PRIVATE ADULT CUSTODIAL CORRECTIONS IN QUEENSLAND AND THE FIRST WAVE: A CRITICAL REFLECTION ON THE FIRST THREE YEARS—REFORM OR REPRESSION?

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Queensland is at the crossroads in the development of contract management of correctional centres. Australia's first private prison, Borallon Correctional Centre, has been operating for over three years, holds 244 inmates and cost the Queensland government $9.7m for the 1991-1992 financial year. Another Queensland private prison, the Arthur Gorrie Correctional Centre, is a remand and reception facility operated by Australasian Correctional Management Pty Ltd (ACM). It commenced operations in June 1992 and is built to hold 380 inmates. Twenty of these beds are kept for illegal immigrant detainees. These detainees will be held under Commonwealth jurisdiction. The operating budget for this centre in 1992 was $11.5m.

Privatisation of correctional centres is also taking hold in other Australian States. The largest private correctional centre in Australia is currently being built in Junee in New South Wales. It will be operated by Australasian Correctional Management Pty Ltd. When completed this centre will have 600 inmates, 500 medium security and 100 minimum security. It is anticipated that the average sentence for inmates at this centre will be six to nine months.

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Junee is to be officially opened in May 1993. With the election of the Liberal/National Party Coalition in late 1992, Victoria is certain to announce at least one private prison which will be used as a pace setter for other prisons and more could be sold to private enterprise.

With private prisons on the political agenda, a case study of the Borallon Correctional Centre provides a unique opportunity to learn from the positive and negative outcomes of this process. Other Australian states and overseas countries such as New Zealand, are well placed to critically evaluate Queensland developments and make institutional and policy modifications thus avoiding any demonstrated disadvantages that emerge from the Queensland experience. This paper will explore some essential themes in the Queensland debate to date. The preliminary matters of whether there is a limitation on the private sector's involvement in corrections and effects on demand for prison space will be analysed. Operational matters such as dual standards, accountability and monitoring, costs and outcomes and work and prison culture will then be reviewed. The final section will summarise developments and suggest important factors that other jurisdictions should consider if they are going down the path of privatised custodial corrections.

Is there a Limitation on the Private Sector's Involvement in Corrections?

The first issue that any government should consider before it privatises aspects of the criminal justice system, is whether for reasons of public policy and good government, it should allow private companies to manage correctional facilities. This issue arises from the theory of social contract. The question is, should private contractors be allowed to manage correctional facilities within a parliamentary democracy based on the theory of social contract? As Rousseau argued in 1743 (1968, p. 61):

> each one of us puts into the community his [her] person and all his [her] powers under the supreme direction of the general will; and as a body, we incorporate every member as an indivisible part of the whole . . . this act of association creates an artificial and corporate body composed of as many members as there are voters in the assembly, and by this same act that body acquires its unity, its common ego, its life and its will.

From this organic theory of community Rousseau (1968, p. 60) develops the idea of a contract "so precisely determined by the nature of the act, that the slightest modification must render it null and void". Whilst Rousseau cannot be taken too literally, there must be a point beyond which a government cannot divest its powers and yet retain a reciprocal obligation from its citizens to obey the law. Identifying the limits of this power to divest is crucial in any debate about the privatisation of corrections. Many authors have used this idea in a general way when discussing limitations on governments in setting up private prisons. These authors include Weiss (1989, pp. 33-4) and Ryan and Ward (1989, pp. 69-70). In the United States, this political objection to the power of governments to divest its powers to punish has been discussed in terms of constitutional law. This is in part because of the existence of federal rights legislation which protects persons from civil
rights abuses. A useful discussion of these legal protections is given by Thomas (1991, pp. 3-45) and Robbins (1988, pp. 34-113).

Recently within Queensland, the Electoral and Administrative Review Commission (EARC) (1992) has prepared an issues paper examining the preservation and enhancement of individuals' rights and freedoms. If as a result of this review legislation is passed by the Queensland Government that is similar to the New Zealand Bill of Rights 1990, this may form a basis to challenge abuses of prisoner's human rights held in both private and public prisons. The discussion of a Bill of Rights reaffirms the need for governments to carefully identify their responsibilities within a constitutional democracy, especially with regard to the private sectors role in corrections.

The issue of a political limitation has been discussed in the Australian literature recently. George (1989, p. 54) poses the question whether:

or not the state can delegate its power in the criminal justice system generally, and specifically in the rights to imprison and use deadly force. The state developed through the assumption of sole responsibility and control of law-making, policing, adjudication and punishment, that is, the rule of law [Emphasis added].

More recently, McCarthy (1992, p. 113) has developed this point by stressing that there is enormous symbolism associated with the:

concept of social contract, especially because it is the theory that underlines our concept of parliamentary democracy today. Given that governments make the laws, and through the judiciary try and punish offenders, and since prisons are integral to the punishment function of government, it is inappropriate for it to relinquish this responsibility.

