

Inspecting Private Prisons

An evidence-based critique of the Prison Inspector's call to introduce private prisons in Ireland

*"The primary focus of running the prison was the financial outcomes.
My view is that when I was there I never had enough officers to run it properly."*

Stewart Yates
former Assistant Director
Kilmarnock (private) Prison, Scotland
2005

*"If numbers in prisons need to be reduced – as most agree –
is it helpful to create an interest in their growth among companies and their shareholders?"*

Rt Revd Dr Peter Selby
Bishop of Worcester and Bishop to HM Prisons
2005

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EXECUTIVE SUMMARY

In his first three Annual Reports, the Inspector of Prisons and Places of Detention voices an interest in – and support for – the privatisation of prisons in Ireland. In the Second and Third Annual Reports, the Inspector recommends that the Minister for Justice privatise “at least one prison”, and suggests “private prisons may be essential for the further development of prisons.” These recommendations have been highlighted by Minister of Justice, Equality and Law Reform, Michael McDowell, as a basis to pursue prison privatisation in Ireland.

This brief provides an evidence-based rebuttal of the Prison Inspector’s call for private prisons, and exposes the significant errors in fact and the use of selective evidence underpinning the pro-privatisation recommendations in the Inspector’s Second and Third Annual Reports. The main purpose of this brief is to challenge Justice Minister McDowell’s plans to privatise prisons in Ireland.

The Irish Penal Reform Trust believes that the international evidence of prison privatisation does not support the Inspector’s recommendations or Minister McDowell’s plans, and that the Inspector’s conclusions misrepresent the research on the outcomes of prison privatisation.

Among the failings of the Inspector’s recommendations exposed in this brief:

1. The Prison Inspector has no mandate to comment on the issue of prison privatisation. In making recommendations in favour of privatisation, the Inspector significantly over-steps the Terms of Reference of his office.
2. Even if the Inspector did possess an appropriate mandate to comment, his recommendations in favour of private prisons are not supported by the evidence.
3. There is no independent academic comparative research showing that private companies deliver prison services at less cost than the public service. Therefore the Prison Inspector’s claims of cost savings through privatisation are unsubstantiated.
4. The operational evidence of private prisons is at best mixed. Therefore the Prison Inspector’s claims of increased efficiency and innovation from privatisation are not proved.
5. There is no evidence of reduced recidivism from private prisons.
6. The Inspector’s recommendation in support of private prisons is based almost exclusively on information provided by the private prisons industry itself, or by business lobbyists supporting the privatisation of custodial services.
7. There is a fundamental contradiction between the Inspector’s call for private prisons and his more significant finding that “for most prisoners prison does not work”. If prison does not work as an effective response to offending, privatising prisons entrenches the problem rather than offering a sensible solution.

Rather than building new and bigger prisons (public or private), the socially and fiscally sensible way forward is to reduce our over-reliance on prisons by developing and resourcing effective non-custodial alternatives to incarceration. The privatisation of prisons runs completely against this objective, and is fundamentally hostile to the broader societal objective of reducing crime and therefore prison numbers.

Now that the industrial dispute with the Prison Officer’s Association has been resolved, the Irish Penal Reform Trust calls upon Minister McDowell to make a clear and unambiguous public commitment not to privatise any existing prisons, or any planned new prisons.

1. BACKGROUND

In his first three Annual Reports, the Inspector of Prisons and Places of Detention voices an interest in – and support for – the privatisation of prisons in Ireland. In the Second and Third Annual Reports, the Inspector recommends that the Minister for Justice privatise “at least one prison”¹, and suggests “private prisons may be essential for the further development of prisons.”²

This brief is an evidence-based rebuttal of the Prison Inspector’s recommendation, and exposes the significant errors in fact and the use of selective evidence underpinning the pro-privatisation recommendations in the Inspector’s Second and Third Annual Reports.

The Inspector’s recommendations come in a context of significant Government activity towards privatising prisons.³

In October 2003, the Minister for Justice, Equality and Law Reform, Michael McDowell, told the Dáil, “I can state categorically... that there is no plan in my Department to privatise the Prison Service”.⁴ While he has frequently restated this position publicly,⁵ Mr. McDowell’s actions tell a very different story, as the Minister has subsequently announced plans to contract out the operation of Loughan House and Shelton Abbey Prisons⁶ and has stated willingness to privatise the new super-prisons planned for construction in Dublin and Cork in the wake of the most recent Prison Inspector’s Report.⁷

The Minister has claimed that privatisation would be made as an exercise in cost savings as part of the ongoing conflict with the Prison Officer’s Association (POA)⁸, but the Department of Justice has yet to provide any evidence that privatisation would accomplish this objective, or show how privatisation would provide a better service than the public sector.

The pro-privatisation recommendations of the Prison Inspector now raise the concern that the Inspector’s Reports may be used as the Minister’s rationale for introducing private prisons into Ireland. Indeed this recommendation was the one the Department of Justice chose to highlight in the Minister’s press release on the day the Inspector’s Third Annual Report was published.⁹

The Irish Penal Reform Trust believes that the international evidence of prison privatisation does not support the Inspector’s recommendations nor Minister McDowell’s plans, and that the Inspector’s conclusions misrepresent the research on the outcomes of prison privatisation.

¹ Dermot Kinlen, Third Annual Report of the Inspector of Prisons and Places of Detention for the Year 2004—2005. Department of Justice, Equality and Law Reform. p. 32. The section of the Inspector’s Report addressing prison privatisation is reproduced as Appendix B.

² Ibid, p.31.

³ This interest dates back at least to August 2003. “Radical Plan to Privatise Prisons” in the Evening Herald, 22 August 2003. p.1.

⁴ Michael McDowell, TD, Dáil Eireann debate, 14 October 2003.

⁵ Minister McDowell restated this as recently as last month. See Kitty Holland, “Prison officers given overtime deal ultimatum” in The Irish Times, 2 July 2005.

⁶ Lorna Reid, “Private jailers to run open prisons” in The Irish Independent, 28 May 2005.

⁷ Shaun Connelly, “McDowell threatens to privatise jails in officers row” in The Irish Examiner, 2 July 2005.

⁸ Ibid.

⁹ Department of Justice, Equality and Law Reform Press Release, Minister publishes Third Annual Report of the Inspector of Prisons and Places of Detention 2004 – 2005, 1 July 2005.

This brief highlights:

1. The lack of a mandate for the Prison Inspector to investigate or comment on the issue of private prisons.
2. The absence of referenced research or evidence to support the Inspector's conclusions.
3. The inaccurate statements and selective evidence that underpin the Inspector's recommendations.
4. The Inspector's reliance on information provided by the U.K. business lobby and by private prison industry representatives in formulating his recommendations.
5. The contradiction between the Inspector's call for private prisons and his more significant finding that "for most prisoners prison does not work". If prison does not work as an effective response to offending, privatising prisons entrenches the problem rather than offering a sensible solution.

The Irish Penal Reform Trust fully supports the need for an independent, transparent and properly resourced Inspectorate of Prisons. While it gives us no pleasure to challenge the Prison Inspector in this public manner, we believe that sensible and effective prison policy must be evidence based. When conjecture and inaccuracy are used to support the implementation of unproven public policy in Ireland, the IPRT has a responsibility to speak out, correct the record and ensure public debate and scrutiny of policy making.

