.

**5.36.**The committee would like to be assured the Government has a clear evaluation strategy at an early stage of the process. It is essential that data is collected on current prisoners, detainees people sentenced to periodic detention and people sentenced to community service to provide baseline

data to enable future comparisons. The Government should begin work on designing the data collection program before the prison project brief is finalised. This data collection program needs to be properly funded. The committee envisages it would include a well-designed survey of all prisoners and remandees, covering issues such as:

- the history of their criminal offending;
- family history;
- employment history;
- education and literacy levels;
- health history including mental health, drug and alcohol history;
- abuse history, especially sexual abuse;
- cultural background and ethnicity;
- views on factors which make them commit offences and factors which stop them committing offences;
- views on prisons and remand centres they have attended;
- views on prison staff; and
- views on accommodation and programs needed.

5.37. Part of the data collection process could include focus groups in addition to surveys, to ensure the collection of qualitative information. The data collection process should be designed in conjunction with the prisoner consultation so information can also be used in the design of prison buildings and operations as well as for monitoring and evaluation of prison management.

### ***Recommendation 36***

**5.38. The committee recommends that:**

**(i) the ACT Government design and fund a data collection program for the purpose of obtaining baseline data which can be used for comparative analysis of outcomes once the prison complex is established in the ACT;**

**(ii) design of the data collection program should begin immediately so that data is collected one year before the ACT prison opens in 2001; and**

**(iii)the ACT Government present a detailed evaluation strategy to the Standing Committee on Justice and Community Safety for comment before November 2000.**

## **Co-ordination and Planning**

5.39.The committee has identified the importance of coordination between different agencies of government and between government and the prison operator as a crucial issue. The committee has also identified the importance of government taking responsibility for long term planning of corrections issues.

5.40.The ACT Council of Churches has argued strongly that planning for the prison be in the context of broader social policy and corrections issues.<sup>203</sup>

5.41.ACTCOSS made a strong case for a strong enforceable, flexible and responsive corrective services policy framework which consists of a clearly stated philosophy for corrective services.<sup>204</sup>

5.42.The Victorian Auditor-General found that Victoria needs to adopt more effective long term planning strategies for the prison system because strategic planning for prisons had not been well-coordinated and limited attention had been given to strategic consideration of the future capacity requirements of the prison system.<sup>205</sup>

5.43.The committee believes the ACT Government should note the shortcomings in planning in Victoria and ensure this does not occur in the ACT. Mechanisms must be developed which provide for good co-ordination between government agencies, the prison operator, private agencies providing contract services and volunteer organisations. Budget planning should reflect the importance of preventative strategies and acknowledge that resources spent on early intervention will lead to less demand on public funds in the long term.

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<sup>203</sup> ACT Council of Churches, *Submission*

<sup>204</sup> ACTCOSS, *Submission*

<sup>205</sup> Victorian Auditor-General, *Victoria's Prison System: Community Protection and Welfare*, p7

### ***Recommendation 37***

**5.44. The committee recommends the ACT Government draft a Corrections Strategic Plan which provides for:**

- (i) co-ordination between the prison and other corrections services; and**
- (ii) mapping of the respective roles and inter-relationships between all corrections agencies and accountability mechanisms.**

### **Drug-related crime and sentencing policies**

5.45. The number and types of prisoners in the ACT facility will depend to some extent on the Government's drug strategies and policies. For example, if the ACT introduced policies whereby all heroin-addicted criminals were given a choice to undergo rehabilitation instead of prison this would significantly reduce the numbers of prisoners in the ACT facility and impact on the planning and funding of the facility. It would mean that more funding currently targeted to the prison should instead be directed to community drug rehabilitation facilities.

5.46. It is imperative that the overall strategic plans for drugs and prisons are coordinated. The committee has not seen much evidence of this sort of coordination to date. The existence of the ACT Corrections Health Board is a good start but more work needs to be done.