Harding (1992a) refines George and McCarthy's discussion of the state's role within corrections in a more specific and useful way. Harding draws on the important distinction between the administration and the allocation of punishment. He argues that under the Corrective Services Act 1988 (Qld) administration of punishment does not spill over into its allocation. To support this conclusion he examines the administration of parole under Part V of the Corrective Services Act 1988. This distinction has existed in American literature for some years. What is interesting about Harding's approach is his attempt to look at the specific connection between legal definitions involving the operation of corrective services legislation, and the conceptual distinction between the allocation and the administration of punishment. Advocates of privatisation argue that private contract managed prisons do not involve the allocation of punishment but merely the administration of punishment within statutory limitations.

The example provided by Harding using parole decisions is not decisive. A more useful example would be the administration of Division 7—Offences and Breaches of Discipline by Prisoners—of the Corrective Services Act 1988. Three issues are important in this regard. The first is the power to initiate disciplinary proceedings, the second involves the breach of equitable protections such as national justice, and the third involves the public perception about who administers punishment.
With respect to the first issue, disciplinary decisions made by Corrections Corporation Australia (CCA) employees involve in a direct sense, the allocation of punishment. This is true whether it is a decision under s. 93—Prisoner Offences or s. 97—Breaches of Discipline. The Full Court of the Supreme Court of Queensland recognised this fact (see Moyle 1993c) in a case concerning charges under s. 93 of the Corrective Services Act 1988. The Full Court clearly indicated that decisions under s. 97 involve the allocation of punishment by the exercise of disciplinary powers and processes (Hogan v. Sawyer, ex parte Sawyer, [1992] 1 Qd. R. 32).

The second issue concerns the question whether or not individuals who are employed by a private company, should also exercise the right to breach persons under corrective services legislation and in addition, review those breaches. With respect to these issues, several recent developments are important. The statutory requirement of natural justice and its importance as an equitable principle under the Corrective Services Act 1988, has recently been affirmed by the Queensland Court of Appeal (Moyle 1993b, especially pp. 284-7). In addition, the requirement that persons making disciplinary decisions should not have pecuniary interest in the outcome of the decision or that there should not be a "reasonable apprehension of bias", is well established as part of Queensland law. (See The King v. Justices of Sunderland [1901] 2KB 357 at 371, R v. Commonwealth Conciliation and Arbitration Commission; Ex parte The Angliss Group (1969) 122 CLR 546 at 553-554 and Livesey v. NSW Bar Association (1983) 151 CLR 288, 293-5, 298-300).

The decision to charge inmates under the Act for the breach of the rules involves the broad exercise of discretion and a high degree of subjectivity (Moyle 1992a, p. 117) as to whether a minor or major breach has occurred. In either case, the review process is internal with no right to legal representation (see s. 101(5)). Significantly, if an inmate undergoes separate confinement for a period of seven days on more than three occasions, then there is a presumption that that person "has not generally been of good conduct and industry [and] the Commission shall thereupon determine whether the prisoner shall forfeit the whole or any part of the remission which he might otherwise have enjoyed" (Corrective Services Regulations 1989 (Qld) s. 27).

It is unrealistic to separate the exercise of discretion on a daily basis from the highly closed nature of prison environments. As a matter of practice, the Commission relies heavily on evaluations of a highly subjective nature undertaken by custodial and administrative staff. The question remains, is it proper for individuals who work for private companies, to exercise these broad powers? During a research interview conducted at Borallon in 1991, one middle level manager indicated, "We exercise a fair bit of discretion here. It would be easy to add time to an inmate's sentence if he was a trouble maker. In fact he would spend most of his time in solitary".

The third issue concerns the operation of the criminal justice system generally. Is it realistic to separate the judicial act of sentencing from the ongoing exercise of powers to punish, discipline and award privileges which are undertaken by correctional officials regularly? It is not unrealistic for the public to perceive the act of sentencing as an essential precursor to the application of sanctions and identify the two as part of the same process. The
imprisonment of an individual is closely and intimately connected with the sentencing process. This connection has been fundamental in the development of criminal law. Any changes to this premise should be debated in an open and democratic way on well justified grounds. As the Law Reform Commission (1988, p. 127) highlights:

Laws which govern the management of, and the conditions in, the prisons in which federal and Australian Capital Territory prisoners are incarcerated are clearly “laws' relating to the imposition of punishment for offences”... *It is a fundamental principle that a polity which convicts and imprisons offenders against its laws should accept the ultimate responsibility for the standards under which those offenders are imprisoned.* Accordingly, the ultimate responsibility for the conditions under which federal and Australian Capital Territory prisoners are incarcerated is federal [Emphasis added].

The Queensland Government needs to carefully evaluate the effects of private correctional centre management in terms of broader political concepts, administrative law practice and public expectations of the role and functions of correctional agencies. A solution to many of these objections would be the establishment of a separate public disciplinary regime within private correctional centres. There is no evidence to suggest that the QCSC has considered this option to date. The separation of these rates occurs at Wolds, Britain's first private prison, which commenced operations after Borallon.

