

# INQUIRY INTO THE EFFICIENCY AND PERFORMANCE OF WESTERN AUSTRALIAN PRISONS

Issues Paper

11 November 2014

Economic Regulation Authority

WESTERN AUSTRALIA

© Economic Regulation Authority 2014

This document is available from the Economic Regulation Authority's website at [www.erawa.com.au](http://www.erawa.com.au). For further information, contact:

Economic Regulation Authority  
Perth, Western Australia  
Phone: (08) 6557 7900

# Contents

<b>This Issues Paper</b>	<b>iii</b>
How to Make a Submission	iii
Key Inquiry dates	iv
Contacts	iv
Confidentiality	iv
<b>1. An introduction to the Inquiry</b>	<b>1</b>
Background	1
Terms of Reference	2
Issues to be addressed in this Inquiry	2
Structure of this Issues Paper	4
<b>2. Overview of the prison system in Western Australia</b>	<b>5</b>
Introduction	5
The structure of Western Australia's justice system	5
The Department of Corrective Services	6
Powers of key officials in the Western Australian prison system	7
Powers of key entities and officials in the broader justice system	8
Prisons in Western Australia	9
Finances	11
Prison Population	14
<b>3. Purpose of the Prisons Inquiry and proposed analytical approach</b>	<b>18</b>
Introduction	18
Analytical process	18
Objectives of the prison system	19
Government involvement in the prison system	20
Efficiency and effectiveness in the context of the prison system	21
Economic Efficiency	21
Effectiveness	22
Measuring efficiency and effectiveness	22
<b>4. Performance framework</b>	<b>25</b>
Introduction	25
The purpose of a performance framework	25
Characteristics of a good performance framework	27
Characteristics of good performance benchmarks	28
The current performance framework in Western Australia	28
The construction of good benchmarks	33
Institutions and governance arrangements to support performance	35
Institutions required to support performance	35
Governance arrangements and the prison system	37
<b>5. Complexities in developing a performance framework for the prison system</b>	<b>40</b>
Introduction	40
Factors affecting the cost of the prison system	40

Prison infrastructure	40
Prison population	42
Factors affecting performance	45
Factors affecting the achievement of the rehabilitation objective	46
Factors affecting the achievement of the incapacitation objective	47
<b>6. How to incentivise performance in the prison system</b>	<b>49</b>
Introduction	49
The importance of incentives in prison system design	49
Design of the current prison system in Western Australia	50
The alternatives and options available	50
<b>Appendix 1: Inquiry Terms of Reference</b>	<b>54</b>
<b>Appendix 2: Consolidated List of Questions</b>	<b>55</b>

## Tables

Table 1: Western Australian Prisons	9
Table 2: Objectives of the prison system	20
Table 3: Components of Economic Efficiency	21
Table 4: 2013-14 Corporate Scorecard	32
Table 5: Leading practices in prison system governance	38
Table 6: Private sector involvement in the prison system: commonly cited advantages and disadvantages	51

## Figures

Figure 1: Organisational structure of the Western Australian justice system	6
Figure 2: Cost of keeping adult prisoners in custody	11
Figure 3: Cost per prisoner per day in 2012-13	12
Figure 4: Cost per day to detain a prisoner by prison 2013-14	13
Figure 5: Department of Corrective Services costs (2013-2014)	13
Figure 6: Daily Prison Population	15
Figure 7: Age distribution of Western Australian prisoners and population 2013	16
Figure 8: Percentage of prisoners returning to prison within two years of release	17
Figure 9: Framework for measuring the performance of government services in the Report on Government Services	23
Figure 10: The spectrum of public versus private involvement in the prison system	51

## This Issues Paper

The Treasurer of the State of Western Australia has requested the Economic Regulation Authority (**ERA**) undertake an inquiry into options to improve the efficiency and performance of public and private prisons (**Inquiry**).

In accordance with the Terms of Reference for the Inquiry, the ERA will provide advice to the Government on the efficiency and performance of prison services based upon economic, market and regulatory principles. This will include advice on the design of appropriate performance standards, incentives and performance monitoring processes for the prisons system.

A key deliverable of the Inquiry will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in Western Australia. The Department of Corrective Services would use the benchmarks to identify areas in which the performance of individual prisons could be improved.

The purpose of this Issues Paper is to: explain what the ERA had been asked to do; explain the administrative and analytical processes that the ERA will follow in conducting this Inquiry; and to assist interested parties to make submissions to the Inquiry.

## How to Make a Submission

The ERA has asked questions throughout this Issues Paper to draw responses from stakeholders on matters that it wishes to explore. These questions are highlighted in boxes and a complete list of these questions is available in Appendix 2 of this Issues Paper.

The ERA does not seek to limit the scope of submissions to the questions in this Issues Paper. People and organisations making submission may choose whether the questions are relevant to them. The ERA encourages interested parties to make submissions on any issues they consider relevant to the Inquiry.

Anyone can make a submission. Submissions may be made in hardcopy or electronic form. There is no single format for submissions and they may range from a short letter or email addressing a single matter to a substantial document covering many issues.

If you are providing a submission, whenever possible please provide evidence to support the points that you raise (examples, facts, figures and documentation). This assists the ERA in assessing and understanding the points you have raised.

Submissions can be sent to:

**Email address:** [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)  
**Postal address:** PO Box 8469, PERTH BC WA 6849  
**Office address:** Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000  
**Fax:** 61 8 6557 7999

The deadline for submissions 4:00pm (WST) on 19 December 2014.

## Key Inquiry dates

The ERA received the terms of reference for this Inquiry on 9 October 2014.

Submissions in response to this Issues Paper are due on 19 December 2014.

The ERA anticipates publishing a Draft Report mid-2015. The Draft Report will present the ERA's preliminary analysis and recommendations on the matters outlined in the Terms of Reference. Interested parties will have an opportunity to make a submission in response to the Draft Report.

The terms of reference require the ERA provide a Final Report to the Treasurer no later than one year after having received the Terms of Reference (that is, by 8 October 2015).

## Contacts

If you require further information, please contact one of the contacts below.

### General Enquiries

Daniel Vincent  
Economic Regulation Authority  
Ph: 08 6557 7900  
[records@erawa.com.au](mailto:records@erawa.com.au)

### Media Enquiries

Richard Taylor  
Riley Mathewson Public Relations  
Ph: 08 9381 2144  
[admin@rmpr.com.au](mailto:admin@rmpr.com.au)

## Confidentiality

In general, all submissions from interested parties will be treated as being in the public domain and placed on the ERA's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of *Economic Regulation Authority Act 2003*.

