

## **Molly Mahlouzarides, 'Private Prisons, Public Fears'**

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*Academic Richard Harding once wrote that, 'prison privatisation [was] the most significant development in penal policy in the second half of the 20th century'.<sup>1</sup> The purported significance of prison privatisation was certainly felt in Queensland, where the decision to privatise formed the basis of vital reforms to the State's archaic corrective services. The interview material on the Queensland Speaks<sup>2</sup> website offers a unique glimpse into the thoughts of the key players behind this privatisation agenda, with politicians and public servants intimately commenting on the controversial development. Drawing from their words, this essay will examine whether the fears that surrounded the introduction of private prisons to Queensland's penal system have been realised, by looking back over the two decades since the opening of the State's first private correctional facility.*

### Introduction

Stemming from a history of 'state socialism' and government dominance over the provision of services, Queenslanders have long been ill at ease with the notion of delegating such services to private bodies. This process of privatisation, regardless of the political party that has initiated it, has often been met with public resistance, from the denigration of the Bjelke-Petersen Government for 'selling off' Queensland to the more recent campaigns against the Bligh Government's sale of public assets, including QR National.<sup>3</sup> However, when it comes to discussing the trend of privatisation, no issue has been as ideologically divisive as the privatisation of corrective services. With the recent opening of the Southern Queensland Correctional Centre, operating within the private sector, the controversial debate surrounding prison privatisation has again been reignited. Whilst public fears have continued to abound based upon concerns of accountability and transparency, the operation of private prisons over the past decades has actually had some positive effects upon Queensland's penal system.

### Historical Context

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<sup>1</sup> R. Harding, 'Private prisons in Australia: the second phase', *Australian Institute of Criminology* 84 (1998): 6.

<sup>2</sup> *Queensland Speaks* is an online oral history project run by the Centre for the Government of Queensland, at the University of Queensland.

<sup>3</sup> C. Marriner, 'Bligh risks Telstra-style bath on QR National', *The Age* (online), 11 December 2009.

In the 1980s, following the global neoliberal trend of the 'retreat of the state', Queensland's relatively large public sector was reduced, limiting state involvement in service delivery and ownership of assets.<sup>4</sup> With the emergence of private prisons in the United States, this trend of privatisation similarly extended to the ownership and operation of correctional facilities in Queensland. The move to privatise came at a time when Queensland's prison culture was particularly chaotic; prisons were overcrowded, operational costs were high, facilities were outmoded and inadequate and the dominant prison culture was violent, corrupt and unstable, with protests and riots at the Boggo Road Gaol causing substantial apprehension. Queensland's prison crises desperately called for a radical overhaul of the penal system.

On the basis of this deteriorating culture and the mounting strains falling on the existing public penal system, the Kennedy Report endorsed the 'unique opportunity' to allow the privatisation of prisons in its recommendations.<sup>5</sup> Accordingly, Queensland became the first Australian state to embark on a privatisation initiative in the field of corrective services, with the opening of the privately operated Borallon Correctional Centre in 1990. Although the objective of prison privatisation was initially pursued by the Ahern-Cooper Governments, it was later embraced by the Labor Party when the Goss Government came to power. As Pat Weller again recalls on the *Queensland Speaks* website,

Keith [Hamburger; Director-General of Corrective Services] tells the story that the Labor Party was going to return this [privately run prison] to government, and they went out to see it, this was at Borallon... saying, 'how can we return this to government?' and came back saying, 'how can we get out of our promise to return this to government?' It was quite well run.<sup>6</sup>

Thus, the policy was maintained under the Goss Government, and other private prisons emerged throughout Australia, with two more opening in Queensland in later years: the Arthur Gorrie Correctional Centre (1992) and the more recently developed Southern Queensland Correctional Centre (2011).

## The Privatisation Debate

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<sup>4</sup> J. Wanna & P. Weller, 'Traditions of Australian governance', *Public Administration* 81, no. 3 (2003): 70.

<sup>5</sup> J. Kennedy, *Commission review into corrective services in Queensland: final report* (Brisbane, 1988): 3.