**Effects on Demand for Prison Space**

A concern about privatising prisons has been that private companies will have an economic incentive to lobby for an increase in demand for prison space as they seek to expand their market. A component of this argument is concerned with the possible effects of this on government policy with respect to incarceration. George (1989, p. 57) summarises this concern succinctly.

Private prisons will and have tried to impact on government policy through lobbying just as any business concern does. Reductions in sentences and the promotion of alternatives to prison will clearly affect the potential market of private prisons. They will be in a position, however, to publish lurid descriptions of violence in prisons reinforcing a perceived need for increased facilities. This will feed the imagination of the media creating an environment of fear in the community. Such tactics will support policies that ensure their beds are full. Unlike government, private enterprise is under no obligation to discuss the broad issues that are involved in offending behaviour and corrections policy.

Harding (1992a, p. 3) responds to George's claim by an analysis of some recent statistics published by the Australian Institute of Criminology. The statistics cover the Queensland jurisdiction and indicate the levels of incarceration. He concludes that:
There is no evidence to suggest that this is a problem in Queensland. Indeed, since Borallon was opened the Queensland imprisonment rate has fallen from 75.8 per 100,000 to 69.3, whilst the overall Australian rate has risen from 73.7 to 81.4.

Whilst these figures are encouraging, they do not put an end to the concerns outlined by George. This is for several reasons. First, the fact that Borallon is only one institution means it would have a small impact on the overall incarceration rate. In addition, evidence suggests that the drop in prison rates may be caused by a strong commitment by the Queensland Corrective Services Commission (QCSC) to reduce overall rates of incarceration and increase the use of community based alternatives (QCSC 1991, p. 27). This policy has included a reduction in adult custodial incarceration for Aboriginal inmates (QCSC 1989, p. 5; QCSC 1990, p. 3 & Moyle 1994a). It is quite possible that there has been a dramatic increase in the use of community based alternatives to imprisonment. Therefore, there may not have been a reduction in the state's intervention in people's lives, merely a re-allocation in the form of control. Evidence also suggests that in the short term it has been unnecessary for CCA or ACM to encourage incarceration policies, because they have had an available market that has exceeded their capacity to grow. As a middle level manager at Borallon remarked in 1991 in response to a call for expressions of interest to build a private prison in Alice Springs in the Northern Territory, "We haven't put our feet on the ground yet. I doubt we could staff another facility so quickly after we have just settled in at Borallon".

It should be stressed that the factors that drive incarceration policies are complex and probably not identifiable by any one cause. Any single causative theory, should be treated suspiciously. The possibility for private companies to shape and manipulate government policies and the public's perception of the levels of crime, needs careful evaluation. This evaluation would, at the very least, require detailed studies of decision making within the QCSC and senior government (Moyle 1992b, p. 33). This type of research has not been undertaken within Queensland. It is likely that there will be a drag effect between the time private companies influence incarceration policy and the effect of this on rates of incarceration. This is especially so in Queensland where there has been replacement of old institutions by new ones. There has been no need for private companies to expand prison building beyond already projected levels. The real test will come in the medium-term after all prisons that are to be phased out have been phased out and prison replacement stabilises.

**Dual Standards**

An operational concern regarding private prisons is that private prisons will receive special treatment. As George (1989, p. 56) argues:

> With few exceptions, private enterprise wants to run the easiest prisons: low security, low public profile and little trouble. The "difficult" prisons and prisoners are left to the state, a situation mirrored in other areas of
welfare and service provision where private enterprise co-exists with the state.

Harding (1992a, p. 5) supports this concern concluding that there is some
evidence that, "[Borallon] may be catering somewhat for easily manageable prisoners
in an institution which is over-secure for their needs, and thus unduly expensive in
capital terms".

Both of these authors touch on a problem that has been ongoing since Borallon
commenced operations in 1989. Borallon has actively sought and received cooperation
from the QCSC in providing it with a very unrepresentative sample of inmates. This
certainly raises the suspicion that CCA has had a particularly easy time whilst state
managed institutions have not been given the same concessions. Field research
conducted in 1991 suggests that the Borallon inmate is less violent, more motivated
and towards the latter part of their sentence. The management of CCA regularly
exercised the right of veto, often returning unwanted inmates to the public system. A
middle-level manager at the facility frankly acknowledged:

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.
The Queensland Corrective Services Commission paid for their transportation to
Borallon and their return to wherever the Commission sent them.