5.47. The ACT does have provision under the *Drugs of Dependency Act* for magistrates and judges to sentence people appearing before them to rehabilitation and treatment rather than prison. It is suggested that information detailing how this operates in practice and the number of people sentenced under this legislation be provided to the Assembly on an annual basis. There may be a need for more investigation of the implementation of this legislation in the planning for the ACT prison.

5.48. Families and Friends for Drug Law Reform claim that the development of an effective evidence-based drug treatment strategy should be a condition precedent for the establishment of an ACT prison.<sup>206</sup> Pamela Burton supported this argument.<sup>207</sup> Families and Friends for Drug Law Reform also argued that the case for expanded prison facilities has not been made out. In their view prisons are now serving as a principal if misguided element of

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<sup>206</sup> Families and Friends for Drug Law Reform, *Submission*

<sup>207</sup> Ms Pamela Burton, *Submission*

Australia's official drug strategy, with 70-80 per cent of prisoners drug users incarcerated for drug related offences undertaken to support a drug habit.<sup>208</sup>

5.49. The provision of drug rehabilitation places in the general community is relevant to planning for the prison. It is preferable that heroin-addicted people have the option of accessing community drug rehabilitation placements as an alternative to committing crimes to feed their habits which lead to prison sentences. A formula for funding of the prison should take into account the number of rehabilitation placements and waiting lists for those placements. The Government may find it useful to undertake a cost benefit analysis comparing the cost of providing additional drug rehabilitation places to the provision of additional prison space.

5.50. There are questions and issues related to drug and prison policies which need community debate. For example what are the options for people with drug addictions who have committed drug-related crimes? How many have the option of going to rehabilitation rather than prison? Should we establish a more formalised Drug Court like NSW and Queensland? To what extent should we be trying to keep heroin addicts out of prison?

### ***Recommendation 38***

**5.51. The committee recommends that the Corrections Health Board develop a draft discussion paper on ACT Drug Policy and the ACT prison which:**

**(i) explores options for removing drug addicted prisoners from the criminal justice system by providing options for rehabilitation;**

**(ii) includes information on the number of places for drug rehabilitation in the ACT and the number of people currently receiving the option of rehabilitation as an alternative to a prison sentence; and**

**(iii) invites community comments;**

**with a final paper incorporating community comment to be publicly released before November 2000.**

### **Alternative sentence options**

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<sup>208</sup> Families and Friends for Drug Law Reform, *Submission*

5.52. A key issue with the building of an ACT prison is the need to maintain and develop alternatives to prison sentences, for example, drug rehabilitation orders, home detention and community service orders.

5.53. A recent ACT Government report noted that only approximately 10 per cent of the convicted offenders in the ACT are sentenced to full custodial penalty. The remaining 90 per cent are dealt with by way of a community-based sentence, a suspended sentence, a recognisance without supervision, a post-prison recognisance, a fine, a reparation or a 556A (conviction not recorded).<sup>209</sup>

5.54. Justice Action cautioned that with a private prison, other options to imprisonment run the risk of being downgraded.<sup>210</sup>

5.55. There may be some validity in this viewpoint although this downgrading of alternative sentencing options can be avoided with appropriate Government strategic planning. The Government has acknowledged the importance of alternative sentence options. The Minister for Justice and Community safety recently stated:

I am keen to explore widening non-custodial sentencing options in conjunction with the establishment of a prison in the ACT. a prison is not the only way of dealing with offenders, and it is likely that home detention offers some realistic benefits which prison will not.

5.56. However, to guard against alternatives to prison being downgraded with the establishment of an ACT prison facility, the Government should develop a strategic plan/framework which articulates the driving philosophy, provides mechanisms for co-ordination of private and public services/agencies and identifies the options which are alternatives to prison sentences.

5.57. This issue is relevant to the drug policy issue. In planning for the prison the Government needs to keep control of the funding so the pattern of incentives does not favour more money for the prison building instead of better targeted money for individuals who will benefit more from alternative sentences such as community orders.