<sup>6</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2010, <http://www.queenslandspeaks.com.au/pat-weller>, 00.33.54 -00.34.10

## Accountability deficit and union opposition

The pivotal public concern regarding prison privatisation was that, by transferring the core responsibility of corrective services from the public domain, privatisation would create an accountability deficit in an area where it was most desperately required. It was feared that private contractors would not be subject to the same degree of scrutiny as public operators, in the absence of the direct chains of accountability that traditionally run between public institutions, government departments and the relevant elected official, who, in turn, is answerable to citizens.<sup>7</sup> Consequently, the lack of clearly delineated responsibility for the state of correctional facilities could result in dangerous outcomes for prison welfare standards, as legal obligations may be neglected in the name of commercial efficiency, without reprimand.

This argument was propounded as part of the Queensland State Service Union's strong public opposition to the notion of prison privatisation. As well as fearing staffing cuts, a loss of job stability and tenure and a decline in prison security standards, the union was anxious about the moral aspects of the accountability issue, asserting that:

A Prisons System is the responsibility of Government and is not something that is appropriate to be transferred to private enterprise... It is essential that the Government be responsible for the administration of the Penal System...<sup>8</sup>

However, it is important to note that the feared accountability deficit was not an issue specific to private prisons, but was also a prominent cause for distress within the public system, with the rise of corporatisation endeavours. In 1997, the public corrections system underwent the process of corporatisation, as the Queensland Corrective Services Commission (QCSC) transferred its service delivery role to a newly formed government-owned corporation, Queensland Corrections (QCORR), essentially bringing prison management decisions under a body independent from government and thereby shattering the chain of command that usually connected state prisons to the government department.<sup>9</sup> Frank Peach, who worked as the Director-General for the Department of Corrective

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<sup>7</sup> W. Funnell, R. Jupe & J. Andrew, *In government we trust: market failure and the delusions of privatisation* (Sydney: University of New South Wales Press, 2009): 12.

<sup>8</sup> J. Kennedy, *Commission review into corrective services in Queensland: interim report* (Brisbane 1988): 17.

<sup>9</sup> Commonwealth Productivity Commission, *Review of Commonwealth/State service provision* (Canberra 1997): 78.

Services, notes the major concerns harboured regarding how accountability for prison operation could possibly be maintained within such an arrangement. As he explains in *Queensland Speaks*:

The minister at the time was Tom Barton, and my recollection is that his view, as expressed to me, was that the government was really accountable and you couldn't outsource responsibility for these things, and having QCORR and the commission [the Queensland Corrective Services Commission] there meant that he was less able to make them responsive to what government wanted, but when things went wrong, government was held accountable by the public... Yes, he did want more accountability in the whole system...<sup>10</sup>

It is worth noting that recommendations handed down by Peach in his 1999 report later saw the system decorporatised again, with the operation of public prisons brought back under the Department of Corrective Services. Tom Barton, Minister for Police and Corrective Services at the time (1998-2001), recalls:

Frank [Peach] came back to me and said, essentially, we need to put it back under a department and decorporatise it... I think, to this day, I'm still the only minister who's ever decorporatised a GOC [government owned corporation] in this state. I decorporatised the prison service and put it back as a department, and this was consistent with Frank's report to me.<sup>11</sup>

Whilst decorporatisation was clearly the preferred method of restoring accountability to the public prison system, doubts still loomed over whether accountability could be adequately achieved in both public and private sectors of prison management. To a large extent, these doubts have since been overcome through vigorous monitoring and scrutiny. The importance of such strict monitoring was emphasised by Judy Spence, Minister for Police and Corrective Services (2004-09), when she admitted in her *Queensland Speaks* interview that:

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<sup>10</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2010, <http://www.queenslandspeaks.com.au/frank-peach>, 00.58.53-01.00.40

<sup>11</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2011, <http://www.queenslandspeaks.com.au/tom-barton>, 01.33.53-01.34.28

I was opposed to it [prison privatisation] initially... but I am now of the opinion that the private providers can do it as well as the state system, provided you fund them appropriately and monitor them.<sup>12</sup>

Through its vigilant supervision, academic Richard Harding contests that Borallon is just as, if not more, accountable than its public counterparts. After all, like any other Queensland prison, operations at Borallon are subject to corrective services legislation, as well as mandatory industry standards and regulations and Ombudsman overview. Furthermore, additional accountability mechanisms are in place, through the carefully constructed contractual obligations that must be honoured and the use of an official, independent monitoring process. Harding concludes:

Run-of-the-mill matters within Borallon are no less accountable than in any other Queensland prison; and with the added factor of an official monitor it could even be said that there is greater accountability. Moreover, the endless procession of semi-official visitors which Borallon willingly accepts is in contrast to the secretiveness which some public prisons still exhibit.<sup>13</sup>

However, such thorough monitoring practices have not always been maintained in actual practice, with early Borallon management stating that:

There is not a great deal being done through the contract monitor other than I know she is aware that we have programs here and reports that fact back to the QCSC.<sup>14</sup>

Additionally, issues surrounding a lack of transparency and public scrutiny of private operations have continued to plague the private system, with the records of such facilities remaining inaccessible due to 'commercial confidentiality' protections.<sup>15</sup> Although such shortcomings have never seen the realisation of old fears of rogue private prisons, accountability does remain a concern within both the public and private sectors of Queensland's penal system.

#### Competition and efficiency

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<sup>12</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2011, <http://www.queenslandspeaks.com.au/judy-spence>, 00.35.31-00.36.19

<sup>13</sup> R. Harding, 'Prison privatisation in Australia: a glimpse of the future', *Current Issues in Criminal Justice* 4 (1992): 18.

<sup>14</sup> R. Harding, *Private prisons and public accountability* (New Jersey: Transaction Publishers, 1997): 42-3.

<sup>15</sup> P. Moyle, 'Private prison research in Queensland, Australia: a case study of Borallon Correctional Centre, 1991', *British Journal of Criminology* 35, no. 1 (1995): 55.

However, despite such considerable opposition, policies calling for the privatisation of prisons have continued to be defended. To a large extent, the privatisation agenda has been justified on the basis of the creation of competition within the field of corrective services. In accordance with the recommendations handed down by Commissioner Jim Kennedy in his groundbreaking report in 1988, it was suggested that it was time to erect a market for prison institutions in Queensland, which would be useful in 'providing a real measure against which to test the performance and costs of Queensland Corrective Services'.<sup>16</sup>

In favour of the decision to privatise prisons, it was argued that the public sector should no longer enjoy its usual monopoly over the penal system, but should instead be exposed to greater competition against private providers. In order to compete properly in the newly formed marketplace, the outdated prisons of the public sector would be forced to alter their practices in order to reach the standards achieved by private facilities.<sup>17</sup> Thus, private prisons were to set performance benchmarks for their public counterparts to aspire to, stimulating improved management, introducing updated techniques and encouraging innovation.

For Russell Cooper, Minister for Corrective Services and Queensland Premier (1989), the decision to privatise prisons was largely motivated by this notion of boosting competition, which, he hoped, would provide a crucial catalyst for the complete reinvigoration of Queensland's failing prison system. As he explained in an interview with the *Queensland Speaks* project:

We did that [the privatisation of prisons] because we needed to have some benchmarks. It wasn't all privatised, there was some state-owned, some privatised... It gives you that competition between the two and you can have a look and see how they're travelling.<sup>18</sup>

Similarly, Labor politician Tom Barton, who served as Minister for Police and Corrective Services under the Beattie Government, discusses the benefits of introducing the concepts of competition incentives and benchmarking to Queensland's penal system:

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<sup>16</sup> J. Kennedy, *Commission review into corrective services in Queensland: final report* (Brisbane 1988): 97.

<sup>17</sup> R.G. Porter, 'The privatisation of prisons in the United States: a policy that Britain should not emulate', *The Howard Journal of Criminal Justice* 29, no. 2 (1990): 72.