Even though Borallon has been re-classified a medium security facility, recent data
on correctional centre prisoner classification and categories (QCSC 1992, p. 2)
indicates that Borallon has the highest number of exclusions available to it with which
to refuse to accept transfers. In 1992, for example, Borallon had the following
exclusions:

- prisoners subject to extradition or deportation;
- reception prisoners (sentenced and/or remand) direct from courts /police;
- prisoners requiring extended hospital or infirmary care;
- prisoners who have escaped or attempted to escape during the preceding
twelve months from a high, medium or low security institution or while on
escort;
- prisoners who have had serious breaches of regulations, for example, violent
assaultive behaviour on either other prisoners or staff during existing and/or
previous periods of imprisonment within the preceding twelve months;
- prisoners with documented recent history of psychiatric or emotional
behavioural disturbance;
prisoners who have been involved in the taking of a hostage while in legal custody;

- genuine protection/high risk prisoners;

- prisoners identified as suffering from communicable diseases (Hepatitis B and AIDS).

Interestingly, Lotus Glen Correctional Centre, a public sector prison in far north Queensland which is a complete replica of Borallon, has only two exclusions: "medically segregated prisoners (Hepatitis sufferers only) and illegal immigrants" (QCSC 1992, p. 4). In addition, Lotus Glen has remand prisoners and maximum/high/medium/low/open classified prisoners whereas Borallon only has medium security classified adult prisoners.

Byrne (1990, p. 32) has observed that Borallon was causing an “additional and skewed extra movement of prisoners in South East Queensland”. It appears that this criticism is still valid and continued preferential treatment given to CCA has and will unless it is discontinued, undermine the efficient use of correctional facilities across the State.

### Accountability and Monitoring

Accountability and monitoring are parts of the same process. Accurate monitoring of clearly identified objectives is a precursor to any real accountability by private sector correctional officials. Keating (1990) discusses the importance of using a variety of techniques to monitor privately managed correctional institutions. These include contract reviews, document reviews, direct inspections and analysis of operations and facilities, financial audits, accreditation, court-appointed masters, and administrative mechanisms such as ombudsperson and grievance procedures and commissions. (For a further analysis of how aspects of Keating's system of accountability can be incorporated in Australia, see Moyle 1993a).

Moyle (1992a, pp. 177-218) refines Keating's definitions of accountability by breaking them into four elements. Political, legal, informational and organisational accountability are identified. Political and legal accountability have been discussed in part one of this paper. Informational accountability refers to the availability of contractual, financial and policy information held by private contractors’ and regulation agencies to outside people requesting such information. It refers to the availability of information through the application of Freedom of Information (FOI) legislation and the QCSC's policies to handle requests for unpublished information. Organisational accountability refers to the systems the QCSC implements to monitor the performance of private prisons. Understanding the level of organisational accountability would involve examining the adequacy or otherwise of the QCSC's regulatory role.

Aspects of informational and/or organisational accountability have been dealt with in the Australian literature. George (1989, p. 56) discusses the expense of organisational accountability. Government personnel will need to access information belonging to the company. This information will then be
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used to evaluate the compliance with the contract. Independent audits and inspections are also necessary". George further expresses the concern that another tier of bureaucracy will be created. "Moreover, private prisons will see themselves as accountable specifically to their contractual partners, the state. The public right of access to information is effectively blocked".

Harding (1992b) disagrees with this analysis concluding that "Borallon is no less accountable than any other Queensland prison; and with the added factor of an official monitor it could even be said that there is greater accountability". Harding is, however, sceptical that the "lack of full public access to the standards and performance criteria documentation erodes this accountability".

Robbins (1988, p. 341), a prominent American researcher, notes that:

the contracting agency's monitoring of the contract will be extremely important both to ensure that the private contractor is fulfilling its obligations and to prevent managerial abuse. Without an appropriate monitoring device, the contracting agency will not be able to supervise the quantity and quality of the services delivered.

Developments within Australia thus far indicate that monitoring is grossly inadequate. There is no evidence of a two-tiered bureaucracy emerging because the monitoring system at Borallon is poorly developed and the QCSC does not have a clear idea about what it is monitoring (Moyle 1992a). It appears that the Commission has not given sufficient thought to what Chan (1992) describes as "an appropriate structure of accountability . . . [which] . . . should include the setting of clear standards, as well as the establishment of monitoring and enforcement mechanisms".

An evaluation of the monitoring process may be assisted by the introduction of FOI legislation. There has been a considerable push by EARC to introduce FOI legislation on the basis of the principle that "an informed political polemic is healthy for a democracy and should be encouraged and not discouraged" (EARC 1990a, p. 2). (For public submission on the review of freedom of information issues and the final report on the introduction of FOI legislation, see EARC (1990a, 1990b, 1990c)). As a result if this, the Freedom of Information Act 1992 (Qld) was introduced.