With the recent resolution of the industrial dispute with the Prison Officers, Minister McDowell's only public rationale for privatisation has been eliminated. Media reports following the ratification of the Prison Officer's new contract assume the privatisation of Loughan House and Shelton Abbey is off the table as a result.¹⁰ However, the Minister's own press statement makes no such commitment.¹¹ More significantly, there has been no mention of any change in the Minister's stated interest in privatising the new super prisons in Dublin and Cork, nor any commitment against privatising one or both of these institutions.

The Irish Penal Reform Trust calls upon Minister McDowell to make a clear and unambiguous public commitment that he will not privatise any existing or future prisons.

2. INSPECTING THE MANDATE OF THE PRISON INSPECTOR

2.1 Prison Inspector has no remit to comment on private prisons

The Prison Inspector has no mandate to investigate or comment on the issue of prison privatisation.

The Terms of Reference of the Inspector of Prisons and Places of Detention is specifically limited to reporting on issues and conditions in "prisons and places of detention under the aegis of the Department of Justice, Equality and Law Reform".¹² As there are no private prisons in Ireland, examining the issue of privatisation falls completely outside the Inspector's remit.

¹⁰ See Cormac O'Keeffe, "Prison officers lock up deal to end overtime row" in the Irish Examiner, 18 August 2005, among others.

¹¹ Department of Justice, Equality and Law Reform Press Release, "Minister welcomes POA ballot result", 17 August 2005.

¹² See Appendix A for full Terms of Reference and Guidelines governing the Inspector's office.

The Inspector also has no authority to investigate or comment on the effectiveness or ineffectiveness of prison regimes and systems outside this jurisdiction. Nor do the Terms of Reference direct the Inspector to explore examples of good or bad practice in other countries. While the Terms Of Reference do authorise the Inspector to “Investigate and report on any specific issue referred...by the Minister”, the Justice Minister has stated on the Parliamentary record, “[N]either I nor officials from my Department have suggested to the Inspector of Prisons and Places of Detention that he should investigate private prisons or partially privatised prisons or the outsourcing of prison services.”¹³ **Therefore, investigating or making any recommendation on the issue of private prisons significantly oversteps the Inspector’s mandate.**

3. INSPECTING THE EVIDENCE OF PRIVATE PRISONS

The call for the privatisation of Irish prisons made in successive reports from the Prison Inspector is based upon claimed benefits of this approach in other jurisdictions, particularly the United Kingdom. Section 3 examines these alleged benefits point by point, and highlights areas where the Inspector’s conclusions are unsubstantiated and/or contradicted by the evidence. It also exposes the no fewer than five statements that are either factually incorrect or misrepresent the evidence of private prisons contained in the Inspector’s Third Annual Report.

3.1 INSPECTING THE COSTS

3.1.1 Claims of cost savings are unproven and unsubstantiated

Prison Inspector: “[T]here is no doubt that the private prison, if it is efficiently run, costs less than state prisons.”¹⁴

Evidence: It is simply not true to suggest that the existing data supports the claim that private prisons are less expensive than public prisons, as there is no published independent academic evaluation in the U.K. or elsewhere showing this to be the case. Indeed the Inspector’s Reports cite no reference to support this conclusion.

In fact, the British Government – an enthusiastic supporter of privatisation – claimed a cost savings of only 1% by contracted prisons in England and Wales when compared against publicly run prisons in 2003—04.¹⁵ The method by which even this meagre savings was calculated is not explained, and its accuracy is therefore not possible to independently verify.¹⁶

This same insignificant cost differential was found in the United States in a 2001 study of prison privatisation. According to the report by the Bureau of Justice Assistance of the U.S.

¹³ Michael McDowell, Written Answer to Parliamentary Question from Deputy Aengus Ó Snodaigh, Dáil Éireann, 18 November 2003.

¹⁴ Kinlen, Third Annual Report, p.32.

¹⁵ According to an answer to a Parliamentary Question on 4 July 2005, “In 2003-04 the average cost per prisoner was £25,377 for contracted prisons and £25,718 for public sector prisons.” House of Commons, 4 July 2005.

¹⁶ More recent figures show the average annual cost per prisoner for April 2004—March 2005 at the nine private prisons for which data was available was £26,868, almost £1,500 higher than that claimed in the 2003—04 figures (and well exceeding the £341 per prisoner differential claimed that year, see footnote 13). Office for Contracted Prisons, Statement of Performance and Financial Information April 2004 to March 2005. 19 July 2005. (NB: In calculating this April 2004—March 2005 average, the IPRT has excluded the annual costs for Blakenhurst, Buckley Hall and Manchester Prisons, which are “contracted” prisons operated by the public service rather than private companies.)

Department of Justice, “[R]ather than the projected 20-percent savings, the average saving from privatization was only 1 percent”.¹⁷ The report concluded that this tiny savings “will not revolutionize modern correctional practices”¹⁸ and stated **“it may be concluded that there are no data to support the contention that privately operated facilities offer cost savings over publicly managed facilities.”**¹⁹

In fact, in the United States, where private prisons date back as far as 20 years, there is still no independent evaluation showing that private prisons are cheaper to operate than public prisons. There is however significant Government analysis concluding just the opposite. Nearly a decade ago, U.S. General Accounting Office’s review of several comparative studies on private versus public prisons acknowledged that, “because the studies reported little difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money.”²⁰

More recently, a 2003 study funded by the National Institute for Justice of the U.S. Department of Justice could not conclude that private prisons were less expensive than public prisons. The report found that Texas’s claims of cost saving were based upon “some unusual accounting assumptions” and that it was therefore “not possible to evaluate them”.²¹ In Florida, claims of cost savings were said to be “a subject of considerable controversy”, and that some evaluations had in fact found private prisons to be *more expensive* than comparable state-run facilities.²²

The Florida evaluations showing private prisons to be more expensive than publicly operated prisons are by no means unique. Only four months ago, a Performance Audit conducted by the state Auditor General of the privatised Michigan Youth Correctional Facility (MYCF) found that the daily cost per prisoner at the private facility was *higher* than in 33 of 37 state run correctional facilities.²³ The report found, “If [the Department of Corrections] had housed the youthful prisoners in other lower cost State correctional facilities instead of [the private] MYCF, it could have achieved a cost savings of \$2.2 million annually.” The Auditor General concluded that the Department of Corrections should “consider the need for and use of MYCF and evaluate its contract options.”²⁴

Nor is this outcome limited to the U.S. experience. In Australia, a 2005 submission from the Department of Corrective Services to the Parliamentary Public Accounts Committee of the Government of New South Wales also found the cost of housing prisoners at the state’s one private prison (Juncie Correctional Centre) to be *more expensive* than in a similar publicly run prison (Mid North Coast Correctional Centre). According to the Department’s submission, “a clear comparative based on assessing like inmates of like classification reveals that the Mid

¹⁷ Dr. James Austin and Dr. Gary Coventry, *Emerging Issues on Privatised Prisons*. United States Department of Justice Bureau of Justice Assistance, February 2001. p.iii.