5.58. The committee believes that community-based sentencing options should be improved and strengthened. At the very least, the implications of increasing alternative and community-based sentencing options should be further investigated. Possible initiatives could include expanding the periodic detention program and introducing home detention as a sentencing option.

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<sup>209</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p19.

<sup>210</sup> Justice Action, *Submission*

### **Recommendation 39**

**5.59. The committee recommends that the ACT Government produce a discussion paper on alternative sentencing options which:**

**(i) canvasses cost comparisons in relation to imprisonment;**

**(ii) canvasses comparative rehabilitative outcomes from alternative sentencing options and imprisonment; and**

**(iii) includes detailed descriptions of alternative sentence options.**

### **Early intervention and crime prevention**

5.60. The committee is aware that over 50 per cent of ACT prisoners have juvenile records.<sup>211</sup>

5.61. Ms Pamela Burton suggested that:

In the long term, reduction of the crime rates requires the identification of the sources and causes of delinquent behaviour before it occurs. This requires attention being paid to the home and school environments of children with behavioural problems who are likely to comprise the young offenders of the future.<sup>212</sup>

5.62. The committee supports Ms Burton's comments about giving attention to children with behavioural problems.

5.63. The fact that 56 per cent<sup>213</sup> of ACT prisoners have a juvenile record reveals action needs to be taken to deter young people from continuing with criminal behaviour while they are juveniles. Resources must be directed at early intervention if we are to reduce the numbers of adult prisoners. Now that the Department of Justice and Community Safety has responsibility for

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<sup>211</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p10.

<sup>212</sup> Ms Pamela Burton, *Submission*, p8.

<sup>213</sup> ACT Corrections Steering Committee, *The Future Correctional Needs of the ACT to the Year 2020: Evaluation of the Current System and Alternatives*, p10.

juvenile justice as well as adult corrections, there may be more scope for greater resources being directed at early intervention. The Department may recognise that investment in prevention and early intervention will lead to cost savings in expenditure on adult corrections in the future.

5.64. Mr Fred Leftwich offered to advise the Government about ways to stop people young Aboriginals offending.<sup>214</sup> Undoubtedly others in the ACT community can also provide useful information to the Government on this matter.

5.65. The committee considers the issue of early intervention as one requiring serious attention from Government. The committee suggests the Government facilitate a workshop with community representatives such as indigenous workers, youth counsellors, young offenders, academics and others aimed at developing strategies for reducing the movement of young offenders into the adult criminal justice system. It should also produce a discussion paper setting out strategies and evaluation mechanisms.

#### ***Recommendation 40***

**5.66. The committee recommends that the ACT Government:**

**(i) conduct a workshop with community representatives to develop strategies to reduce the number of juvenile offenders who move into the adult criminal justice system; and**

**(ii) produce a discussion paper outlining such strategies which includes provision for evaluation and that this paper be tabled in the ACT Legislative Assembly by November 2000.**

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<sup>214</sup> Mr Fred Leftwich, *Transcript*



## 6. COMMUNITY INVOLVEMENT

### Messages from the community

6.1. A wide variety of community organisations and individual members of the public have expressed interest in being involved in the development of an ACT prison facility.<sup>215</sup> The overwhelming message from individuals and community organisations who made submissions to this inquiry was that they want to contribute to the design and development of an ACT prison facility which provides the highest standards of rehabilitation.

6.2. The committee's previous report addressed the issue of community involvement in the prison project. That report urged the Government to harness this community goodwill and provide real opportunities for community involvement in the design and operation of the prison facility.