The publication of a submission on the ERA's website shall not be taken as indicating that the ERA has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the ERA.

# 1. An introduction to the Inquiry

## Background

In conducting this Inquiry, the ERA will be focussed on identifying options to improve the efficiency and performance of the prison system.

Prisons are an integral part of the criminal justice system in Western Australia. The imprisonment of those who break the law serves a number of important functions in the community. These functions include protecting the community from further offending, rehabilitating offenders, deterring people from committing crimes and ensuring that offenders are appropriately punished for any crimes.

However, the prison system is inherently expensive to operate, reflecting that incarceration involves full-time accommodation, supervision, care, and rehabilitation of high-risk individuals.

The Western Australian prison system cost \$608 million to operate in 2013-14.<sup>1</sup> Compared to the rest of Australia, the Western Australian system is relatively expensive to operate. In 2012-13, the average cost per prisoner per day in Western Australia was \$342, compared to \$297 per prisoner per day nationally.<sup>2</sup>

In part, this higher average cost reflects factors that are beyond the control of the State Government, including issues relating to the geographic dispersion and demographics of the population (for example, age and gender). However, the higher average cost may also reflect administrative decisions and practices over which the State Government has some influence.

The total cost of running the Western Australian prison system is also affected by the fact that Western Australia has an above average incarceration rate (259.9 per 100,000 compared to 172.4 per 100,000 nationally).<sup>3</sup>

The Government has limited financial resources to operate the prison system. It is therefore important that the resources allocated to the prison system are directed in a manner that generates the greatest public benefit. A prison system that delivers more or better services at the same cost, or the same services at a lower cost, will benefit all Western Australians.

In this context, the Western Australian Government has established the State's prison system as a priority area for review. The Western Australian Government has commenced several processes aimed at understanding, reviewing and improving the performance of the prison system in Western Australia. Key amongst these is an evaluation of the programs and services provided by the Department of Corrective Services. This evaluation is being conducted by the Department in conjunction with the Departments of Treasury and Premier and Cabinet.

It is anticipated that the Prison Inquiry will overlap other review processes that are being undertaken of the Western Australian prison system to some extent. The ERA is able to offer an independent examination of the prison system.

---

<sup>1</sup> Data provided from the Department of Corrective Services. In its Annual Report, the Department of Corrective Services states that \$756 million was spent on the Adult Criminal Justice Services in 2013/14. This figure includes activities that occur outside of prisons, such as home detention and community supervision.

<sup>2</sup> Productivity Commission, *Report on Government Services 2014*, The Government of Australia, Table 8A.7.

<sup>3</sup> Productivity Commission, *Report on Government Services 2014*, The Government of Australia, Table 8A.4

## Terms of Reference

This Inquiry has been referred to the ERA under Section 38(1)(a) of the *Economic Regulation Authority Act 2003*, which allows the Treasurer of Western Australia to refer inquiries to the ERA on matters related to industries other than those regulated by the ERA (gas, electricity, rail and water).

The Treasurer gave written notice to the ERA on 9 October 2014 to undertake an inquiry into options to improve the efficiency and performance of public and private prisons.

The Terms of Reference for this Inquiry require the ERA to provide advice based upon economic, market and regulatory principles and to provide advice on the design of appropriate performance standards, incentives and monitoring processes for the prison system.

In conducting this Inquiry, the ERA will:

- draw upon new and existing costing models of prison services belonging to the Department of Corrective Services;
- ensure that its findings are informed by other State Government processes related to the prisons system;
- review current administration and performance management practices of public and private prisons in Western Australia; and
- survey inter-State and international experience and literature on the efficient performance management of prisons.

A key deliverable of the Inquiry will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in Western Australia. The Department of Corrective Services would use the benchmarks to identify areas in which the performance of individual prisons could be improved. In developing these benchmarks, the ERA will:

- take into account different categories of prisons and any other significant operational differences, and the implications these will have for the cost of service provision;
- consider the need for the Department of Corrective Services to be able to update and report on the benchmark on a regular basis;
- prepare a stand-alone document explaining how benchmarks have been calculated; and
- seek to identify ways the Department of Corrective Services could use the benchmark information to improve the performance of the prison system.

The full Terms of Reference for this Inquiry are set out in Appendix 1.

## Issues to be addressed in this Inquiry

The purpose of this Inquiry is for the ERA to develop and recommend options to improve the efficiency and performance of the prison system.

The Terms of Reference establish that a key mechanism for achieving an improvement in the efficiency and performance of the prison system will be the development of a performance framework.

A performance framework provides a means by which an organisation can improve its performance. A well-designed framework has a number of components that allow an organisation to measure and evaluate performance and give the organisation incentives to improve that performance. These components include:

- Service Standards: which are the standards that an organisation must meet in delivering its operations. These may include minimum standards that must be met (for example, prisoners have access to appropriate medical care) or performance standards that will be rewarded if achieved (for example, exceeding targets for a percentage of prisoners completing education and training programs).
- Performance Monitoring: This is the means to determine whether an organisation is achieving standards set for it and is performing well. Performance monitoring includes the responsibilities for compiling, conducting and auditing performance reviews, and the frequency with which they are undertaken. This role would typically be undertaken by an independent body.
  - Benchmarks: A key component of good performance monitoring is performance benchmarking. Benchmarking provides a comparative measurement of the performance of similar or competing organisations and can be used as a tool for identifying and adopting more efficient or effective practices.<sup>4</sup>
- Incentives: Service standards and performance monitoring will have limited effect if prison operators do not have an incentive to adhere to them. A good performance framework will clearly set out what good performance is and then give organisations the incentive to achieve that level of performance.

A well-designed performance framework needs to be supported by appropriate institutions and governance arrangements in order to be effective. With this in mind, the ERA will examine the objectives and functions of key officials and organisations within the prison system to determine whether they are clearly defined and officials and organisations have the necessary authority to deliver upon them. Additionally, the ERA will examine whether organisations have the institutional skill sets and resources that they need to achieve their functions and objectives.

The development of a performance framework for the prison system is complicated by the fact that many of the drivers that affect the cost and performance of the prison system are external to the prison system: operators of the prison system can only be held accountable for factors over which they have influence. Some of these drivers arise from decisions made within the broader justice system (of which the prison system is a part). This includes decisions about what constitutes a crime resulting in a prison sentence and the length of that sentence. Furthermore, some drivers of prison costs and performance are beyond the control of Government (for example, the demographics of the Western Australian population). In conducting this Inquiry, the ERA will seek to identify the factors over which the prison system has some degree of control. However, the ERA will also seek to identify potential improvements that can be made to the cost and performance of the prison system by adjusting the way it interacts with the broader justice system.