¹⁸ *Ibid*, p.59.

¹⁹ *Ibid*. p.38.

²⁰ United States General Accounting Office, *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service*. United States General Accounting Office, August 1996. p.7.

²¹ Abt Associates Inc., *Governments’ Management of Private Prisons*: Prepared for the National Institute of Justice. 15 September 2003. p.xii.

²² *Ibid*, p.xiv.

²³ Michigan Office of the Auditor General, *Performance Audit, Michigan Youth Correctional Facility: A Facility Under Contract With the Department of Corrections*, Report Number 47-280-04, May 2005. p. 1. Available at www.audgen.michigan.gov

²⁴ *Ibid*, p.14.

North Coast Correctional Centre is A\$2.19 per inmate per day cheaper than Junee Correctional Centre to manage.”²⁵

Comparative costs of public versus private prisons also often ignore the hidden costs of privatisation, which if included in the analysis would further undermine claims of cost savings from private prisons. Experience has shown that these hidden costs can run into the millions.

For example, in Western Australia the Director General of the Department of Justice, Alan Piper, highlighted the significant cost of state monitoring of the performance of private prisons. According the Director General in Department’s 2002—2003 Annual Report, “[T]he department provides a monitoring team with almost as many senior and experienced staff as it would take to run the prison if it were in public ownership.” The cost to the state of managing the private prison contract in 2002—03 alone was approximately \$1.5 million.²⁶

More recently, the Israeli Government acknowledged in documents submitted to the High Court of Justice in April 2005 that it had spent \$1.5 million on the process of preparing a tender for the construction of a private prison in that country, even *before* the tender process was closed and the tenders evaluated.²⁷

3.1.2 Private prisons are paid for by public taxes

Prison Inspector: “The private sector build and maintain and run at their own expense their own prisons.”²⁸

Evidence: This statement is simply false. Private prisons are completely paid for by taxpayers.

For the Inspector’s Report to suggest that private prisons are a service donated by prison companies at no cost to the state reveals a profound misunderstanding of the contractual basis underpinning private prisons, and the economic basis which make prisons attractive commodities for private industry.

Governments enter into binding contractual agreements (usually for 25 years) with private prison operators that result in the state paying the private company a fee to house prisoners, and to provide agreed programmes and services. Taxes also pay the capital costs of construction of the private prisons and the cost of private sector borrowing to finance the projects (money which is borrowed at a higher interest rate than if the public sector had borrowed the money).

In the United States, not only are private prisons completely paid for by taxpayers, but researchers have also found that the profits of private prison companies are enhanced by additional tax breaks and Government subsidies. A 2001 study found that *at least* 73% of the big privately-built and operated prisons in the U.S. have received subsidies such as tax-advantaged financing, property tax reductions or other tax cuts, infrastructure assistance and

²⁵ Department of Corrective Services, Submission to Inquiry - Value for Money from New South Wales Correctional Centres - #1, 6 June 2005. p.8. Available at <http://www.parliament.nsw.gov.au/cgi-bin/isiswebext.exe?op=get&uri=/isisquery/irlad6e/6/doc/#hit1>

²⁶ Cited in “Western Australia: AIMS prison ‘no benefit’” in Prison Privatisation Report International, No. 59, December 2003. Available at www.psir.org/justice

²⁷ Case No. 2605/05 Supreme Court, Sitting as the High Court of Justice. Human Rights Division, Academic College of Law, Ramat Gan, and Shlomo Teuzer v Ministry of Finance and Ministry of Internal Security. Cited in “Israel: Privatisation process has cost \$1.5 million – so far” in Prison Privatisation Report International, No. 68, May/June 2005. Available at www.psir.org/justice

²⁸ Kinlen, Third Annual Report, p.32.

training grants/tax credits.²⁹ Therefore, taxpayers not only pay for the building, maintenance and running of private prisons, public taxes also ensure the profitability of the private prison industry.

3.2 INSPECTING THE RESULTS

3.2.1 Claims of innovation and efficiency through privatisation not proved

Prison Inspector: “Private prisons have been very inventive.”³⁰ The Inspector claims the introduction of competition in the prison system has been “another benefit” of privatisation, as this has led to increased operating efficiency within the public service.³¹ The Prison Inspector’s First Annual Report also makes the claim that, “competition in England has resulted in the streamlining of the Prison Service.”³²

Evidence: The Inspector’s statements are not supported by the evidence of prison privatisation from the U.K. or elsewhere.

The experience of prison privatisation in the United Kingdom was recently summarised by British Labour MP Neil Gerrard in the House of Commons in March 2005,

In 2003, the [U.K.] National Audit Office reported on the operational performance of private prisons. It said that the experience of that performance had been mixed: some private prisons had delivered; some of the best private prisons compared with the best prisons in the public sector and that the worst prisons at the bottom were performing at least as badly as public sector prisons.

The NAO acknowledged that private prisons had brought some innovation into the way in which they recruited and used their employees, but said that there was little difference in daily routine. It concluded that the use of private prisons was not a guarantee of success. **I have seen no real evidence to back up the statement that the existence of private prisons has had a dramatic effect on how non-private prisons operate. It was said that private prisons have been one of the factors in driving up performance in the public sector. I cannot recall seeing reports of detailed research into such matters.**³³ [emphasis added]

The reason Mr. Gerrard has not seen any research proving that private prisons drive up the performance of public prisons is because neither the British Government nor independent research can show this to be true. As was revealed in a response to a July 2004 Parliamentary Question on the impact of competition within the prison service, then prisons minister Paul Goggins admitted, “There is no simple way to track the spread of innovative working practices between the private and public sectors of the Prison Service.”³⁴

Therefore the Prison Inspector’s Reports claim benefits from privatisation in the U.K. that the British Government admits it cannot identify with any accuracy. Again the Inspector’s Report cites no reference on which to base this conclusion.

²⁹ Good Jobs First, Jail Breaks: Economic Development Subsidies Given to Private Prisons, October 2001. Available at <http://www.goodjobsfirst.org/jbstudy.htm>

³⁰ Kinlen, Third Annual Report, p.32.

³¹ Ibid.

³² Dermot Kinlen, First Annual Report of the Inspector of Prisons and Places of Detention for the Year 2002—2003. Department of Justice, Equality and Law Reform. p. 50.

³³ Neil Gerrard, MP, House of Commons Debate, 16 March 2005.

³⁴ Paul Goggins, MP. House of Commons, Written Answers, 22 July 2004.

The Inspector's Third Annual Report further claims, "Last year the [U.K.] Prison Service regained a prison which had been taken over by the private sector"³⁵, implying that private competition had served to improve the efficiency of the public service. This claim is incorrect, as there were no such transfers of management in the year identified in the Inspector's Report.

While transfers of management of prisons from private operators to the public service did occur in England in 2000 (Buckley Hall Prison) and 2001 (Blakenhurst Prison), neither of these prisons was ever operated by the public sector. These prisons were operated by the private sector since their inception, at which time the Prisons Service was barred from submitting tenders to operate them.³⁶ When the private contracts expired and the Prison Service was allowed for the first time to submit bids to operate these facilities, the contracts were awarded to the public service instead of private companies. Rather than being "regained" by the public sector – as is incorrectly claimed in the Inspector's Report – these are examples where private prisons were unsuccessful in competing with the public sector on the basis of costs and quality of service.