### Design stage

6.3. Many submissions called for the establishment of a community advisory body at the design stage.<sup>216</sup>

6.4. The Government has already picked up this idea and publicly signalled it will establish such a body. The Government intends establishing a broad-based 'ACT Prison Project Community Committee' with representatives from Prisoners Aid, members of the judiciary, the Parole Board, ACTCOSS, the Official Visitor, the Law Society of the ACT, the ACT Ombudsman, the ACT Region of Chamber and Commerce, ATSIC and various peak bodies such as the Alcohol and Drug Foundation of the ACT.<sup>217</sup>

6.5. The committee believes a community advisory body should have more representation from members of the general community. For example it should include social service organisations such as Lifeline, local indigenous representatives, a representative with expertise in mental health issues, a representative of the interests of women, and a representative of the local area (local residents). This community advisory body should include

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<sup>215</sup> eg ACTCOSS, ACT Council of Churches, Quakers, WAOD, Anglicare and others

<sup>216</sup> *ibid*

<sup>217</sup> ACT Government, *Submission*, pp12-13.

individuals who have demonstrated a genuine personal interest in the prison issue. There are dangers in this prison process being dominated by men, as the prisoners are likely to be 90 per cent male. It is important that the committee be gender-balanced to help guard against the prison design not catering appropriately for women. The committee would appreciate forewarning of proposed appointments.

6.6. It is imperative that the objectives and powers of this community committee are clearly defined. It should operate in advisory capacity and not have any executive powers. It should be designed to facilitate real community consultation, not just as a token body. The committee could also help smooth the way when the building begins. This committee should remain in place until the prison facility is established.

6.7. The Standing Committee on Justice and Community Safety also envisages a significant role for itself in the design phase. It should be consulted in the development of tender specifications and the engagement of consultants. The continuing involvement of the committee will provide another forum for community participation in the design phase. For example during this process, the Government may wish to consult the community on specific ideas or aspects of the design phase and the committee could assist. The majority of the committee was of the view that the project brief should be submitted to the committee for comment before it is released to bidders. One member did not believe this was necessary.

#### ***Recommendation 41***

**6.8. The committee recommends that the Government establish a community advisory body to participate in the design of the ACT prison facility to comprise a membership at least half of which are not government officials.**

#### ***Recommendation 42***

**6.9. The committee recommends that the ACT Government:**

**(i) recognise the significant role of the Standing Committee on Justice and Community Safety in the design phase of the ACT prison facility; and**

**(ii) submit the project brief to the committee for comment before it is released to bidders.**

## Operational stage

6.10. Many submissions also recognised the importance of establishing a community committee to have an ongoing monitoring role once the prison facility is established. Mr Bill Aldcroft called for a Community Corrections Advisory Committee to oversee all aspects of corrections including probation and parole etc. The ACT Council of Churches called for a similar body. Prisoners Aid believe the community body should have the power to question prison staff and call for documents and this should be known to bidders in advance. Operators must not be able to hide behind the concept of 'commercial-in-confidence'.

6.11. The committee believes representation should be similar to the design stage committee although not exactly the same. The committee believes that the operational stage committee should be the principal mechanism for community oversight and monitoring of the prison facility and should have access to all relevant documents and staff. It should have a monitoring role with reporting access to Government. It should cover broad-ranging corrections issues as this would assist in developing a holistic approach, which is not just prison-centred.

6.12. The committee also believes the Government and the prison operator should foster a culture of community involvement in the prison. This will be assisted by an attitude strongly supporting community engagement by the prison management and staff and by the relevant government department. Ways of putting this in place may include the prison facility or the department having a community liaison officer or a grants program to fund community prison projects.

6.13. The committee was also impressed by an idea that individuals and community and church groups could sponsor prisoners.<sup>218</sup> This could assist prisoners develop social skills, help them develop and strengthen their links with the community and provide opportunities for them to gain employment upon release.

6.14. The mechanisms relating to community involvement in the operation of the prison should be consistent with the idea of promoting a culture of openness, not one of secrecy and hiding information.

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<sup>218</sup> Ms Hellen Cooke, *Submission*

### ***Recommendation 43***

**6.15.**The committee recommends that the project brief invite bidders to put forward ideas on how they would achieve effective community involvement in the design and management of the prison.

### ***Recommendation 44***

**6.16.**The committee recommends that a community consultation committee be established to participate in the ongoing operation of the prison facility and broader corrections issues. The tender specifications should include selection criteria on this.