Finally, the ERA will examine service delivery options that provide incentives for service providers to improve their performance. One approach will be to examine options to improve contestability in the delivery of services in the prison system. The ERA will consider

---

<sup>4</sup> G. Watson, 'A Perspective on Benchmarking: Gregory H. Watson in conversation with the Editor', *Benchmarking for Quality Management & Technology*, vol. 1, no.1, 1994, p. 5.

changes that might be necessary to existing arrangements to support greater contestability in the delivery of prison services.

## Structure of this Issues Paper

The remainder of this Issues Paper is structured as follows:

- *Chapter 2* provides a description of the prison system, including how it fits within the structure of the broader justice system in Western Australia. This chapter includes factual information on prison facilities, operating expenditure and revenues of the prison system and the demographics of prisoners.
- *Chapter 3* provides an overview of the analytical framework that the ERA proposes to apply in this Inquiry. This includes a discussion of the objectives of the prison system, the rationale for Government involvement in the prison system, and a discussion of what is meant by efficiency and performance in the context of the prison system.
- *Chapter 4* describes the role of performance frameworks, the existing performance framework that is applied in Western Australia, the challenges associated with implementing an effective performance framework and the institutional and governance arrangements needed to support a performance framework. This chapter also includes a discussion on the development of a set of performance benchmarks.
- *Chapter 5* provides a discussion of some of the complexities of developing a performance framework for the prison system, including accounting for drivers of cost and performance that are external to the prison system.
- *Chapter 6* contains a discussion of how better performance in the prison system can be incentivised, including by improving contestability in the delivery of prison services.

## 2. Overview of the prison system in Western Australia

### Introduction

The purpose of this chapter is to provide background information on the operation of the Western Australian prison system and how it fits within the broader justice system.

In this chapter, the ERA presents data, which has been collected from a number of public sources. This data has been collected in good faith, with the expectation that it presents a true and accurate picture of the matter being presented. At this stage, the data has not been scrutinised in detail by the ERA and the presentation of data does not imply endorsement by the ERA. The ERA will scrutinise data in detail in preparing the Draft Report.

The remainder of this chapter is set out as follows:

- A discussion of the institutional arrangements within the Western Australian justice system. This includes outlining its basic structure and the powers and responsibilities of key officials.
- An overview of prison facilities that are operating in Western Australia.
- Detail of the financing arrangements for the prison system.
- An overview of the Western Australian prison population, its demographics and rates of reoffending.

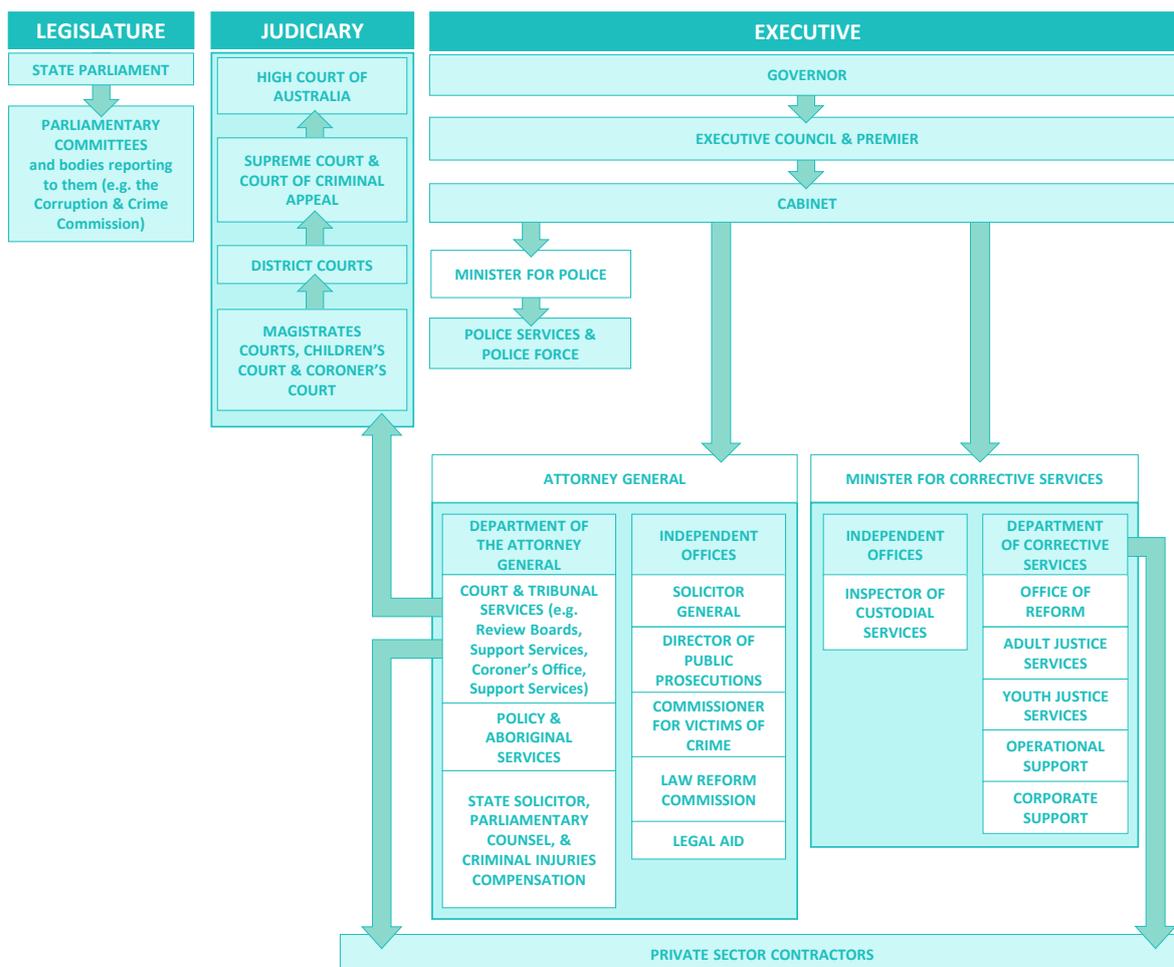
### The structure of Western Australia's justice system

The prison system is part of a broader justice system that also includes law-makers, police, and the courts. This broader system is a complex one, and relies on interactions between many organisations and individuals, from both inside and outside Government. The actions of each party can have a significant effect on others.

Consequently, there are many organisations and individuals within the Western Australian justice system that play a direct or indirect role in the management, oversight, regulation and delivery of the Western Australian prison system.