The author made an application under s. 25 (1) of this Act for access to tender documents, policy documents outlining the QCSC’s evaluation of the tender process, the contract between the QCSC and CCA to manage Borallon and a statement of affairs with respect to prison privatisation. Access to these documents was refused. Early evidence indicates that FOI is likely to be of limited use for some time because of extensive concessions made to government agencies to enable them to comply with the administrative and policy changes required under this legislation. The QCSC is not obliged to prepare a statement of affairs with respect to prison privatisation until August 1993. In addition, the FOI manager for the QCSC indicated that it is unlikely that any of the requests made would be granted as the Commission is sensitive about this information and does not want it to be released. Fortunately there is a method of appeal against decisions not to grant access to information (see s. 73(1)).
It will not be an easy task to change the secretive nature of the QCSC. This is to an extent understandable as the full application of FOI legislation involves a high level of openness and accountability that is counter to the recent political system in Queensland. (For a description of the "old" system see the Commission of Inquiry Pursuant to Orders in Council 1989.) An additional barrier will be that CCA will claim commercial confidentiality with respect to internal documents. The issue is complicated by the fact that any officer of a proprietary limited company is a fiduciary and therefore owes a general duty of confidentiality to their employer company. In 1991 (Moyle 1992c) CCA senior management indicated that it would claim commercial confidentiality with respect to:

- various clauses of its contracts which deal with its legal obligations to the QCSC for the operation of Borallon;
- CCA policy documents which are used by staff for advice in all daily aspects of the operation of Borallon.

It is likely that now that the full extent of FOI legislation is appreciated, when the crunch comes, applications for exemptions under s. 45(1)—Matters relating to trade secrets, business affairs and research and s. 46(1)—Matters communicated in confidence, will be used extensively by CCA to avoid providing financial, contractual and policy information. Moyle (1992c, pp. 26-7) argues that this would neither be in accordance with the policy of FOI legislation nor would it satisfy the important public interest requirement that private companies performing incarceration functions be subject to FOI legislation.

A system of accountability and the monitoring of private prisons should not be reactive, but pro-active. That is, the QCSC should carefully identify and undertake a rigorous process of monitoring which identifies problems in the early stages. Specific channels of accountability need to be built in the organisation and the QCSC needs to acknowledge that secrecy reduces accountability and ultimately the overall effectiveness of the monitoring process. The underlying philosophy for the establishment of accountability and monitoring should be full and open disclosure by private companies of their obligations under their contractual arrangements with the QCSC.

It is remarkable that after three years of Borallon's operation the contract between the QCSC and CCA has still not been placed on the public record and therefore has not been assessed openly. Important questions still remain about specific requirements for CCA in terms of its obligations and responsibilities to the QCSC. Some issues that need clarification are:

- What are the powers and responsibilities of Wormald security officers to search and use force against inmates?;
- What are the powers of CCA or Wormald to subcontract any part or parts of their obligations and the liabilities to subcontractors?;
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- Is there an obligation on CCA or Wormald to comply with legislation relating to corrective services?
- Is provision made in the contract for a conflict of interest in the discharge of obligations by CCA?
- How is the management fee calculated and payments portioned?
- What are the provisions for variation of the management fee and what circumstances need to exist before this can be done?
- What is the level of public risk insurance and the requirements for liability?
- What are the details with respect to the appointment of monitors and centre auditors?
- What rights do the QCSC have to examine the records held by CCA?
- What are the events that will bring CCA into default of its obligations?
- What are the remedies available to the Commission for a breach of conditions and the notice requirements to terminate the agreement; and
- What are the requirements to provide services for offenders, security control, supervision and other performance standards affecting inmates?

Secrecy based on vague claims of commercial confidentiality has enabled important information to be kept off the public record by both the QCSC and CCA. Particularly disconcerting is the recent acknowledgment by the Deputy-Director General of the QCSC that it had developed a substantial vested financial interest in providing consultancies to other state's prison privatisation programs:

We are selling our knowhow to various states. We made revenue out of consulting with New South Wales when they went down the path with Junee. We are currently having discussions with Victoria and we are not giving them information, we are selling it. We want to keep our standards and contractual information secret. It's commercially sensitive.

It should not be forgotten that this is also the agency entrusted to effectively evaluate the performance of CCA and other private companies. The creation of a financial interest in the success of privatisation is problematic.
Costs and Outcomes

To date there has been an excessive concentration on costs in purely financial terms. This discussion of costs within traditional operating budgets generated by the financial and administrative section of the QCSC, is of little value. There is an important need to develop an understanding of value and therefore discuss the success of correctional centres, not purely in terms of their ability to meet expenditure and revenue targets, but by a series of factors. Some of these factors may include:

- the quality of programs provided;
- the provisions of industrial and trade training;
- impact on recidivism rates;
- staff and inmate perceptions of the facility;
- escape rates;
- successful rehabilitation of inmates;
- reducing levels of violence and assault within centres;
- employment rates upon release; and
- the provision and utilisation of amenities.

Whilst discussion of costs may be useful to attract media attention and stimulate public discussion, it is important that the Commission reform its internal structure in line with government-owned enterprise (GOEs) procedures. The development of accurate performance measures is an integral part of this strategy. A 1992 Queensland Government White Paper entitled *Corporatisation in Queensland* (p. 25), requires that:

Each year GOE performance would [sic] assessed by the Board against the targets which were outlined in the Statement of Corporate Intent. . . In addition to the annual measurement of performance against agreed targets, various financial and non-financial indicators would be used to monitor the financial "health" and the efficiency of operations of the GOE on a quarterly basis throughout the year.