## **Consultation with current staff**

6.17.It would be useful if the Government could include current staff in a consultation process about the design of the new prison facility. They are likely to have some good ideas. The CPSU made this point strongly when appearing at the public hearing.<sup>219</sup>

## **Consultation with prisoners**

6.18.The question of to what extent prisoners should be consulted arose during this inquiry. Some submissions suggested that prisoners should be consulted during both the design phase and the operational stage of the prison facility.

6.19.It makes sense that prisoners be consulted in the design of the prison facility. Such consultation should be designed to elicit which factors help prisoners to rehabilitate and the factors which impede their rehabilitation from the point of view of prisoners themselves. This could assist in giving prisoners some ownership in the process of their rehabilitation.

6.20.This committee has not consulted directly with prisoners to date and sees this as a role for Government and the bidders. The Government should consult with ACT prisoners in NSW prisons, detainees, parolees and those on community orders and ask them what factors in building design, prison

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<sup>219</sup> CPSU, *Transcript*, p88

management and prison programs would help them to rehabilitate. This information should be fed into the tender specification process.

6.21. ACT Corrective Services may like to explore creative ways of obtaining some of this input from prisoners. For example, teachers in NSW prisons could be encouraged to set writing projects on designing an ideal prison for rehabilitation etc.

#### ***Recommendation 45***

**6.22. The committee recommends that the ACT Government instigate a consultation with current prisoners, detainees, parolees and those on community orders, to ascertain the factors in building design and prison management and programs which assist and hinder their rehabilitation. This information should be fed into the tender specification process.**

6.23. Prisoners should continue to be consulted once the prison is established. The committee envisages this could be achieved through a prisoner/management committee to meet regularly within the prison. The Government should seek information on how this is done in other Australian prisons in developing a model for the ACT. The aim of this would be to facilitate communication, provide early warnings of problems, and provide for shared responsibility and a move away from the traditional prison culture.

#### ***Recommendation 46***

**6.24. The committee recommends that:**

**(i) the project brief seek information from bidders on how they would consult with prisoners in the operation of the prison and how they have done so in other prisons; and**

**(ii) the ACT Government collect information from other Australian prisons about how they consult with prisoners.**



## 7. CHECKLIST FOR TENDER SPECIFICATION DOCUMENTATION

### Information to be provided to bidders in project brief

- Outline the prison philosophy- to be based on rehabilitation, reparation and reintegration into society, to place an emphasis on the dignity of the prisoner, high quality staff, access for families and friends, and a community orientation; the prison should also facilitate a research culture and have strong mechanisms for accountability and transparency of information
- Prison programs to be aimed at reducing recidivism rates and contributing significantly to meeting the employment, educational and social skill deficits of prisoners
- Prison programs to be evaluated
- Minimum requirements for the amount of work to be provided by the bidder
- Detailed information on the type of work to be provided to be used as basis for building design
- Expectation that prisoners will be given work opportunities which give them skills in demand in the employment market which will lead to real employment opportunities upon release and that work opportunities will be free of gender-stereotyping
- The prison philosophy to be based around the responsibility model, not the control model and the operator should facilitate a program of prisoner support based on the UK Listener model
- Thorough health assessments including drug and alcohol, psychiatric, sexual abuse history, blood-borne diseases to be conducted on entry, annually and upon release
- Requirement that bidders explain how they will provide health services and how they will ensure the seamless integration/coordination of corrections and health services
- Include detailed information on the known drug/alcohol history and addictions of prisoners expected to be housed in the ACT prison facility for information of designers and operators