Figure 1 provides an overview of these key organisations and their roles and relationships in the State's justice system. The main participants in the system fall broadly into the legislature (makers of laws), the judiciary (interpreter and enforcer of laws, independent of the legislature and executive), and the executive (the administrative arm of government).

**Figure 1: Organisational structure of the Western Australian justice system**



Source: ERA Research

## The Department of Corrective Services

In this Inquiry, the ERA will give particular attention to the role of the Department of Corrective Services.

The Department of Corrective Services is responsible for implementing government policy and the delivery of corrective services, of which prisons are a part. The Department has functions in adult and youth justice, including managing offenders in prisons or detention centres and offenders serving community orders.

This Inquiry will focus on the Department's role in administering the State's prison system (that is, only the adult custodial aspects of the Department's functions). The Department owns all 16 prisons in Western Australia and operates 14 of those prisons. The remaining two facilities are operated by a private service provider contracted by the Department. This arrangement is discussed in further detail later in this chapter.

The Department has recently established an Office of Reform. This division is responsible for managing the internal reform program that is designed to better align the Department's structure with its strategy.

## *Powers of key officials in the Western Australian prison system*

The majority of officials and organisations with roles in the Western Australian prison system are ultimately under the authority of the State Governor. However, the majority of decisions relevant to prisons are made by the relevant Ministers, Commissioners and Departments. In practice, the Governor's direct input is required only in specific circumstances (for example, the appointment of the Commissioner of the Department of Corrective Services, and the parole of prisoners with life sentences.)

On a practical level, the key officials in the Western Australian prison system report to the Minister for Corrective Services. While the Minister is responsible for both the Department of Corrective Services, and for the Office of the Inspector of Custodial Services, the Inspector of Custodial Services reports to Parliament

The respective powers of the Minister, the Commissioner<sup>5</sup> of the Department of Corrective Services, and the Inspector of Custodial Services are discussed below.

### *Powers of the Minister for Corrective Services*

In relation to the Department of Corrective Services, the Minister may:

- declare any building to be a prison, or alter the boundaries of a prison;
- direct the Commissioner of the Department of Corrective Services to conduct an inquiry and report on any matter, incident or occurrence concerning the security or good order of a prison, or concerning a specific prison or prisoner; and
- have free and unfettered access (along with assistance, prison dogs, and equipment the Commissioner finds necessary) to a prison, person, vehicle or relevant documents.

As the Inspector of Custodial Services is accountable to Parliament, and not to the Minister or Commissioner for Corrective Services, the Inspector is therefore not subject to any absolute direction as to the scope, content or method of activities. However, section 17(2) of the *Inspector of Custodial Services Act 2003* permits the Minister to issue a written direction to the Inspector to carry out an inspection or review in certain circumstances. The Inspector must comply with such a direction unless, in the Inspector's opinion, there are exceptional circumstances for not complying. In addition, the Minister may require access to any information in the possession of the Inspector.

The Inspector of Custodial Services also administers the Independent Visitors Service on behalf of the Minister. Independent visitors are volunteers appointed by the Minister who carry out visits and inspections of prisons and detention centres, and who report any complaint made by, or on behalf of, any prisoner or detainee to the Inspector.

### *Powers of the Commissioner of the Department of Corrective Services*

The Commissioner holds overall responsibility for exercising the powers of the Department of Corrective Services, although decision-making powers relating to day-to-day operations are largely delegated to the superintendents of individual prisons.

---

<sup>5</sup> The *Prisons Act 1981* uses the title 'Chief Executive Officer' to describe this position, but the Department of Corrective Services generally uses the title 'Commissioner'. The ERA has used the term 'Commissioner' in this Issues Paper.

The powers exercised by the Commissioner relate to the management, control, and security of all prisons, the contracting of prison services, and the welfare and safe custody of all prisoners.

### *Powers of the Inspector of Custodial Services*

The role of the Inspector of Custodial Services is one of independent investigation, review, and reporting. As such, the Inspector does not have the power to implement any recommendations made as a result of investigations.

The Inspector of Custodial Services focuses on performance standards in custodial facilities and the rights of people in detention. The Inspector provides transparency and accountability to the sector through reports to Parliament. The Inspector of Custodial Services may perform reviews of prisons, detention centres, and custodial services at any time (including scheduled, short-notice, and unannounced inspections) and independently determine the content contained in inspection reports.

### *Powers of key entities and officials in the broader justice system*

#### *The Attorney General*

When the Department of Justice was abolished in 2006, the majority of the powers not transferred to the Minister for Corrective Services were transferred to the Attorney General.

The Attorney General exercises decision-making powers relating to the Department of the Attorney General, which cover areas such as the administration of courts, the operation of review boards (previously 'parole boards'), provision of court security (including that provided by private contractors), compensation of victims, drafting of legislation, and the operation of the State Solicitor's Office.

The Department of the Attorney General also plays a key role in justice reform, providing policy advice to, and developing policy initiatives for, the Attorney General, as well as providing support to the Law Reform Commission of Western Australia.

The Attorney General is also directly responsible for a range of independent agencies in the State's justice system, including:

- the Office of the Solicitor General;
- the Office of the Director of Public Prosecutions;
- the Commissioner for Victims of Crime;
- the Law Reform Commission; and
- Legal Aid.

While most of the powers of the Attorney General do not relate directly to the operation of Western Australia's prisons, they do have significant implications for the prison system. This is particularly evident in the development and reform of criminal laws, and the making of decisions about the parole of prisoners.

### *Parliamentary Committees*

Various Parliamentary Committees have the power to investigate and report on issues in the prison system.

These Committees report directly to Parliament rather than to the relevant Minister or the Attorney General. They include the Joint Standing Committee on the Crime and Corruption Commission, the Public Administration Committee – Legislative Council and the Community Development and Justice Standing Committee, as well as a range of other Committees that have input into the development of criminal legislation.

## Prisons in Western Australia

The Western Australian prison system is comprised of 16 prisons that collectively housed an average of 5030 prisoners per day in 2013-14.<sup>6</sup> The Department of Corrective Services owns all 16 prisons and is responsible for operating 14. The remaining two prisons (Acacia Prison and Wandoo Reintegration Facility) are operated by Serco Australia (**Serco**).

The primary objective of the Department of Corrective Services in delivering corrective services is to ensure safe, secure and decent corrective services that contributes to community safety and reduces offenders' involvement in the justice system.

There are several types of prisons ranging from minimum security prisons to maximum security prisons. There are also several facilities that house prisoners of varying security. Table 1 provides details of the prisons currently operating in Western Australia, as at 26 June 2014.

