



# **Outsourcing Community Safety: Can private prisons work for public good?**

**Position Paper**

October 2017

# Private Prisons

## A position paper by Jesuit Social Services

**In 2012 the Victorian Government announced plans to build a new prison at Ravenhall in Melbourne's west. This will be Victoria's third private prison.**

When it is operational in 2018, 40 per cent of Victoria's prisoners will be held in privately owned and operated prisons. This is a higher percentage than almost anywhere else in the world.

Jesuit Social Services believes that prison should always be a last resort. We acknowledge that sometimes prison is necessary, particularly in cases of violent crime. But when a State takes the serious step of removing a person's liberty, certain standards must be met to ensure the human rights of those incarcerated, to rehabilitate detainees and to reduce re-offending. There is a real question as to whether for-profit prison providers are well placed to meet these requirements. For this reason we are very concerned about Australia's move to more private prisons, particularly when a number of countries are moving in the opposite direction.

Our report, *Outsourcing Community Safety: Can private prisons work for public good?*, raises a number of questions about the purpose of prisons and the role of private providers. One thing is clear: governments cannot outsource their responsibility for prisons, and particularly for the welfare of prisoners. If private providers are used, transparency and accountability must be assured to be of the highest standard. This is not the case in Australia today. If for commercial or other reasons this is impossible, then prisons should remain in public hands.

### BACKGROUND

What is a prison for? Prisons are used to deter, denounce, punish and rehabilitate. Enhancing community safety is another oft-cited purpose, but if this is the case, then more must be done than simply locking people up. If a term in prison makes people

more likely to reoffend upon their release, then prison is making the community less safe, not more. Prisons must aim, then, to reduce recidivism – and that means prioritising rehabilitation. The ultimate goal of a prison, on this view, is not to be full.

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Until the 1980s, prisons around the world were public institutions. States sentenced certain offenders to imprisonment, and States imprisoned them. This changed when the United States introduced the first private prisons in the 1980s. The United Kingdom and Australia followed in the 1990s, and New Zealand, Japan, South Africa and France followed soon after that.

Arguments for private prisons often proceed along the same lines as arguments for the privatisation of other public assets and amenities: markets are generally efficient; competition drives down prices and stimulates innovation; private, profit-seeking providers are incentivised to find better, more creative solutions to problems. This approach ignores the unique nature of prisons, which do not involve manufacture of a standard product, but instead house and seek to reform humans with individual backgrounds and criminogenic profiles.

The important question is whether the supposed benefits of privatisation are compatible with the goals of prisons. A number of jurisdictions around the world, having tried private prisons, have concluded that they are not. Israel's Supreme Court declared that private prisons were in fact unconstitutional: 'In a prison run by a private company, prisoners' rights are undermined by the fact that the inmates are transformed into a means of extracting profit.' In the United States, although later reversed by current President Donald Trump, the Obama administration announced an end to private prisons at a federal level amid scathing commentary on performance. Even in Victoria, a private women's prison was taken back into

public hands in 2000 after the company that ran it proved unable to meet adequate standards of health care, safety and security.

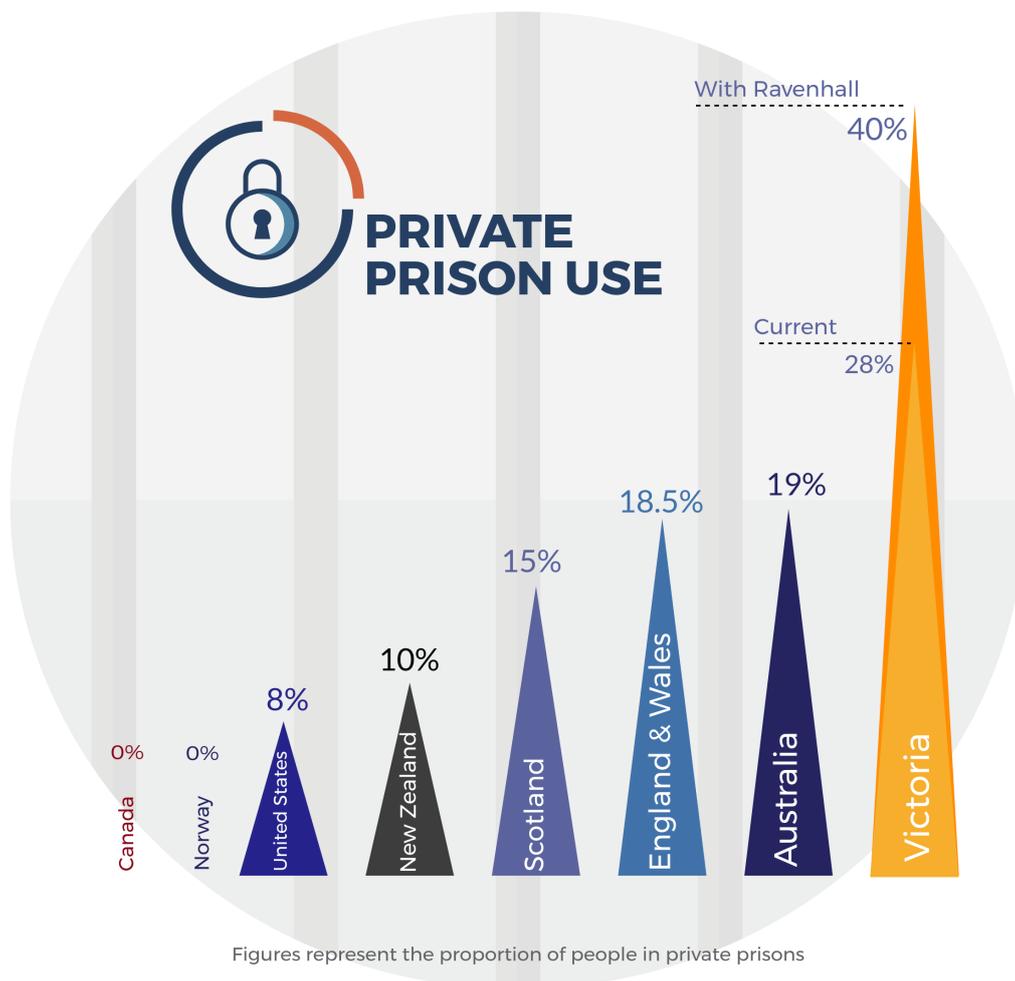
These jurisdictions may or may not have made the right decisions about the privatisation of prisons – but in Australia we have not yet asked the right questions. At the same time, we are locking up more people than ever before. In the past 15 years, while the global population has increased by 18 per cent, the global prison population has increased by 20 per cent. But in Australia, prisoner numbers have risen 133 per cent since 1997, meaning the national jail population has grown at more than four times the rate of the overall population over the last two decades.