The suggestion that the private sector is more innovative and efficient in operating prisons is contradicted by many sources. A 2003 report of the U.K. National Audit Office, for example, came to the conclusion that, "a general verdict that [privatisation] is either good or bad in the case of prison...cannot be justified."³⁷

This was also the conclusion of the Prison Inspector's counterpart in the U.K. According to HM Chief Inspector of Prisons Anne Owers, "[P]rivately-run prisons can provide models of good practice; but it is equally clear that they can drift away from the basic tenets of good prison-craft."³⁸ This statement was made in the July 2005 report of the inspection of the private Rye Hill Prison, in which the Chief Inspector concluded "the prison had deteriorated to the extent that we considered that it was at that time an unsafe and unstable environment, both for prisoners and staff."³⁹

The Chief Inspector largely attributed the safety and security problems at Rye Hill to low staffing levels and a 40% staff attrition rate. According to the Chief Inspector, this

raises some important questions. They include: whether contractually agreed staffing levels are sufficient for a prison of this kind; what systems and pay structures need to be in place to support staff retention; and the effectiveness both of internal management systems within the prison, and of external monitoring and management. These are all issues that were raised in last year's National Audit Office report into contracted out prisons.⁴⁰

The United Kingdom is not alone in this mixed experience of prison privatisation. In the United States, which has an even longer history of prison privatisation than does the U.K., claims of increased efficiency are also not proven.

³⁵ Kinlen, Third Annual Report, p.32.

³⁶ This practice – where only private companies are allowed to submit tenders to manage, finance, design, build and operate new prisons – has been the case since the early 1990s for all new prisons in England and Wales.

³⁷ National Audit Office, The Operational Performance of PFI Prisons: Report by the Comptroller and Auditor General, 18 June 2003. p. 9.

³⁸ Anne Owers, Report on an unannounced inspection of HMP Rye Hill, 11-15 April 2005 by HM Chief Inspector of Prisons, July 2005. p.6.

³⁹ Ibid, p.5.

⁴⁰ Ibid, p.6.

As far back as 1996, the U.S. General Accounting Office's study of prison privatisation stated, "A principal concern is whether private contractors can operate at lower costs to the taxpayers, while providing the same or even a better level of service as the public sector, particularly with respect to safety and security issues." After reviewing a number of evaluations of private versus public prisons in the U.S., the GAO concluded that the "comparisons of quality are unclear".⁴¹

In 2001, a study by the Bureau of Justice Assistance of the U.S. Department of Justice reached a more definitive conclusion. **This study found, "no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities."**⁴² Furthermore, the study found that "the rate of major incidents is higher at private facilities than at public facilities."⁴³

A 2003 report prepared for the National Institute of Justice of the U.S. Department of Justice found that overall the private prison industry's claims of cost savings, increased efficiency and lower recidivism are not supported by the evidence. For example, the report dismisses Florida's claimed benefits of privatisation, concluding that,

The legislature may have assumed that any innovation of significance would result in more effective prisons (i.e., lower recidivism) and less costly ones. The existing comparative costs and comparative recidivism rates do not support any strong influences about the state's obtaining more innovative imprisonment from the private sector.⁴⁴

Most recently, an April 2005 Performance Audit of private prisons in Colorado conducted by the State Legislative Audit Committee found problems in almost every area of performance, including "None of the medical clinics operated by the five private prisons located in Colorado are licensed by the Department of Public Health and Environment as required by Statute"⁴⁵, "Private prisons have hired some applicants with questionable backgrounds"⁴⁶ and the Committee identified "continued contract violations by the private prisons"⁴⁷.

The experience of private prisons in Australia is no less problematic. According to Western Australia's Justice Minister in October 2003, "It is clear that this privatisation delivered no benefit to the community."⁴⁸

Responding to a question about the Department of Justice's Second Annual Report on the operation of the privatised Acacia Prison, the Minister said,

The model offered by Acacia Prison indicates what happens when a prison is privatised. For members [of Parliament] opposite this was not just about building a prison. They believed Acacia would be their benchmark, their flagship, and the market leader in correctional practice. The previous government said at the time that it would provide proof that its privatisation policies would work ...we have seen the result has been a lot different from the rhetoric.⁴⁹

⁴¹ United States General Accounting Office, p.9.

⁴² Austin and Coventry, p.38.

⁴³ Ibid, p.52.

⁴⁴ Abt Associates Inc., pp.xv—xvi.

⁴⁵ Legislative Audit Committee of the State of Colorado, Report of the State Auditor: Private Prisons Department of Corrections Performance Audit. Office of the State Auditor, April 2005. p.2.

⁴⁶ Ibid, p.4.

⁴⁷ Ibid, p.5.

⁴⁸ Michelle Roberts, Justice Minister for Western Australia, 30 October 2003. Quoted in Prison Privatisation Report International, No. 59, December 2003. Available at www.psiru.org/justice

⁴⁹ Ibid.

According to the Minister, “Based on this experience, we wouldn’t consider privatising any more prisons in Western Australia.”⁵⁰ In July 2005, the Government of Western Australia announced that it would be accepting new tenders for the operation of Acacia Prison when the contract with the current private operator expires in May 2006.⁵¹

3.2.2 No evidence that private prisons produce lower rates of recidivism

Surely the main performance indicator for the success or failure of a prison regime is the rate of re-offending among people released from that prison. On this key point, there is no evidence that private prisons produce lower rates of re-offending than do public prisons.

The British Government admits it cannot identify lower rates of re-offending among prisoners held in private prisons.

In an answer to a Parliamentary Question on this issue in 2000, the then prisons minister Paul Boateng replied, “[S]ince prisoners may move between privately owned and publicly owned prisons on a number of occasions during their sentence, it is not possible to calculate the reoffending rates.”⁵²

Studies in the U.S. have also failed to show that private prisons succeed in reducing recidivism.

For example, a 2003 study of over 11,000 releases from five private prisons in Florida conducted by Florida State University and the Florida Department of Corrections found that,

[I]n only one of thirty-six comparisons was there evidence that private prisons were more effective than public prisons in terms of reducing recidivism. This indicates that, at this time, public and private prisons are essentially the same in terms of their relative effectiveness in preventing inmates from being re-imprisoned for adult males, adult females, and youthful offender males after release from Florida’s prisons.⁵³

A comparative study of private versus public youth offender facilities in Florida published in 2005 by researchers from Yale University found that while some private juvenile facilities were able to demonstrate lower operating costs than some state run facilities, the private facilities exhibited *higher rates of recidivism*. The report therefore concluded that, “[O]ur cost-benefit analysis implies that the shortrun savings offered by for-profit facilities over nonprofit facilities are reversed in the long-run due to increased recidivism rates.”⁵⁴

3.2.3 Private prison “scandals” ignored by Inspector’s Report

Prison Inspector: “Unfortunately there were scandals in privately run prisons in the United States.”⁵⁵

⁵⁰ Michelle Roberts, Justice Minister for Western Australia in The Western Australian, 19 November 2003.