- Advise bidders they should include information on drug programs and detail what they have achieved in other prisons including information on evaluation of their programs
- A preference for the provision of separate drug detoxification and rehabilitation centres
- Female prisoners to have equal access to any resources, services, programs and staff compared with men and also to be provided with gender-specific and specialist women's programs, services, health practitioners and staff
- Bidders to submit a Plan for Female Prisoners and Detainees detailing how they will meet the needs of women in terms of building design and provision of facilities, programs and staff
- Bidders to provide information on how they will achieve higher rates of rehabilitation for indigenous prisoners/detainees
- Bidders to submit a Plan for Indigenous Prisoners/Detainees
- Bidders for design, building and management to submit a Plan for Detainees
- Requirement that the prison be designed to be child-friendly and visitor accommodation designed to welcome and encourage family visits
- Prison operator to have some responsibility for post-release transition
- The prison should be designed to include all levels of security, male and female prisoners, sentenced prisoners and remand prisoners, regional prisoners and prisoners with psychiatric conditions
- Suggest a preference for filling the prison at a gradual pace and request bidders to put forward suggestions on how gradual accommodation should be managed
- Emphasise the Government's support for an open and transparent prison system and advise there will be no commercial confidentiality provisions in the contract
- Highlight the importance of the prison facility having a research culture which influences the programs and practices of the prison and encourages research
- Bidders asked to put forward ideas on how they would achieve effective community involvement in the design and management of the prison

- Include information drawn from consultation with current prisoners, detainees, parolees and those on community orders identifying the factors help and hinder their rehabilitation
- Request bidders to provide information on how they intend to consult with prisoners and how they have done this in other prisons

### **To be included in selection criteria in the tendering process**

- Emphasis on staff selection, the quality of staff and training of staff
- Measurement of the ability of programs to reduce recidivism rates, encourage rehabilitation
- Measurement of the quality and amount of work to be provided by the tenderer
- Measurement of ability to achieve improvements in rehabilitation of indigenous prisoners/detainees
- Assessment of the Plans for Indigenous prisoners/detainees
- A key selection criterion to be the ability to provide an open, transparent prison system
- Assessment of the bidders' ideas and abilities to provide for community consultation in the ongoing operation of the prison facility through a community consultation committee and other means

### **To be included in the contract for management of the prison**

- Financial incentives and penalties to encourage research
- Financial incentives and penalties to reflect program outcomes and recidivism rates
- Requirement for minimum amount of work to be provided
- Quality and outcome measures for work and education programs, staff training and prisoner rehabilitation

- Incentives and sanctions to direct activity toward rehabilitation outcomes and reductions in recidivism rates
- Statement setting out Government responsibility for monitoring performance, punishment decisions and sentence management and requirement for a Government on-site monitoring presence
- Financial incentives so operators receive payments when prisoners achieve employment for certain periods after release
- Financial incentives and penalties related to the provision of health assessments and the changing health status of prisoners
- Requirement for prison operator to submit an annual report to the ACT Legislative Assembly on the progress toward implementation of RCIADIC recommendations
- Financial incentives and penalties related to the operation of the post-release period
- Specific reporting requirements to public and the ACT Legislative Assembly
- Contract to exclude any provision for commercial confidentiality

### **Action by the ACT Government**

- Bimonthly briefings to Standing Committee on Justice and Community Safety on progress of the prison project
- Identify gaps in data on ACT prisoners and detainees, initiate strategies to rectify these gaps and develop an ACT Prisoner Data Report for information of bidders and the general community
- Initiate legislation which sets out minimum training requirements for prison officers
- Provide mechanism for evaluation of prison program outcomes in terms of rehabilitation outcomes
- Provide mechanism for the ACT Prison Project Community Committee to be invited to contribute ideas on the type of work to be provided in the prison before the building contract is finalised
- Devise a health corrections strategic plan for the information of bidders