What is of particular concern, is that Borallon has not been subjected to an evaluation of the above factors with respect to cost. What is the cheapest is not necessarily the best. On August 1992 in response to questions about evaluations of these factors, the Deputy-Director General of the QCSC stated:

We haven't audited those things but bear in mind that this is really a reflection of where we are at overall. We don't evaluate those things very effectively in our own prisons. You're really on the cutting edge of where we are at, which is evaluating our own programs for effectiveness.

Given this situation, it is quite misleading to claim that Borallon, or any other facility within Queensland, provides the lowest cost whilst giving the best value. A broader understanding of how resources are used and distributed within corrections is
required. It would have been wise to develop this area early in the evaluation of Borallon's performance by the QCSC.

Work and Prison Culture

The Commission of Review into Corrective Services in Queensland (1988), chaired by J. J. Kennedy, recommended extensive changes to the operation of corrective services in Queensland. Some of the areas where change was suggested included the management and design of prisons, the future direction of corrective services, recruitment, training, promotion and development of staff, and services to and for the welfare of prisoners. In the Interim Report, the Commission highlighted a poor morale in prison staff and corruption in parts of the organisation. (See Final Report p. 3, and for further details the Interim Report and Vol. II Attachments.)

The Review highlighted the need for major legislative and organisational change. A more unsavoury aspect of the old system, was a group of experienced prison officers who were highly authoritarian, and enjoyed treating prisoners harshly. This quasi-militaristic approach would often lead to a breakdown in communication and heightened the possibility of violence within the correctional setting. This group worked from the premise that the solution to criminality was discipline and hard work. Since the introduction of reforms as the result of the Kennedy Review, there has been further polarisation between the "old" and "new" guard.

In 1991 a Criminal Justice Commission Report on Allegations into Employees of the Queensland Prison Service, and later the QCSC, observed that since the Kennedy reforms new prisons have been opened, privatisation has been introduced, community corrections initiatives have been developed and a new philosophy of humanising corrective services has emerged. The Commission noted in the background to the allegations (1991, pp. 2-3) that:

Many Correctional Officers who were more suited to the role of a Prison Officer as a turnkey and authoritarian figure have opposed the changes. The new philosophies have been anathema to them. Their bitterness has been exacerbated by their perception that they were threatened with the possibility of:

- relocation to a new or different Correctional Centre;
- loss of employment by the closing of Centres or privatisation;
- a loss of promotional opportunity because of the introduction of senior staff from outside the service;
- lack of security of tenure through the introduction of forced redundancy;
- the introduction of new work practices.
In its conclusions, findings and recommendations, the Commission identified two groups of witnesses, one falling into the "old" guard and the other falling into the "new" guard. The "old" guard (p. 221):

were openly critical of the philosophies and goals of the Queensland Corrective Services Commission. They universally thought that strict discipline was appropriate in all cases. They belonged to what was described in evidence as the "lock them up and forget them" school. They were seemingly in opposition of the "humanising" processes that were being introduced by the Queensland Corrective Services Commission.

For a more popular description of the impediments to reform in the criminal justice system, see Griffith and Fitzgerald (1992). The existence of the "old" guard raises two interesting issues about the possible effect of work culture at Borallon, on the system as a whole. First, will Borallon provide the opportunities for the development of a different work culture based on a more humane and conciliatory approach towards inmates within the institution itself? Second, is it necessary to privatise contract management to obtain a general change in prison culture? A 1991 case study suggests that Borallon has a humane environment in which inmates feel less threatened than in older public prisons (see Moyle 1994b). Several inmates commented on the positive effects of an open campus style centre, a full-day work program, and the opportunity to be responsible for decisions within clearly identifiable guidelines. The following response was typical:

We have more freedom of choice here, more responsibility to make our own appointments. If I need to see the doctor I make the appointment. I don't have to go up and ask somebody else and then wait for approval if the screw decided to do you a favour. If you're crook you get an appointment card and go and see the doctor. We rely on ourselves more here. No-one kicks you out of bed in the morning, stands you up in a line, calls your name. They open the door here and that's it. You get up yourself, make your own breakfast, decide what you want to eat and go to work.

Correctional and program staff responded positively to this change in environment. An experienced education officer, during a life skills tutorial admitted:

I think the absence of humiliation from officer to inmate has created a cohesion. There is not the "them" and "us" thing . . . . When the officers come in to ask an inmate to go to the dentist or whatever, they do it in a gentle way. It's never in a harsh tone or to disrupt the class which happened often in the public system. The inmates don't feel their rights are violated here. They get their dues. They have done the crime and can accept incarceration but there isn't any daily intimidation.