Quoted in Prison Privatisation Report International, No. 59, December 2003. Available at www.psir.org/justice

⁵¹ John D’Orazio, MLA, “Acacia Prison contract to be put to tender”, Government of Western Australia Media Statement by John D’Orazio MLA Minister for Justice, 19 July 2005.

⁵² Paul Boateng, MP, House of Commons, Written Answer, 9 March 2000.

⁵³ W Bales, L.E. Bedard, S.T. Quinn, D Ensley, G Holley, A Duffee, S Sanford, Recidivism: An Analysis of Public and Private State Prison Releases in Florida. A Joint Study conducted by Florida State University, the Florida Department of Corrections and the Correctional Privatization Commission. December 2003. p.35.

⁵⁴ P Bayer and D Pozen, “The Effectiveness of Juvenile Correctional Facilities: Public versus Private Management” in the Journal of Law and Economics, vol. 48, no.2, 2005.

⁵⁵ Kinlen, Third Annual Report, p.31.

Evidence: The Inspector's Report admits there have been "scandals" in U.S. private prisons, yet it ignores any further comment or analysis of these problems. Surely "scandals" should be a reason to avoid – or at least be wary of – the introduction of private prisons in Ireland. This issue is of particular relevance because if the Irish Government decides to introduce private prisons, U.S. firms would be able to bid to operate them.

So what are a few of the U.S. "scandals" that are ignored in the Inspector's Report?

- **Overcharging the taxpayer by millions** – In July 2005, an audit by the Office of the Inspector General in Florida revealed that two private prison companies – The Geo Group and Corrections Corporation of America – had overcharged the state \$12.7 million for work at five privately run prisons over 10 years.⁵⁶
- **Rioting** – In July 2004, hundreds of prisoners at the private Crowley County Correctional Facility in Colorado attacked each other, destroyed two accommodation units and burned a vocational greenhouse to the ground, injuring thirteen people. The Denver Post described the incident as "one of the most devastating inmate uprisings in Colorado history,"⁵⁷ and the event prompted Colorado's state auditor to investigate all private prisons in the state.⁵⁸
- **Abuse of prisoners** – In 2000, the U.S. Department of Justice filed a lawsuit against the private Jena Juvenile Justice Center in Louisiana, alleging that the facility provided inadequate care for its juvenile prisoners. The suit also charged that prison officers at the facility used inappropriately harsh and brutal methods of behaviour control, including physical beatings, verbal abuse and the indiscriminate use of mace and pepper-spray.⁵⁹
- **High number of escapes** – A tally of news reports in 1999 showed at least 37 escapes of adult prisoners from secure private prisons that year. This figure does not include escapes from privatised juvenile facilities or from privatised prisoner escorts. For comparison, publicly operated prisons in New York state, which housed roughly the same number of prisoners as the entire system of private prisons in the U.S., experienced only eight escapes between 1995 and 1999, an average of less than two per year.⁶⁰
- **High levels of violence** – A 1997 industry-wide study found that private prisons in the United States had 49% more prisoner-on-staff assaults than public prisons, and 65% more prisoner-on-prisoner assaults.⁶¹

The United States is not the only jurisdiction to experience such serious problems with private prisons. Other examples include,

- **England** – In July 2005, the Chief Inspector of Prisons found that conditions at Rye Hill Prison "had deteriorated to the extent that we considered that it was at that time an unsafe and unstable environment, both for prisoners and staff." According to the Chief Inspector's Report, "Staff were inadequately supported by managers and were sometimes surviving by ignoring misbehaviour or evidence of illicit possessions. Prisoners themselves told us that they wanted a more visible, and a more robust, staff

⁵⁶ Joseph Tartakoff, "Audit: Geo Group overcharged state" in the Palm Beach Post, 28 July 2005.

⁵⁷ Denver Post, 22 July 2004.

⁵⁸ Denver Post, 24 August 2004.

⁵⁹ The Sentencing Project, Prison Privatization and the Use of Incarceration, January 2002.

⁶⁰ Judith Greene, "Bailing Out Private Prisons" in The American Prospect, vol. 12, issue 16, 9 September 2001.

⁶¹ Judith Greene, Prison Privatization: Recent Developments in the United States, Presentation at the International Conference on Penal Abolition, 12 May 2000.

presence. We were shown mobile phones, and prisoners reported the presence of drugs, alcohol and knives. Prisoners also said that they themselves sorted out fights and bullying; and we saw evidence of staff being bullied by prisoners and withdrawing from, rather than confronting, intimidatory and aggressive behaviour.”⁶²

- **Scotland** – A 2005 BBC investigation of Kilmarnock Prison revealed “that staff shortages compromise prisoner and guard safety, a blind eye is turned to drug and alcohol abuse, and despite vulnerable prisoners killing themselves, basic suicide watches still go ignored.”⁶³ Stewart Yates, the former assistant director of the prison, stated on the programme that, “The primary focus of running the prison was the financial outcomes. My view is that when I was there I never had enough officers to run it properly...my estimate would be, you would probably require another 30 per cent of resource.”⁶⁴
- **England** – In February 2003, the Government's Youth Justice Board announced it was withdrawing all sentenced juveniles from Ashfield Prison, England's first privately run young offenders' institution. The Board announced its phased withdrawal of 172 young offenders after the Chief Inspector of Prisons published a scathing report on conditions there. The Chief Inspector said Premier Prison Services, Ashfield's operator, failed to provide “the minimum requirements of a safe environment”.⁶⁵
- **Australia** – In Victoria in 2000, the Government invoked emergency powers to take control of the management of the failing private Metropolitan Women's Correctional Centre and bought out its contract after 4 years of persistent problems.⁶⁶ These included concerns with prison security, management of at risk prisoners, control and management of illicit drugs, compromised prisoner regimes and shortcomings in the delivery of health services.⁶⁷

3.2.4 The “best prison in England” is not a private prison

Prison Inspector: “The best prison in England according to the Home Office is a privately run one.”⁶⁸

Evidence: The Inspector identifies the source of this information as an unnamed person within the British Home Office.⁶⁹ However, this statement is not supported by the Home Office's own published Performance Ratings of prisons.

According to the U.K. Prison Service, there are currently 23 prisons in England and Wales assessed as “high performing” under its Prison Service Performance Rating System. Two of these 23 prisons are privatised. However, prisons are not ranked against each other within this category (other than being listed alphabetically) so there is no basis for the Inspector's

⁶² Owers, p.5

⁶³ BBC News UK Edition Online, “Private Prison Failings Exposed”, 9 March 2005.
http://news.bbc.co.uk/1/hi/programmes/real_story/4322311.stm

⁶⁴ Stewart Yates, Interview on “Prison Undercover: The Real Story”. BBC Television. 9 March 2005.

⁶⁵ “Premier's Ashfield: the ‘worst’ prison in England and Wales” in Prison Privatisation Report International, no. 53, February 2005. Available at www.psir.org/justice

⁶⁶ Stephen Nathan, “The Public Deserves Better” in Holyrood Magazine, issue 37, 10 June 10, 2002.