**Table 1: Western Australian Prisons<sup>7</sup>**

	Operation	Gender	Population	Security
Acacia Prison	Private	Male	984	Medium
Albany Regional Prison	Public	Male	314	Maximum, medium and minimum
Bandyup Women's Prison	Public	Female	291	Maximum, medium and minimum
Boronia Pre-release Centre for Women	Public	Female	74	Minimum
Broome Regional Prison	Public	Male and Female	28	Maximum, medium and minimum
Bunbury Regional Prison	Public	Male	311	Maximum (remand only), medium and minimum
Casuarina Prison	Public	Male	757	Maximum, medium and minimum
Eastern Goldfields Regional Prison	Public	Male and Female	93	Maximum, medium and minimum
Greenough Regional Prison	Public	Male and Female	298	Maximum (remand), medium and minimum

<sup>6</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 20.

<sup>7</sup> Department of Corrective Services, *Weekly Offender Statics (WOS) Report as at June 2014 00:00 hours*, Perth, Government of Western Australia, 2014.

	Operation	Gender	Population	Security
Hakea Prison	Public	Male	984	Maximum, medium and minimum
Karnet Prison Farm	Public	Male	309	Minimum
Pardelup Prison Farm	Public	Male	80	Minimum
Roebourne Regional Prison	Public	Male and Female	172	Maximum (short-term), medium and minimum
Wandoo Reintegration Facility	Private	Male	53	Minimum
West Kimberley Regional Prison	Public	Male and Female	148	Medium and minimum
Wooroloo Prison Farm	Public	Male	346	Minimum

Source: Department of Corrective Services.

Offenders aged between 10 and 17 years are separated from adult prisoners into Youth Detention Centres. The only such facility in Western Australia is the Banksia Hill Detention Centre. Banksia Hill houses male and female juvenile detainees and had an average daily population of 155 in 2013-14.<sup>8</sup> Banksia Hill will not be considered in this Inquiry as detention centres are not comparable to prisons.

The security rating of a prisoner is the factor that most influences the prison in which a prisoner will serve his or her sentence. Other factors that influence this decision include gender, age, the location of family and friends, health needs and program availability<sup>9</sup> at the prisons.

### *Private prison providers in Western Australia*

Serco is responsible for operating two prisons in Western Australia: Acacia Prison and the Wandoo Reintegration Facility. Both prisons are owned by the Department of Corrective Services with Serco contracted to operate the facilities.

In 2001, Acacia became the first prison to be privately operated in Western Australia. Acacia was operated by Australasian Integrated Management Services from 2001 to 2006. Serco won the contract in 2006 through a re-tendering process.

Serco must operate both prisons in accordance with their respective contracts. Contracts are designed to ensure the security of prisons, while providing suitable prisoner programs that help to meet the goals of the Department of Corrective Services.<sup>10</sup> The Department of

<sup>8</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 22.

<sup>9</sup> Prisoners may be located at a particular prison because a rehabilitation or education program is only available at that prison.

<sup>10</sup> Department of Corrective Services, *Acacia Prison Contract*, Perth, Government of Western Australia, [Accessed 16 October 2014] <http://www.correctiveservices.wa.gov.au/about-us/business-with-us/tenders-contracts/acacia-prison-contract.aspx>.

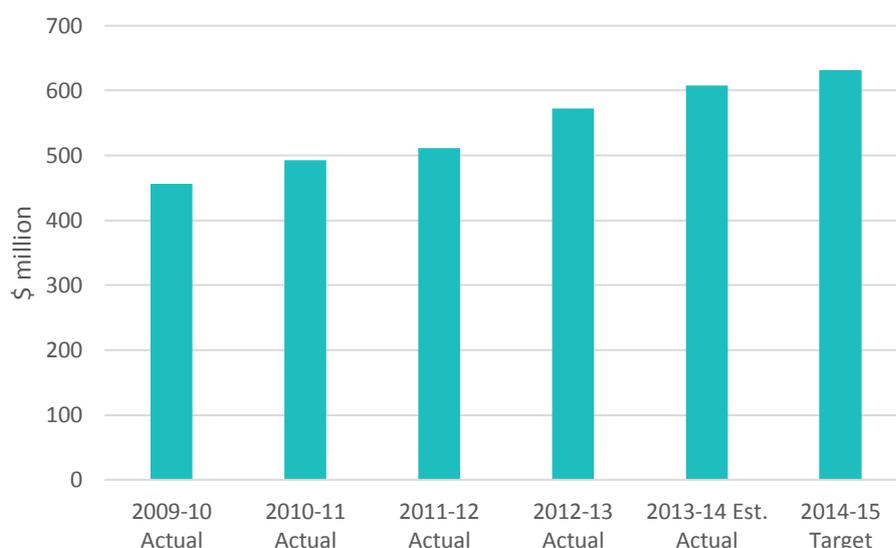
Correctives Services also undertakes onsite monitoring of privately operated prisons to ensure that Serco is meeting their contractual requirements.

Serco also manages a prison in each of Queensland and New Zealand, with a second New Zealand prison to open in 2015.

## Finances

In 2013-14, the total net cost to the State Government for providing adult custodial services was \$608 million.<sup>11</sup> This was an increase of 6 per cent on the 2012-13 figure. Figure 2 shows the progression of this cost from 2009-10 to the 2014-15 target.

**Figure 2: Cost of keeping adult prisoners in custody**



Source: Department of Corrective Services

The Department of Corrective Services sought additional funding from Government in 2013-14, citing significant cost pressures caused by increased prisoner numbers and increased insurance costs. The Government provided the Department with supplementary funding of \$3.5 million to meet the cost of increased prisoner numbers and \$13.3 million to meet increased insurance costs.<sup>12</sup>

The Department of Corrective Services made progress in achieving the Government's fiscal savings targets, including the efficiency dividend and reduction to procurement expenditure. The Department of Corrective Services achieved \$28.4 million in savings through rationalisation of costs and spending restrictions.<sup>13</sup>

<sup>11</sup> Data provided from the Department of Corrective Services. In its Annual Report, the Department of Corrective Services states that \$756 million was spent on Adult Criminal Justice Services in 2013/14. This figure includes activities that occur outside of prisons, such as home detention and community supervision.

<sup>12</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 18.

<sup>13</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 18.