- Provide for consultation of the Aboriginal Justice Advisory Committee in assessment of bidders Plans for Indigenous Prisoners/Detainees
- Provide a legislative basis which ensures access to the prison facility by researchers
- Ensure appropriate funding is available for research and evaluation
- Make a decision on ownership of the facility
- Submit a quarterly report to the Standing Committee on Justice and Community Safety detailing expenditure on consultants, work commissioned and outcomes achieved starting from 1 December 1999
- Seek expressions of interest from experts for the project direction team to develop the project brief and design and manage the tender process
- Develop and provide the Standing Committee on Justice and Community Safety with a cost benefit analysis comparing the relative merits of public and private financing, design, construction and management of the prison
- After evaluating the results of the cost benefit analysis decide whether the ACT Government will submit a public bid for the financing, design, construction or management of the prison and advise the Standing Committee on Justice and Community Safety of this decision
- Invite bids for the financing, design, construction or management of the prison through a competitive tendering process
- Include ACT Government's position on commercial confidentiality in legislation
- Publish the contracts in hard copy and on the Internet
- Draft legislation which provides a framework for a high standard of accountability and monitoring and outlines the role and respective responsibilities of administrative review mechanisms such as the Official Visitor, the Ombudsman, the Community Advocate and complaints and appeal mechanisms in relation to the management of the prison
- Consult with the Standing Committee on Justice and Community Safety on how the Government intends enforcing full transparency of information in the tender process and in the design and operation of the prison and how it intends providing for all aspects of accountability
- Produce a discussion paper on options for linking incentives and sanctions with rehabilitation outcomes and present to the Standing Committee on Justice and Community Safety by February 2000

- Submit draft contracts to the Standing Committee on Justice and Community Safety for comment before they are signed by the parties with sufficient lead time for committee comment
- Design and fund a data collection program for the purpose of obtaining baseline data and submit a detailed evaluation strategy to the Standing Committee on Justice and Community Safety
- Draft a Corrections Strategic Plan which provides for coordination between the prison and other corrections services and maps the respective roles and inter-relationships between all corrections agencies and accountability mechanisms
- Corrections Health Board to develop a draft discussion paper on ACT Drug Policy and the ACT Prison with final paper to be released by November 2000
- Produce a discussion paper on alternative sentencing options
- Conduct a workshop with community representatives to develop strategies to reduce the number of juvenile offenders and table a discussion paper on strategies to reduce the number of juvenile offenders in the ACT Legislative Assembly by November 2000
- Establish a community advisory body (the ACT Prison Project Community Committee) to advise on the design of the prison
- Submit the project brief to the Standing Committee on Justice and Community Safety for comment before it is released to bidders
- Establish a community consultation committee to participate in the ongoing operation of the prison facility and broader corrections issues
- Consult with current corrections staff about the design of the prison facility
- Collect information on models for prisoner consultation in other Australian prisons and instigate consultation with current prisoners, detainees, parolees and those on community orders to ascertain which factors help and hinder their rehabilitation

Mr Paul Osborne MLA

Chair

11 October 1999

## **Appendix A: Submissions**

1. Mr Bill Aldcroft
2. Mr Leonard Barratt
3. Ms Jennifer Holmes
4. Confidential
5. Canberra Schizophrenia Fellowship Inc.
6. Mr R I Morse
7. Corrections Corporation of Australia Pty. Ltd. and Concrete Constructions
8. Prisoners Aid (ACT) Inc.
9. ACT Council of Churches
10. The Parole Board of the ACT
11. The Religious Society of Friends (Quakers), Canberra Regional Meeting
12. Victims of Crime Coordinator
13. The Law Society of the ACT
14. Justice ACTION
15. The Salvation Army
16. NSW Council for Civil Liberties Inc.
17. Alternatives to Violence Project
18. Assisting Drug Dependents Incorporated (ADDINC)
19. Australian Institute of Criminology
20. The Uniting Church - Presbytery of Canberra Region
21. Ms Hellen Cooke
22. Mr Doug Mclver
23. ACT Ombudsman
24. Social Justice Committee of ANGLICARE
25. ACT Council of Social Service Inc (ACTCOSS)
26. Ms Jennifer Ipkendanz