⁶⁷ “Victoria takes over CCA women's prison” in Prison Privatisation Report International, no. 37, September/October 2000. Available at www.psir.org/justice

⁶⁸ Kinlen, Third Annual Report, 31—32.

⁶⁹ Kinlen, Second Annual Report of the Inspector of Prisons and Places of Detention for the Year 2003—2004. Department of Justice, Equality and Law Reform. p.73.

statement that the “best prison” is private, as the Prison Service *does not identify* a “best prison”.⁷⁰

While one of the two private prisons listed in the “high performing” category – Altcourse Prison in Merseyside – recently received a positive review from the U.K. Chief Inspector of Prisons, the publication of this report was immediately followed by the report of the suicides of two Altcourse prisoners within a 48-hour period.⁷¹

The Irish Inspector’s Third Annual Report also fails to note that while there are two private prisons in this top category in England and Wales, there are three private prisons listed in the lower category of the performance scale.⁷² In fact, private prisons can be found across all three performance categories. This would substantiate the assessments by the U.K. National Audit Office and U.K. Chief Inspector of Prisons that private prisons offer no guarantee of success or improvement on the outcomes of public prisons.

3.3 INSPECTING THE SOURCES

3.3.1 Over-reliance on information provided by the private prison industry and the business lobby

The recommendations in favour of prison privatisation contained in the Inspector’s Second and Third Annual Reports are based almost exclusively on information provided by the business lobby and private prison industry in the U.K.

The Inspector’s Second Annual Report quotes extensively from what it describes as the “fascinating publication”, Competition: a catalyst for change in the prison service, and reproduces testimonials in support of private prisons directly from its preface.⁷³

What the Inspector’s Report does not say is that this report was produced by the Confederation of British Industry (CBI)⁷⁴ – the self-professed “Voice of Business” in the U.K. CBI is described by one major private prisons company as being “the most powerful lobbying organisation for UK business”⁷⁵, and it is on record calling on the British Government to create a policy environment favourable to expanded prison privatisation.⁷⁶

The author of Competition: a catalyst for change is Gary Sturgess, the Executive Director of the Serco Institute.⁷⁷ Serco is the owner of Premier Custodial Group Ltd.⁷⁸, the largest private prisons and correctional services contractor in the UK. The Serco Institute, according to its

⁷⁰ HM Prison Service. Prison Service Performance Rating System (4th Quarter 2004/2005). Available at <http://www.hmprisonservice.gov.uk/abouttheservice/performance/ceratings/>

⁷¹ BBC News, “Two inmates found hanged at jail”. 13 July 2005. Available at <http://news.bbc.co.uk/1/hi/england/merseyside/4679621.stm>

⁷² HM Prison Service, Prison Service Performance Rating System (4th Quarter 2004/2005). Available at <http://www.hmprisonservice.gov.uk/abouttheservice/performance/ceratings/>

⁷³ Kinlen, Second Annual Report, p.71.

⁷⁴ NB- The Inspector’s Report mistakenly refers to the CBI report as being produced by “CBI”.

⁷⁵ Serco website. Available at <http://www.serco.com/institute/about/team/index.asp>

⁷⁶ Gary Sturgess, Competition: A catalyst for change in the prison service – a decade of improvement. Confederation of British Industry, July 2003. p.46.

⁷⁷ Serco Institute Website, <http://www.serco.com/institute/about/team/index.asp>.

⁷⁸ Serco Press Release, “Premier Custodial Group Ltd nominated as Preferred Supplier to deliver the Prison Escort and Custody Services for London and the South East of England”, 25 February 2004. Available at <http://www.serco.com/media/pressreleases/2004/pcgppreferredsupplierforprisonescortservices.asp>

website, is “Serco’s research facility”.⁷⁹ Prior to taking his post as Executive Director of Serco Institute in January 2003, Sturgess served as “a non-executive director of Serco Group plc from 1993 until 2000”.⁸⁰

However, the organisational relationship between CBI and Serco – and indeed CBI and the private prison industry – runs much deeper than simply the authorship of this one report.

Until recently, the Director of CBI’s Public Services Group – the division of CBI under which Competition: A catalyst for change is listed⁸¹ – was John Williams.⁸² Williams was in the CBI post while on secondment from his position as Market Development Director for Local Government at the Serco Institute.⁸³

Among those working with the Director of the Public Services Group to set CBI’s agenda towards the public service sector are the members of CBI’s “Public Services Strategy Board”. These include:

- Kevin Beeston, Executive Chairman of Serco Group, who sits as Deputy Chairman of the Strategy Board.⁸⁴
- Stephen Brown, Chief Executive of GSL⁸⁵ – GSL operates three private prisons in the UK⁸⁶, as well as private immigration detention centres⁸⁷ and prisoner escort services.⁸⁸ GSL also operates a private prison in South Africa⁸⁹, as well as private prisons, prisoner escorts and electronic monitoring schemes in Australia.⁹⁰

Between them, Serco/Premier Custodial Group and GSL own and operate seven of the eleven private prisons in England and Wales.⁹¹

Therefore the only report on privatisation cited by the Prison Inspector as a basis for his recommendation was written by a long-time official with a major private prisons company, and was commissioned and published by a “powerful lobbying organisation” with significant links to, and interlocking personnel with, the private prison industry.

In 2004, Williams and Sturgess co-authored an article for the Public Service Review journal in praise of the CBI report and of contracting out prison services.⁹² While their article describes the report as “[d]rawing exclusively on independent work”,⁹³ others have criticised it for

⁷⁹ Serco Institute Website, <http://www.serco.com/institute/index.asp>

⁸⁰ Serco Institute Website, <http://www.serco.com/institute/about/team/index.asp>.

⁸¹ CBI’s website identifies Competition: A catalyst for change as one of the “Key downloads” available under the heading of “Public service reform”. See <http://www.cbi.org.uk/ndbs/staticpages.nsf/staticpages/policymatrix.htm?OpenDocument>.

⁸² G Sturgess and J Williams, “Driving Efficiency?” in Public Service Review: PFI/PPP 2004. PSCA International Ltd., 2004. Available at <http://www.publicservice.co.uk/pdf/pfi/2004/gsturgess.pdf>.

⁸³ “CBI influencing public service forum” in Prison Privatisation Report International, No. 68, May/June 2005. Available at www.psiu.org/justice

⁸⁴ Confederation of British Industry website. Available at www.cbi.org.uk/pdf/psdpssb.pdf.

⁸⁵ Ibid.

⁸⁶ HM Prison Service Website. <http://www.hmprisonservice.gov.uk/prisoninformation/privateprison/>

⁸⁷ GSL Website, <http://www.gslglobal.com/markets/custodial/immigration.asp>.

⁸⁸ GSL Website, http://www.gslglobal.com/markets/custodial/court_services.asp.

⁸⁹ GSL website, http://www.gslglobal.com/press_centre/introduction.asp

⁹⁰ GSL Website, <http://www.gslpl.com.au/gsl/contracts/contracts.asp>.

⁹¹ HM Prison Service Website, <http://www.hmprisonservice.gov.uk/prisoninformation/privateprison/>

⁹² Sturgess and Williams, op cit.

⁹³ Ibid.