## Costs

The Western Australian prison system is more expensive to operate than the average of prison systems in Australian States and Territories. In 2012-13, Western Australia had an average cost per prisoner per day of \$342, compared to \$297 per prisoner per day nationally.<sup>14</sup> Figure 3 shows the cost per prisoner per day for Australian States and Territories.<sup>15</sup>

**Figure 3: Cost per prisoner per day in 2012-13**



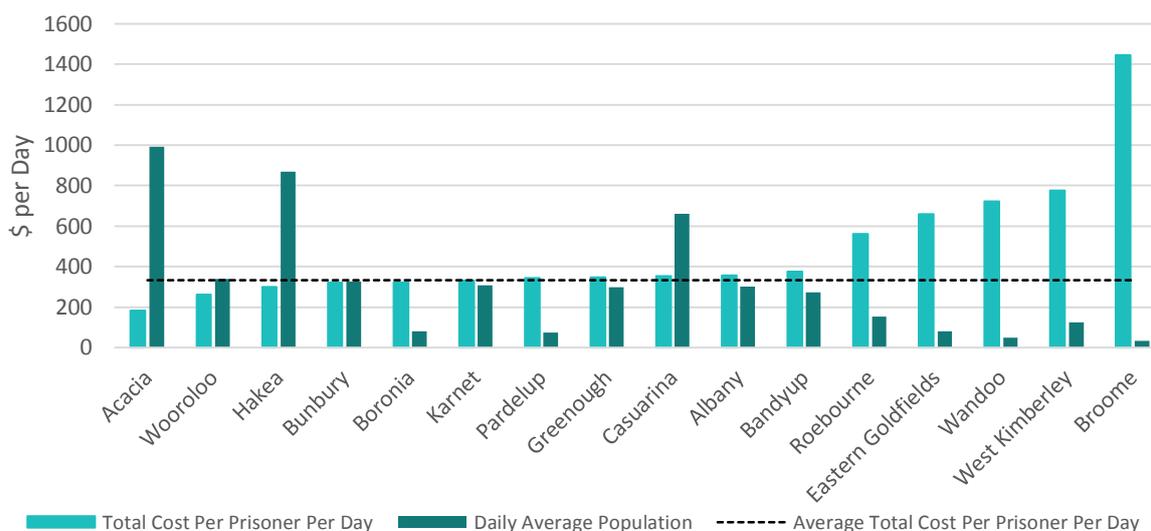
Source: Productivity Commission, *Report on Government Services 2014*, Government of Australia, Table 8A.7.

The cost of operating the 16 prisons varies greatly depending on whether they are operated privately or publicly, the type of prisoners held within the prisons, the location of the prison and the number of prisoners detained. In 2013-14, the average cost per day for keeping a prisoner in custody varied significantly across prisons. The least expensive prison cost \$183 per prisoner per day, while the most expensive was nearly eight times that amount at \$1,446 per prisoner per day. The cost per prisoner per day for all prisons in Western Australia is shown in Figure 4.

<sup>14</sup> Productivity Commission, *Report on Government Services 2014*, Government of Australia, 2014, Table 8A.7. This figure includes total net operating expenditure and capital costs per prisoner per day.

<sup>15</sup> Low costs in the Northern Territory are the result of operating expenditure that is slightly below the Australian average (11 per cent lower than average) and capital costs that are significantly lower than average (50 per cent lower than average).

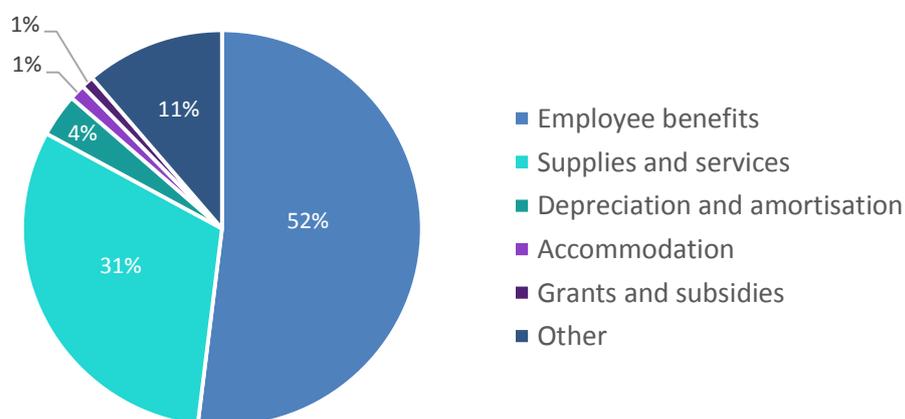
**Figure 4: Cost per day to detain a prisoner by prison 2013-14**



Source: Data provided by Department of Corrective Services on request.

In 2013-14, the largest cost of the Department of Corrective Services was employee benefits, which includes wages and salaries, superannuation and leave entitlements. Supplies and services (including costs such as communications, electricity and water, goods and supplies and services and contracts) was the second largest cost. The ‘other’ category accounted for 11 per cent of total costs and included insurance, staff accommodation and building repairs and maintenance. A breakdown of the total costs incurred by the Department of Corrective Services is provided in Figure 5.

**Figure 5: Department of Corrective Services costs (2013-2014)**



Source: Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 82.

### Funding and Revenue

The Department of Corrective Services is primarily funded by the Government and therefore taxpayers. Service appropriations from the Government<sup>16</sup> accounted for around 96 per cent

<sup>16</sup> Including Royalties for Regions.

of prison funding, or \$823 million, in 2013-2014.<sup>17</sup> This includes funding for non-custodial corrective services.

The remainder of the Department's funding is derived from Commonwealth grants, user charges, and own-source revenue (generated through workshop-based activities associated with producing and manufacturing timber, concrete products, steel fabrication and printing).<sup>18</sup> The total own-source revenue for the Department of Corrective Services was \$29.9 million in 2013-14.<sup>19</sup>

### Questions

Do you agree that prisons are more expensive to run in Western Australia? If not, why not?

If yes, what are the specific factors that result in Western Australian prisons being more expensive to run (in terms of cost per prisoner per day) compared to other States? Are any of these factors within the control of the Government, the prison system or individual prison operators?

## Prison Population

The security risk and demographics of the prison population have a large influence on how prisons are operated and the demand for particular prison types. For instance, if there is an increase in high risk prisoners, the demand for maximum security prisons increases as well as the cost of detaining the prisoner due to increased security requirements.

Overall there has been an increase in the average daily prison population<sup>20</sup> and therefore the number of prisoners in Western Australia by 32.3 per cent between 2007/08 and 2013/14. This is higher than the general population growth for Western Australia of 19.5 per cent over the same period.<sup>21</sup> The increase in prisoner numbers is shown in Figure 6.

<sup>17</sup> ERA analysis and Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 82 and 83.