<sup>18</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2011, <http://www.queenslandspeaks.com.au/russell-cooper>, 00.27.43-00.28.03

We always had a check. We had a check on them [the private prisons] and we had a check on ourselves about what the costs were and what the issues were... I still think it's a good balance to have the prison system under a department, most of your prisons under a department, where you've got direct control over it, and several privatised, so you can check your own costs and your own practices against them...<sup>19</sup>

Ultimately, it appears that the competition between public and private sectors has indeed allowed for the cross-fertilisation of ideas amongst the two, resulting in increased efficiency for Queensland's corrective services. Whilst the private sector, due to its lack of bureaucratic constraints, has been able to achieve savings in operational costs ranging from 9 to 13 per cent, there was also progress in the efficiency of public prisons.<sup>20</sup> As the Report of the Queensland Commission of Audit concluded in 1996, 'private sector participation in Queensland's prisons system has been successful in achieving efficiencies in unit costs per prisoner per day.'<sup>21</sup> However, it is important to recognise that, due to the various ages, designs, locations and classifications of prison facilities in Queensland, it is often hard to draw meaningful conclusions by comparing one prison to another.<sup>22</sup>

Competition created between public and private sectors has not always been based upon fair grounds. In the past, Queensland's private prisons have had the advantage of restricting their prisoner intake to those easiest to manage, with no contractual obligations to accept a more dangerous demographic of inmate.<sup>23</sup> It is suggested that much of Borallon's early success is attributable, not only to improved management techniques, but also the absence of a fully representative portion of the total prison population at the site, which housed no HIV-positive, protection or remand prisoners.<sup>24</sup> This tight control initially exercised by management at Borallon over prisoner selection was acknowledged by one of the facility's managerial staff, who commented that:

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<sup>19</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2011, <http://www.queenslandspeaks.com.au/tom-barton>, 01.34.46-01.36.39

<sup>20</sup> Harding, 'Private prisons in Australia: the second phase', 3.

<sup>21</sup> V. Fitzgerald, *Report of the Queensland Commission of Audit* (Brisbane 1996): 23.

<sup>22</sup> General Purpose Standing Committee No. 3, *Report no. 51: inquiry into the privatisation of prisons and prison-related services* (Sydney 2009): 51.

<sup>23</sup> P. Moyle, 'Private adult custodial corrections in Queensland and the first wave: a critical reflection on the first three years – reform or regression?' in *Private Sector and Community Involvement in the Criminal Justice System, Wellington, 30 November – 2 December 1992* (Canberra: Australian Institute of Criminology 1994): 55.

<sup>24</sup> R. Harding, 'Private prisons in Australia', *Australian Institute of Criminology* 36 (1992): 5-6.

We have had some inmates that we did not want here. It wasn't difficult to send them back to the public system. We just made up a reason and shipped them back.<sup>25</sup>

Although the inmate composition at Borallon has since expanded to gradually include a greater mix of prisoners, the initial advantage of selection has ultimately allowed it a head start over the public system in reducing expenditure and using its savings to develop rehabilitation and employment programs.<sup>26</sup> Competition had indeed been created in the corrections industry, but such competition had begun on less than equal footing.

Nevertheless, the public sector has been able to adapt to its new circumstances and develop new management techniques in order to successfully compete with, and win against, the private sector. Most notably, in 1994, the QCSC managed to win an open competitive tender for the Woodford Correctional Centre, overcoming several private bodies to do so.<sup>27</sup> In order to do so, the QCSC had incorporated private management methods into its tender, including Borallon's rostering practice of 12 hour shifts.<sup>28</sup> Pat Weller, who served as a member of the tender evaluation committee, recalls the process:

This time, the Corrective Services Commission had to compete, and since one of the big costing is staffing, you had to say, 'how can you design a prison that makes it as economically efficient as possible so we compete with the private sector?' So, to a much greater extent, for the first time, the commission itself became involved in planning the structure and operations of the prisons... We decided the public sector should get it. It should get it on design; it should get it on cost.<sup>29</sup>

Competition had provided the incentive for public prisons to improve their efficiency and adapt their practices in order to remain in contention against their private counterparts.

## Reformed culture

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<sup>25</sup> P. Moyle, 'Private adult custodial corrections in Queensland and the first wave: a critical reflection on the first three years – reform or regression?' 55.

<sup>26</sup> B. Dickson, 'The challenge of change' in *Private Sector and Community Involvement in the Criminal Justice System, Wellington, 30 November – 2 December 1992* (Canberra: Australian Institute of Criminology 1994): 41.

<sup>27</sup> P. Weller, 'Prisons, the private sector and the market: some Queensland lessons', *Australian Journal of Public Administration* 57, no. 4 (1998): 117.

<sup>28</sup> F. Peach, *Corrections in the balance: a review of corrective services in Queensland* (Brisbane 1999): 108.