“fail[ing] to offer any critical analysis of its sources or point out that its sources are highly selective.”⁹⁴

In addition to the CBI report, the other major source cited by the Prison Inspector as a basis for the recommendation in favour of privatisation was a one-day visit to the Serco/Premier Custodial Group-owned Lowdham Grange Prison⁹⁵ in the U.K. and meetings with officials employed at that facility.⁹⁶

Therefore both major sources cited in the Prison Inspector’s reports as the basis for the claimed benefits of prison privatisation have direct links to the private prison industry or lobbyists supporting prison privatisation. This certainly begs the question to what degree the alleged benefits cited in the Prison Inspector’s Reports merely repeat industry promotional and lobbying materials masquerading as independent research.

The Irish Penal Reform Trust met for one hour with the Inspector in September 2003 to discuss our concerns about privatisation. This meeting was initiated by IPRT rather than the Inspector’s Office. The Inspector’s Second Annual Report notes that he “considered [the IPRT’s] arguments”, yet the Report dismisses them without citing any reasons or contrary evidence.⁹⁷

4. CONCLUSIONS & RECOMMENDATIONS FOR REAL CHANGE

There has been an experiment overseas – driven by ideology – to introduce private prisons and it hasn’t worked. The ideology-driven belief that ... private is better is not suited to our prisons and this government won’t let New Zealanders become guinea pigs for an experiment here.⁹⁸

Matt Robson, MP
Minister of Corrections, New Zealand
January 2000

It is in the best interests of Kentucky and the best interest of the taxpayers to operate this facility [at Sandy Hook, Elliott County] with the prison guards being state employees.⁹⁹

Governor Ernie Fletcher (Republican)
March 2005

The Second and Third Annual Reports of the Prison Inspector recommend the introduction of private prisons on the basis that the private sector is able to deliver less expensive and more efficient custodial facilities. **However, the overall international evidence – from both governmental and independent sources – supports neither claim.** Indeed, this short brief provides only a snapshot of the extensive documentation of the problems of private prisons over the past 20 years.

⁹⁴ Stephen Nathan, “CBI Supports its Own” in Prison Reform Trust’s Prison Report, no. 62, 2003.

⁹⁵ NB - The Inspector’s Third Annual Report mistakenly refers to Lowdham Grange Prison as “Lowdham on the Grange”.

⁹⁶ Ibid, pp.49—57. The length of this visit was identified as “a day” in correspondence from Prison Inspector Dermot Kinlen to the Irish Penal Reform Trust, July 2005.

⁹⁷ Ibid, pp.64—65.

⁹⁸ Cited in Stephen Nathan, “The Prison Industry Goes Global” in Yes! Magazine, Fall 2000. Available at <http://www.yesmagazine.org/article.asp?ID=372>

⁹⁹ Cited in “Kentucky Republican rejects privatisation” in Prison Privatisation Report International, no. 67, March 2005. Available at www.psir.org/justice

To summarise the failings of the Inspector's recommendations:

- The Prison Inspector has no mandate to comment on the issue of prison privatisation. In making recommendations in favour of privatisation, the Inspector significantly oversteps the Terms of Reference of his office.
- Even if the Inspector did possess an appropriate mandate to comment, his recommendations are not supported by the evidence.
- There is no independent academic comparative research showing that private companies deliver prison services at less cost than the public service. Therefore the Prison Inspector's claims of cost savings through privatisation are unsubstantiated.
- The operational evidence of private prisons is at best mixed. Therefore the Prison Inspector's claims of increased efficiency and innovation via privatisation are not proved.
- There is no evidence of reduced recidivism from private prisons.
- The Inspector's recommendation in support of private prisons is based almost exclusively on information provided by the private prisons industry itself, or by business lobbyists supporting the privatisation of custodial services.

Therefore the Prison Inspector's recommendation to introduce privatisation into the prison system is simply not supported by evidence, and provides no credible basis for the Government to privatise prisons in Ireland. To do so would be to place ideology ahead of evidence, private profit ahead of the public interest.

Given that private prison companies need stable and even growing prison populations to sustain and increase profits, it is fair to question whether providing effective rehabilitation – and therefore producing lower levels of re-offending – is in direct contradiction of their economic interests. As stated earlier this year by the Rt Revd Dr Peter Selby, Bishop of Worcester and Bishop to HM Prisons,

If numbers in prisons need to be reduced – as most agree – is it helpful to create an interest in their growth among companies and their shareholders? Are there some real conflicts of interest which we are likely to have to address: for instance will judges and jurors have to be vetted to ensure that they do not have a [financial] interest in sending more people to prison? More generally, if prisons become part of the 'commercial sector', do those running them have an interest in reducing regimes or staffing levels in ways that militate against the restorative aims of imprisonment?¹⁰⁰

If the Government seriously aspires to reduce the outrageous costs of incarceration and reduce rates of re-offending, rather than privatising prisons it should instead focus on the Inspector's more significant yet largely ignored conclusion that "for most prisoners prison does not work".¹⁰¹

The Inspector's Third Annual Report argues that prisons fail to address the root causes of criminal behaviour, fail to rehabilitate prisoners and are "a terrible waste of money".¹⁰² As has been documented throughout this brief, these failings are equally true of private prisons as they are of public prisons. Therefore if prisons don't work, building new and bigger prisons (public or private) is not a socially or fiscally sensible way forward.

¹⁰⁰ Available at <http://www.prisonreformtrust.org.uk/news-prPrivatePunishmentbriefing.html>

¹⁰¹ Kinlen, Third Annual Report, p.12.

¹⁰² Ibid, p.40.

Rather, sensible policy would dictate that Ireland reduce its over-reliance on prisons by developing and resourcing effective non-custodial alternatives to incarceration. The Inspector's Report endorses the value of this approach, and the goal of "Reduc[ing] the number of people in prison".¹⁰³ Indeed, the Inspector's Third Annual Report makes a number of valuable recommendations on the expansion of alternatives to prison, community supervision and non-custodial options for low-risk offenders.

This area was also identified by the Irish Comptroller and Auditor General in 2004 as one ripe for cost-savings to the state. That report found, "because community-based sanctions are significantly less costly to implement than custodial sentences, the availability of a community-based sanction at the point of sentencing provides a more economic option in suitable cases."¹⁰⁴

The Auditor General's economic analysis of custodial versus non-custodial options was compelling. According to the report,

The estimated average cost of a community-based sanction imposed in 2001 ranges from €1,500 to €6,100. The Department [of Justice] has estimated that the average annual cost of keeping an offender in a place of detention in 2001 was around €79,000. **At the simplest level of comparison, therefore, the estimated average cost of a supervision order ranges from 2% to 8% of the cost of keeping an offender in prison for a year.**¹⁰⁵ [emphasis added]

The Auditor General also highlighted research suggesting that non-custodial options for low risk offenders are not only *less expensive than incarceration*, they are indeed *more successful in reducing re-offending*. According to the report,

[C]omparative research work has concluded that, relative to imprisonment, some forms of community-based interventions can be more successful in certain circumstances in reducing the rate of re-offending, and in achieving some of the other objectives of sentencing. These conclusions underpin the policy of increasing the relative use of community-based sanctions.¹⁰⁶

The potential for such positive outcomes was confirmed earlier this year when the Nenagh Community Reparation Project in Tipperary reported an 84% success rate in deterring re-offending on a total budget less than half the annual cost of a single prison space.¹⁰⁷

The profile of offending and sentencing in Ireland makes increased non-custodial sanctions – rather than increased incarceration – the most sensible area for expansion.