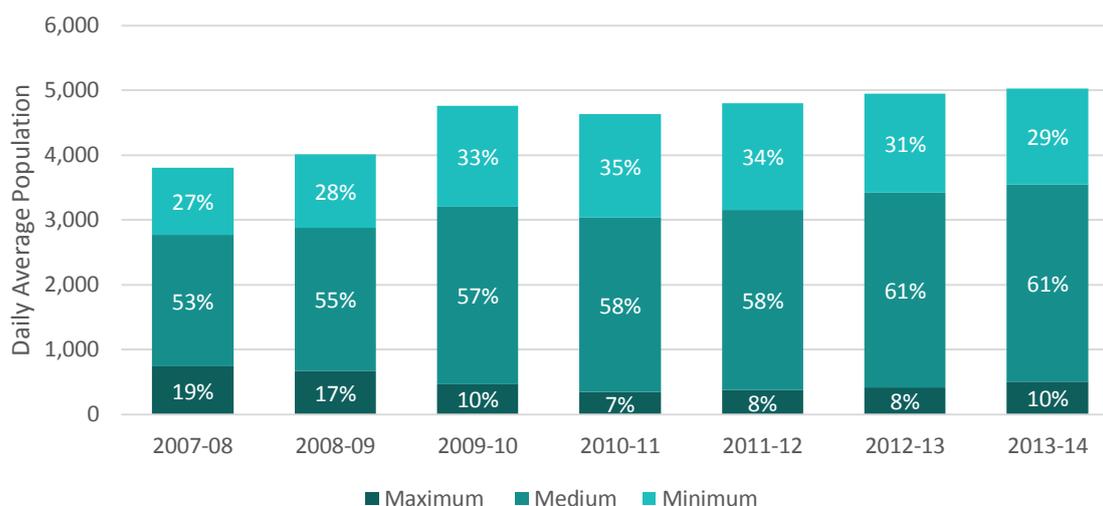
<sup>18</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 17.

<sup>19</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 82.

<sup>20</sup> The daily prison population is the number of people in prison per day.

<sup>21</sup> Australian Bureau of Statistics, *Australian Demographic Statistics*, Government of Australia, March 2014, Table 4. Calculated for the period December 2007 to December 2013.

**Figure 6: Daily Prison Population**



Source: Department of Corrective Services, Annual Reports 2009-14, Perth, Government of Western Australia.

Figure 6 also shows the prison population broken down into security classifications. There was a marked increase in prisoners in 2009/10. This year saw material changes in the number of prisoners in each security classification. In 2009/10, the number of maximum security prisoners fell, while the numbers of medium and minimum security prisoners increased. Since 2009/10, the composition of the daily prison population has been reasonably consistent with a slight increase in medium security prisoners.

The Office of the Inspector of Custodial Services considers that there is poor alignment between the security rating of prisoners and the available accommodation.<sup>22</sup> For example, there are over 2,500 maximum security beds for fewer than 1,000 prisoners, whereas there is an under provision of beds for medium and minimum security prisoners.<sup>23</sup>

### Demographics of prisoners

Prisoner demographics such as gender, culture, age and health affect both the type of prisons required and the services required within the prison system.

In Western Australia in 2013-14, 91 per cent of prisoners were male and 9 per cent were female.<sup>24</sup> The incarceration rate for males (461.7 per 100,000) and females (47.0 per 100,000) is higher than the incarceration rate for males (318.1 per 100,000) and females (25.6 per 100,000) in the rest of Australia.<sup>25</sup>

Furthermore, there is a higher level of indigenous imprisonment in Western Australia compared to Australia as a whole. In 2013, Indigenous prisoners accounted for 40 per cent of the prison population in Western Australia, compared to a national average of 27 per cent.<sup>26</sup> Indigenous people account for around 3.8 per cent of the total Western Australian

<sup>22</sup> The Inspector of Custodial Services, *2013-14 Annual Report*, Perth, Government of Western Australia, 2014, pg.11.

<sup>23</sup> The Inspector of Custodial Services, *2013-14 Annual Report*, Perth, Government of Western Australia, 2014, pg.11.

<sup>24</sup> ERA analysis and Department of Corrective Services, *Department of Corrective Services Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 20.

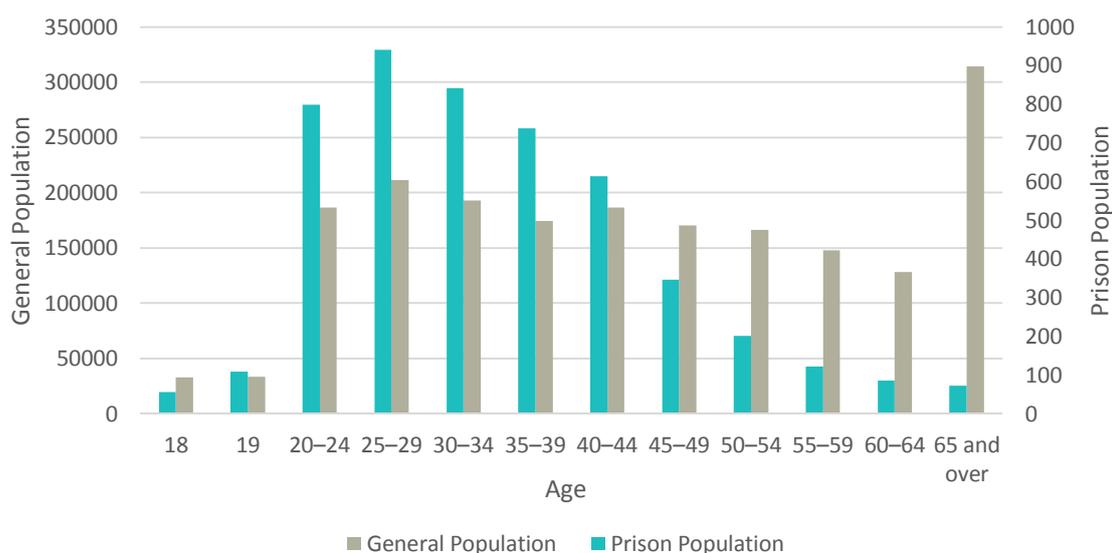
<sup>25</sup> Australian Bureau of Statistics, *Prisoners in Australia 2013*, Government of Australia, 2014, Table 17.

<sup>26</sup> Australian Bureau of Statistics, *Prisoners in Australia 2013*, Government of Australia, 2014, Table 15.

population and around 3.0 per cent of the national population.<sup>27</sup> The only other State or Territory with a higher representation of indigenous prisoners is the Northern Territory.