What is particularly interesting, is that similar experiences were reported by inmates and staff at Lotus Glen Correctional Centre. This was especially so in "C Street", a unit which is run along a limited guided democratic model.
According to the *Recipe for C Street* (1991), the principle behind "C Street" is that:

absolute freedom is allowed within certain limits that are clear and negotiable. The limits should be reasonable to all giving responsibility to people based on a careful management of power, preferring to use a warning system and only positional power as a last resort.

What makes Lotus Glen's achievement impressive, is that it serves a variety of security classifications and was required to take a high percentage of transfers of officers from the public sector. This meant that many members of the "old" guard were subjected to a new case management system in the open campus style setting used in "C Street". The effect of peer influence and inmate expectations produced a very promising response in many of these officers. One officer with several years experience in the Metropolitan Reception section of the notorious Long Bay Prison, New South Wales, commented:

We had a lot of serious injuries at the Bay. We had a static population of some of the heaviest prisoners in the State. Inmates in lines of forty would pace up and down . . . No officer spoke to me in a personal way for about a year, because they sussed you out. The tension within the gaol went in cycles. Some days it was okay but then suddenly inmates that would talk to you before, wouldn't acknowledge you. A lot of officers went off sick when this happened. It's so tense and such a terrible atmosphere that you stick together . . . The worst thing to be labelled was a crim lover. Your peers would reject you and refuse to work with you . . . When I came to Lotus Glen it took me a few months to adjust. The place was totally different. People talked. Inmates talked to officers and officers felt comfortable about talking to inmates. I found you could reason with inmates and violence was almost non-existent . . . I know now that my view of inmates was pessimistic and derogatory. It was like coming out of a war zone into a job that gave you a chance of helping inmates to help themselves.

Interestingly, officers from the "old" guard who did not adapt to the new system were marginalised rather than having significant input into decision making at the unit management level. They were introduced by other custodial correctional officers as being "a bit out of touch" and observations showed that these individuals tended to interact superficially with fellow officers and inmates. Nevertheless, in some cases there appeared to be difficulties with some inmates who were transferred from southern prisons. A long-term inmate who was transferred from Boggo Road to Lotus Glen in 1990 noted:

Most of the guys go through the same reaction. They walk around a little bit dazed for a few days. Freedom of movement is hard to get used to because at the Road, you walked around in a 20 by 50 yard with 16 guys, 12 hours a day . . . The freedom is frightening.

The above information which was collected in 1991 suggests that Borallon and Lotus Glen had similar environments. It was apparent that privatisation
itself was not a precursor to the cultural changes described above. At both institutions, many factors seem to be contributing towards an improvement of the culture in the centres. It is interesting to note that at Borallon and Lotus Glen, the general managers were committed to introducing humanitarian reforms and they actively cultivated this approach in middle level management. Both managers took Chapter 17 of the Sentence Management, QCSC (1991) policy guidelines seriously. The program managers were also committed to introducing basic relationship courses dealing with stress and effective communication. At both centres, custodial officers and inmates were encouraged to attend these sessions. These observations suggest that any single causative theory put forward as a way to explain how to change the culture of the "old" guard, should be treated suspiciously. A central difficulty with privatisation as such, is that Borallon has existed as a separate administrative and operational unit since its creation. An obvious lack of movement of persons between the public and private sector has tended to diminish any effect of private prisons on the operation of the public system.

A major concern to emerge from a case study in 1991 involving field research at Borallon and Lotus Glen, is the absence of any meaningful apprenticeships with trade training at either centres. Lotus Glen tended to concentrate on community based work, while Borallon tended to concentrate on the utilisation of cheap contract labour engaged in menial and repetitive tasks that involve low skilling of inmates. The dilemma faced by inmates at Borallon was that the pay offered for fruit and nut packing was up to five times higher than the average inmate prison salary of $2 per day. Many of the inmates working in the contract labour section, the only area where work was occurring, were aware of the lack of training provided by this work but as it was the only work available that paid this, they were prepared to do it. A group of inmates candidly acknowledged:

The emphasis here is to get the work out. We pack dates. You stand here and do the same three things for eight hours. Its sit down and weigh out 300 grams of dates, put them in a bag. You can train a monkey to do it. It doesn't matter that we are getting $10 per day . . . The company pays $60 per day for six of us. We know CCA makes $300 per day on top of that. So that's $1,500 per week for six of us. They are planning to build a factory for packing, getting 60 inmates to work . . . The inmate is at the bottom of the heap. We are powerless. We know we are being exploited but what can we do? There are six places here and 50 waiting to take our job if we are sacked . . . I would like to do an apprenticeship but they're not available and there would not be any wage for it.

It is perhaps understandable that a business approach would compel the exploitation of cheap labour. As a general point, however, it is of concern that an emphasis on profit may directly conflict with the important goal of rehabilitation of inmates. That is, it may be more expensive to train inmates with skills, in terms of the cost of equipment and expertise, but this course is likely to be more beneficial to the inmate. Further, training in skilled areas in the short term at least, often gives lower financial returns. The emphasis on contract labour in the short term may give financial returns to the company.
but appears to do little to empower and train inmates so that they can gain meaningful employment upon release.