According to Prison Service's own statistics, *84% of people sent to prison in 2003 were for non-violent offences*, and almost *60% of all committals were for sentences of six months or less*.¹⁰⁸ Many – if not most – of these low risk, short term offenders would be better supervised in the community, thereby potentially delivering more effective rehabilitation and treatment programmes while reducing prison numbers and costs. Yet despite the fact that Ireland is a jurisdiction with a great potential for the use of non-custodial sanctions to reduce the prison population, the Auditor General found that the recommendation to expand community-based

¹⁰³ Kinlen, Third Annual Report, p.40.

¹⁰⁴ Comptroller and Auditor General, Report on Value for Money Examination: The Probation and Welfare Service. Department of Justice, Equality and Law Reform, January 2004. p.9.

¹⁰⁵ Ibid, p.48.

¹⁰⁶ Ibid, p.47.

¹⁰⁷ Michael McDowell, Address at the Presentation of the Second Nenagh Community Reparation Project Evaluation, 24 June 2005. Available at <http://www.justice.ie/80256E01003A02CF/vWeb/pcJUSQ6DRJVL-en>.

¹⁰⁸ Irish Prison Service, Annual Report 2003. Department of Justice, Equality and Law Reform, 2004. p.19.

sanctions made by the Expert Group on the Probation and Welfare Service in 1999 has not been implemented.¹⁰⁹

Government action to reduce the unnecessary use of incarceration would have a huge impact in both costs and outcomes, as low-risk offenders make up the overwhelming majority of prison committals every year. Unfortunately this potential continues to be under-valued, under-developed, under-resourced and under-utilised. This fact calls into question the sincerity of Minister McDowell's concern about the high costs of incarceration, and the degree to which his interest in private prisons is based on an ideological predisposition towards privatising public services, rather than a commitment to seeking better correctional outcomes at reduced costs.

According to the Inspector's Third Annual Report,

The Government must decide whether to follow the USA and the UK as to whether to build new and bigger prisons or to follow the example of the Nordic counties by reducing incarceration and using real alternatives to prison in lieu.¹¹⁰

On this point, the Irish Penal Reform Trust wholly concurs. Moreover, we believe the evidence is clear that the socially and economically responsible approach is to significantly reduce the use of incarceration as a response to offending, rather than Minister McDowell's approach of sinking more and more money into bigger and bigger prisons.

Now that the industrial dispute with the Prison Officers' Association has been resolved, Minister McDowell's only public rationale for privatisation has been eliminated. Given this fact – and the wealth of international evidence against privatisation, some of which is cited in this report – the Minister must now end all ambiguity about his position and make a firm and unequivocal public commitment against privatising any existing or future prisons.

Michael McDowell stated that he hoped that the new agreement with the Prison Officer's Association would "pave the way for a new era for the Irish Prison Service."¹¹¹ The Minister must now make it clear that prison privatisation has no place in this "new era".

¹⁰⁹ Comptroller and Auditor General, p.46.

¹¹⁰ Kinlen, Third Annual Report, p.75.

¹¹¹ Department of Justice, Equality and Law Reform Press Release, "Minister welcomes POA ballot result", 17 August 2005.

Appendix A – Terms of Reference of the Irish Inspector of Prisons and Places of Detention

The Office of the Inspector was established by an order signed by the Minister for Justice, Equality and Law Reform on the 21st February 2002. There is a statutory provision in the forthcoming Prisons Authority Bill for establishment of a Prisons Inspectorate. The following are the terms of reference for the Inspector of Prisons and Places of Detention.

TERMS OF REFERENCE

To -

- (a) Inspect and report, as the Inspector considers appropriate, to the Minister on prisons and places of detention under the aegis of the Department of Justice, Equality and Law Reform.
- (b) Report in particular on conditions in those institutions and on the regimes in place for prisoners and detainees.
- (c) Investigate and report on any specific issue referred to the Inspectorate by the Minister.
- (d) Submit to the Minister an Annual Report on the activities of the Inspectorate.

GUIDELINES

In carrying out an inspection of any prison or place of detention the Inspector will, in general terms, have regard to such matters as:

- (a) the quality of the regime
- (b) the attitude of staff and inmates
- (c) the health, safety and well-being of prisoners
- (d) the condition of the buildings
- (e) questions of humanity and propriety
- (f) any general pattern which may indicate possible inadequacies in the management of the prison.

As the terms of reference provide, the Minister may also request the Inspector to investigate and report on specific issues or incidents connected with the running of any prison or place of detention. Furthermore, the Inspector may raise issues of concern, arising out of an investigation or an inspection, either with local management, the Director General of the Prisons or the Minister. To facilitate the Inspector in carrying out his functions, he may consider complaints from prisoners but only to the extent that such complaints are relevant to the functions of the Inspector. The Inspector will, not later than four months following the end of each calendar year, submit a written report to the Minister on his activities during the year.

It is intended that the annual report will be published. The Inspector will also furnish the Minister with such information relating to his activities as the Minister may require from time to time.

The functions outlined above will also apply to any child-detention centres and

remand centres designated by the Minister under Section 150 of the Children Act, 2001.

These terms of reference may be further refined in the forthcoming Prisons Bill in the light of the experience gained in the interim. The Inspector will also be entitled to report and make recommendations, in the light of experience gained, on the contents of the legislation which will eventually make statutory provision for the Prisons Inspectorate.

Appendix B: Section 7 from the Third Annual Report of the Inspector of Prisons and Places of Detention for the Year 2004—2005, pages 31—32

7. PRIVATE PRISONS

Unfortunately there were scandals in privately run prisons in the United States. However it seems to me that private prisons may be essential for the further development of prisons. The best prison in England according to the Home Office is a privately run one. I have already cited people like the Chief Justice of England in praise of private prisons. Of course, their shareholders expect to be paid a dividend but if they are run efficiently and well the dividend is secure. Private prisons have been very inventive. I visited Lowdham on the Grange in Nottinghamshire and they were so proud of their achievements there they asked me to invite the Minister of Justice and his officials to visit them. It would be no harm if they did so. There has been another benefit. The prison service now has to compete against at least four companies to keep control of prisons. Last year the Prison Service regained a prison which had been taken over by the private sector. The private sector build and maintain and run at their own expense their own prisons. While the figures differ there is no doubt that the private prison, if it is efficiently run, costs less than state prisons. Also although the POA still have members who are working in private prisons the management of such prisons do not recognise the POA. There is a different union the PSU (The Prison Service Union) which is less militant and which represents everyone working in the prison not merely the prison officers. I strongly recommend that the Minister should open at least one prison to private companies. The contract should be made between the Minister and the private company not the Prison Service (who will be the competitors for contracts with the Minister) Such prison should like all other prisons in the state be subject to inspection by an independent statutory inspector who should not be a civil servant.