27. Official Visitor, Belconnen Remand Centre, Periodic Detention Centre
28. Women's Electoral Lobby ACT
29. Sundown Village
30. Australasian Correctional Services Pty Ltd
31. Weston Creek Community Council
32. Mr Tom Campbell
33. Community and Public Sector Union, ACT Branch
34. Tuggeranong Community Council Inc
35. Mrs Alison Neiberding and Mr Peter Kimber
36. Ms Jennifer Ipkendanz (supplementary)
37. Mr Fred Leftwich and Mr Jim Jeffrey
38. Mr Bill Aldcroft (supplementary)
39. ACT Corrections Health Board
40. Village of Hall and District Progress Association Inc.
41. Mr Stuart Weller
42. The Real Estate Institute of the ACT Ltd
43. Families and Friends for Drug Law Reform
44. Friends of Grasslands Inc
45. Women's Alcohol and Other Drug Working Party (WAOD)
46. ACT Rural Lessees' Association
47. ACT Government
48. ACT Government (siting)
49. Ms Pamela Burton
50. Ms Jennifer Ipkendanz

## **Appendix B: Public Hearings and Private Briefings**

### **Wednesday 17 March 1999-Public hearing**

- Ms Lyn Morgain and Mr Adam Stankevicius (ACTCOSS)
- Mr Leonard Barratt
- Ms Maureen Cane and Ms Deborah Felton (ADDINC)
- Bishop Richard Randerson and Bishop Patrick Power (ACT Churches Council)
- Dr Hugh Smith (Prisoners Aid)
- Mr Brenton Holmes (Anglicare)
- Ms Charlotte Henderson, Ms Fion Brooke-Watson and Mr Peter Olorneshaw (Alternatives to Violence Project)
- Ms Jennifer Ipkendanz
- Major Marie Gittins (Salvation Army)
- Dr Brian Turner and Mr Bill Aldcroft (Quakers)

### **Tuesday 18 May 1999-Public hearing**

- Professor David Biles
- Mr Tim Gooden and Ms Sue Bull (Community and Public Sector Union, ACT Branch)
- Mr Bill Bush and Mr Brian McConnell (Families and Friends for Drug Law Reform)
- Ms Sukalpa Goldflam and Ms Barbara Knight (Women's Alcohol and Other Drug Working Party)
- Mr Ian Morse
- Mr Michael Swzarcbord, Ms Lynne Grayson and Mr James Ryan (ACT Corrections Health Board)
- Mr Fred Leftwich, Mr Jim Jeffrey and Mr Paul Brandy
- Mr Art Langston and Mr Geoff Robinson (Friends of Grasslands)
- Mr Harold Adams (Rural Leaseholders Association)
- Professor David Hambly, Mr John Hyndes and Mr Greg Cadman (ACT Parole Board)

**Thursday 10 June 1999-Public hearing**

- Mr Alistair Crombie (Hall and District Progress Association)
- Mr Tony Morris (Hall and District Progress Association)
- Mr Phillip Morris (Hall and District Progress Association)

**Monday 27 September 1999-Private briefing**

- Mr Gary Humphries, Minister for Justice and Community Safety
- Mr Tim Keady, CEO, Department of Justice and Community Safety
- Mr James Ryan, Director, ACT Corrective Services
- Mr Mick Lilley, CEO, ACT Treasury



## **Appendix C: Interstate Prison Inspections**

During December 1998 and March 1999, committee members visited nine prisons in Victoria, South Australia and Queensland, comprising a selection of public and private prisons. Those visited include;

- Mt Gambier Prison (SA, Group 4/State-owned, privately managed)
- Fulham Prison (Sale, Vic, ACM/State-owned, privately managed)
- Port Phillip Prison (Laverton, Vic), Group 4/State-owned, privately managed)
- Metropolitan Women's Correctional Centre (Deer Park, Victoria, CCA/State-owned, privately managed)
- Lotus Glen Correctional Centre (Mareeba, Queensland, State-owned and managed)
- Townsville Correctional Centre (Townsville, Qld, State-owned and managed)
- Borallon Correctional Centre (Brisbane Qld, CCA/State-owned, privately managed)
- Arthur Gorrie Correctional Centre (Wacol, Qld, ACM/State-owned, privately managed)
- The new prisons SEQ1 and SEQW under construction near Wacol, Queensland.