**Conclusion and Potential for Reform**

The development of private contract managed prisons in Queensland has reached a critical point. It is very exciting that this new policy move has brought into sharp focus a number of issues about the function and direction of corrections. For far too long the Queensland criminal justice system, especially corrections, has been stagnant. It is time to carefully examine the arguments for and against private prisons in a detailed way. Brown (1992, p. 33) argues that:

> So far in the debate, there has been a tendency for the opposed parties to talk past each other. This must be overcome. One way to overcome it is for a clear exposition of the arguments against privatisation to be undertaken and then seriously addressed by the proponents. Without this joining of argument any initiatives in privatisation will be built on inadequate foundations, subject to continual challenge and destabilisation. It is in the interest of all parties that such a process occurs.

In the *Interim Report* of the Review into Corrective Services, Kennedy expressed reservations about:

> the ethics of the State relinquishing its supervision over sentenced offenders and committing them to the control of companies... I have seen little hard evidence to suggest that the private sector would be more efficient than the public sector at providing the management and operation of custodial institutions (p. 18).

In the same year the *Fitzgerald Report* was beginning to have a significant impact. The privatisation of prisons became entangled in the political arena with politicians attempting to be seen as rejecting the old and antiquated, which was politically embarrassing, and adopting new strategies and ideas. In the Queensland parliament in 1988, the then Minister for Corrective Services, Hon. T. R. Cooper, claimed:

> The real experience and the real truth of the matter is that privatisation—properly and selectively applied—will generate a more standard conscious, competitive corrective services system. It will allow us to measure performance and standards in a more professional manner, and, above all, it will establish a more accountable system than that which is now operating. And how do we measure such standards and levels of performance? Through a system of permanent audit control (Queensland Legislative Assembly 1988, p. 2095).

Now four years after Borallon it is appropriate to ask the question whether Borallon has achieved these objectives. It has been the argument of this paper that many difficult philosophical and legal issues have still largely been ignored. Whilst Borallon has tended to focus attentions on corrections, it
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has also highlighted some more unsavoury and undemocratic aspects of this new policy development.

It is important for any jurisdiction considering contract management of correction centres to learn from the Queensland experience. In this regard, several points are relevant. First, elected politicians should define the extent to which they privatise. Second, the State should ensure that a separate disciplinary regime is created which does not have a financial conflict of interest in the outcome of disciplinary decisions and other custodial functions. Third, State regulatory bodies should require private companies to fulfil specific targets which include quantitative and qualitative outcomes and ensure that monitoring effectively measures the private company's performance. Fourth, it is important that private companies not receive special treatment, especially if this affects the operation of the public system as a whole. The State should be demanding in this regard setting its own agenda requiring the private company to satisfy particular demands. This may require specialist facilities targeting specific groups or general facilities which have a general inmate population.

Perhaps the most important lesson from the Queensland experience is that accountability must involve the public availability of contractual information and the full implementation of FOI legislation. Private companies should be required to provide all information regarding these agreements with the State. These agreements should be placed on the public record. There may in exceptional circumstances for commercial reasons be a justification for allowing some financial information to be exempt. The state should be active in evaluating claims of commercial confidentiality. To date, CCA has used this term in a general way to avoid disclosing all contractual information. This is an unacceptable abrogation of the QCSC's obligation to citizens within Queensland.

A system of audit review needs to be implemented in which the monitoring agency is independent (and with no vested interest) in the outcome of privatisation. This is a problem that has emerged within Queensland. To avoid this, it is justifiable to set up a separate agency which could perform a wider function than simply monitoring. The private operator would be charged for this by a levy but the government should pay the salaries of persons working in this agency. Regulatory agencies should seize the opportunity to evaluate the broader implications of the development of private corrections. It would appear that with many large multinational companies wanting a slice of the cake, the time to use the financial resources of these companies to develop specific reforms is during the contractual negotiation period when the bargaining power of the State is at its highest. These companies can indirectly fund research into the relationship between public and private sector corrections and the potential for non-profit privatisation to enhance the provision of correction services.

Ultimately, the real impact of privatisation of contract management may not be so much a difference between modern public and private sector prisons, but in the fact that correctional officials, private companies and union officials are now more than in the past, required to justify correction reforms in terms of their effect on the delivery of correctional services. Privatisation is
also creating spaces for negotiation by groups that have been traditionally marginalised. Interestingly, it is in the area of non-profit privatisation that genuine possibilities for reform are occurring. In North Queensland for example, the Aurukun Community Correction Centre at Wathanin Outstation is operated and managed by Aurukun Community Inc Ltd, and provides full time custodial accommodation for Aboriginal inmates. This centre provides a non-profit oriented example of how a community can have real input into the development of methods to promote normative behaviour. It is in this area that new opportunities are emerging to allow a comparison of non-profit and profit oriented correction centres. The future of corrections in Queensland may provide a new host of opportunities with which to compare and evaluate the quality and relevance of correctional services.

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