<sup>29</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2010, <http://www.queenslandspeaks.com.au/pat-weller>, 00.30.20-00.00.31.23



Another crucial factor in Kennedy's appeal for the introduction of private prisons into Queensland's penal system stemmed from the need for substantial cultural and attitudinal change within public sector prisons. As Pat Weller recalls in his *Queensland Speaks* interview:

The old stuff was pretty brutal; the culture was brutal. An officer could be on a charge if he unnecessarily spoke to a prisoner. So, they wanted to change the whole culture of it.<sup>30</sup>

At the time of the Kennedy Report, the state's prison system was notorious for its insular subculture, authoritarian nature and the practices of corruption, mismanagement and union obstruction executed by the 'old' guard. Beyond that, Queensland's prison facilities were outmoded, overcrowded, unsanitary and offered conditions falling well below the requisite international human rights standards. As Don Davidson, a member of the review committee under Kennedy, reported to the inquiry of his observations at the archaic Townsville Prison:

Townsville Prison is a shambles. The antiquated buildings, are unhygienic and unsuitable for human habitation... The dormitory section (where Aboriginals are housed) is appalling to say the least, unclean with lice ridden mattresses. The lock up cells have no running water...<sup>31</sup>

Similarly, at the Boggo Road Gaol, both the facilities and the practices there were severely outdated. Controversially, the 'black hole' punishment cells, which contained neither windows nor light, were still in use for the solitary confinement of prisoners, a punishment that was later condemned as inhumane and barbaric.<sup>32</sup> Consequently, prisoner morale was dangerously low and violence and rebellion ensued in the form of mass hunger strikes and riots, including the infamous rooftop riots in the 1980s. The urgency of the situation was becoming increasingly clear.

To rectify such shortcomings of the existing system and reform the menacing workplace culture of these facilities, the private sector sought to recruit its prison officers from non-custodial backgrounds, amongst whom the old culture would not be so deeply entrenched. Furthermore, practices would be modified to facilitate improved relations between officers and inmates, with officers ideally rostered to supervise the same unit in order to establish some semblance of a

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<sup>30</sup> Centre for the Government of Queensland, *Queensland Speaks*, 2010, <http://www.queenslandspeaks.com.au/pat-weller>, 00.32.40-00.32.52

<sup>31</sup> J. Kennedy, *Commission review into corrective services in Queensland: interim report* (Brisbane 1988): 10.

<sup>32</sup> Department of Community Safety, 'History of corrective services in Queensland', <[http://www.correctiveservices.qld.gov.au/about\\_us/history/history.shtml](http://www.correctiveservices.qld.gov.au/about_us/history/history.shtml)>, (accessed December 20, 2011).

rapport with the prisoners.<sup>33</sup> In seeking this objective of generating a new, healthier culture within Queensland's prison system, prison privatisation appears to have been successful. The issues of abused power, coercion and intimidation that were once so rife have become increasingly scarce. One early prisoner of Borallon positively indicates the significant change that the prison system has undergone, saying:

Every officer here treats you with dignity and respect. Blokes who come down here from other gaols are going to suffer from culture shock.<sup>34</sup>

Although the 'old' guard initially resisted the Kennedy reforms, attempting to retain the status quo, the culture in public prisons has since appeared to emulate that of the private sector, indicating the emergence of a new set of attitudes and values amongst prison staff.<sup>35</sup>

## Conclusion

Despite the insurmountable fears that have continued to surface in discussions of prison privatisation, the Queensland penal system does not appear to have suffered considerable damage from such endeavours. In fact, evidence has appeared to support the opposite view: that perhaps the operation and management practices of the public sector have been notably enhanced by the introduction of private prisons to the field of corrective services. Indeed, the Queensland penal system has come a long way since the dark chapter of its history that preceded the Kennedy reforms, and a certain extent of this progress is attributable to the emergence of a private sector in prison operations. The public fears regarding private prisons have remained largely unfulfilled.

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<sup>33</sup> B. Dickson, 'The challenge of change' 39-41.

<sup>34</sup> Dickson, 'The challenge of change', 44.

<sup>35</sup> P. Moyle, 'Private adult custodial corrections in Queensland and the first wave: a critical reflection on the first three years – reform or regression?' 61.

## Further Reading

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