### WARNING BELLS

Given this massive increase in our prison population, at a time of tight state government budgets and low growth forecasts, it is not surprising that governments are looking to quickly build prison capacity in ways that do not adversely affect their balance sheets. The tender document for the Ravenhall Prison Project, for example, identifies 'the timeliness and certainty of operational commencement' as an important criterion in the selection of private partners.

But this in itself is a worrying sign that the wrong approach is being taken. The relative ease of building new private facilities to address overcrowding may help shift the policy focus away from more effective alternatives to incarceration such as prevention, diversion and rehabilitation. The Blair Government in the UK once boasted that it was 'tough on crime, and tough on the causes of crime'. In fact those priorities should be reversed: evidence shows that governments save money when they invest in diversionary programs that keep people out of prison by addressing the root causes of crime. An approach that saves money in the long run and keeps the community safer is surely to be preferred to the seemingly simple but costly and far less effective option of building new prisons.

Another concern about privatisation is that introducing the profit motive to the operation of prisons may be in tension, or even conflict, with what we have identified as principles of imprisonment: rehabilitation and reducing recidivism, while respecting human rights. The need to drive down costs is a legitimate concern of any business, but in the case of prisons, cost-saving measures – such as fewer or less qualified staff – can undermine a prisoner's wellbeing and their prospects of rehabilitation. Short term economic efficiency may



also mandate larger prisons, despite all the evidence suggesting that smaller prisons are more effective in rehabilitating prisoners and ensuring better re-engagement with community upon release. A 1999 study in the UK found that 400 beds was the optimal prison size. The current norm in countries with a mix of both public and private prisons is around 1,000 beds.

When privatisation is introduced there is also the risk of creating perverse incentives. This occurs when the seeking of profit leads to outcomes that directly contradict the goals of the State: for example, if a provider is paid per prisoner housed, then – all other things being equal – that provider has an incentive to keep prisoners in prison for as long as possible. A recent study in Mississippi showed that inmates in private prisons serve up to 90 days more than their sentences, apparently as a result of a much higher incidence of 'conduct violations' than occurs in public prisons. There may or may not be actual corruption involved in this situation, but it is certainly the case that in the absence of robust incentive structures and/or strict regulatory measures, private prison operators in Mississippi (who are typically paid per occupied bed) stand to gain from each additional night a person remains in prison.

A further concern about private prisons is that operators have the potential to become influential actors in the formation of public policy. In the United States, large corporations that run prisons are active donors to political parties, and effective lobbyists of governments. These companies have an incentive to promote not only privatisation, but also incarceration, as opposed to alternative justice policy measures. And these are global companies, competing for prison contracts around the world—including in Australia. The best, evidence-based policies are designed to keep people out of prison; but to a big private prison provider, this is bad for business.

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Finally, the existence of private prisons may encourage governments to try to shift responsibility for what goes on inside these facilities. Escapes, riots and other disturbances greatly concern the public, and it can be tempting for governments to look for someone to blame. But when a State locks people up, the State remains responsible for them, and governments should always be held to account for both the wellbeing of prisoners and the safety of the community.

## WHAT SHOULD BE DONE?

At this point, while certain warning bells are ringing, we are not able to say whether private prisons in Australia are doing a better or worse job than public prisons. This is because there is a serious lack of transparency when it comes to prison performance in this country, both public and private. This also means that governments are not able to make the case for privatisation, which is a problem given that we are heading so quickly down that road.

Data on the contracts, monitoring and performance of all prisons should be made publicly available so that the merits or otherwise of privatisation can be assessed. Policy should be determined upon evidence, not ideology. We cannot at this moment in Australia make a finding like the one mentioned above in relation to private prisons in Mississippi, because the relevant data on prisoner disciplinary hearings is simply not available here. This needs to change.

At the same time, all governments should ensure independent inspection of prisons, with reporting to their respective parliaments. Two states have adopted this level of oversight; the others should follow.

Finally, we welcome the Australian Government's commitment to ratify the Optional Protocol – Convention Against Torture (OPCAT). This United Nations Convention came into force ten years ago when States agreed on the need to be openly accountable for their treatment of prisoners. OPCAT requires States to set up a National Preventative Mechanism which can publish an annual report on prison issues requiring attention. This will go a long way towards increasing the transparency, accountability and oversight of Australia's prisons. We call on each Australian State and Territory to support implementation of OPCAT as a matter of priority.

Prisons have a purpose and an opportunity: rehabilitation must be their focus, a chance to work towards a safer community. We urgently need to know whether privatisation is the best means to achieve this goal. There are some clear warnings from overseas about the risks of private prisons. We therefore sound a note of caution, and call on governments to either make the case, or keep prisons public.