The majority of adult prisoners in Western Australia are aged between 20 and 39, the average age of a prisoner is 35.<sup>28</sup> The distribution of prisoners' ages is provided in Figure 7. Health and educational services in prisons in particular are affected by the ages of prisoners. For instance, older prisoners will typically require higher levels of health care than younger prisoners.

**Figure 7: Age distribution of Western Australian prisoners and population 2013**



Source: ERA analysis and Australian Bureau of Statistics, *Prisoners in Australia, 2013*, Government of Australia, 2014, table 21 and *Australian Demographic Statistics, Australia, March Quarter 2014, Table 55*

### Reoffending rates

One of the aims of the justice system is to prevent prisoners from reoffending after release. Decreasing the reoffending rate reduces the burden on the justice system and is beneficial to both former inmates and society.

In order to decrease reoffending rates, the corrective system provides services and programs that assist prisoners to learn new skills that will help them gain employment upon release. These programs include education and vocational training through working in prison industries.<sup>29</sup>

The Department of Corrective Services has recently initiated an Integrated and Individualised Case Management framework to reduce reoffending rates. This complements the personal development activities and rehabilitation programs conducted.

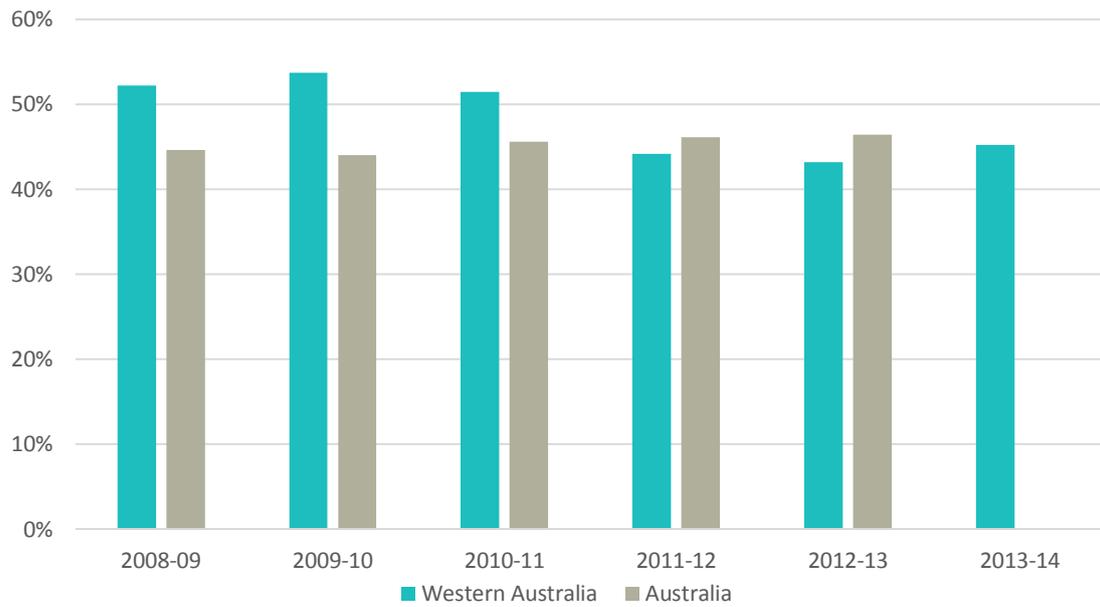
Figure 8 illustrates the percentage of prisoners in Western Australia and Australia discharged from custody after serving a sentence that subsequently return to Corrective Services under sentence within two years of their release.

<sup>27</sup> ERA analysis and Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2011*, Government of Australia, 2014.

<sup>28</sup> ERA analysis and Australian Bureau of Statistics, *Prisoners in Australia, 2013*, Government of Australia, 2014, table 21.

<sup>29</sup> Prison industries include: manufacturing timber, concrete products, steel fabrication and printing.

**Figure 8: Percentage of prisoners returning to prison within two years of release<sup>30</sup>**



Source: Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p.9.

<sup>30</sup> Data for Australia is only available to 2012-13.

## 3. Purpose of the Prisons Inquiry and proposed analytical approach

### Introduction

The purpose of this chapter is to provide an overview of the analytical framework that the ERA proposes applying in this Inquiry.

This chapter is set out as follows:

- a high level overview of the analytical process;
- an examination of the objectives of prisons;
- a discussion of the need for government involvement in the prison system; and
- a discussion of the meaning of efficiency and performance in the context of prisons.

### Analytical process

The primary purpose of this Inquiry is to identify options for improving the efficiency and performance of the prison system.

The terms of reference establish that the development of a performance framework for the prison system will be the main mechanism for improving the efficiency and performance of the prison system. A key deliverable will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in Western Australia.

The ERA will examine the objectives and functions of key officials and organisations within the prison system to determine whether they are clearly defined and officials and organisations have the necessary authority to deliver upon them. Additionally, the ERA will examine whether organisations have the institutional skill sets and resources that they need to achieve their functions and objectives.

The ERA will also examine service delivery options that provide incentives for service providers to improve their performance. One approach will be to examine options to improve contestability in delivery of services in the prison system. The ERA will consider changes that might be necessary to existing arrangements to support greater contestability in the delivery of prison services.

The ERA will largely take a principles-based approach to the assessment of the prison system in Western Australia and will consider all options to improve its efficiency and performance. In practice, this means that the ERA will develop a set of principles that are consistent with good performance of the prison system. These principles may include factors such as accountability, transparency or robustness and are discussed later in this Issues Paper. Once these principles have been established and the options that are consistent with these principles are identified, the ERA will conduct an analysis of these options to determine which option would best improve the efficiency and performance of the prison system.

Having provided a brief overview of the prison system in Western Australia in Chapter 2, in this chapter the ERA discusses the analytical process it will apply in this Inquiry.

In order to apply the principles-based approach, three conceptual aspects of the prison system need to be considered.

- The objectives of the prison system.
- The rationale for government involvement in the delivery of prison services.
- What “efficiency” and “effectiveness” means in the context of the prison system.

These steps are explained in more detail in the remainder of this chapter.

The next stage is to apply a methodical approach to developing recommendations for the detailed design of a performance framework for prisons and how this should interact with supporting institutions, governance and service delivery arrangements to drive performance improvements in the prison system. The ERA considers that there are three main steps in developing recommendations:

- *First*, research and develop the principles on which efficient performance frameworks, institutions, governance and service delivery arrangements would be based.
- *Second*, assess current practices in Western Australia and other jurisdictions (domestic and international) against these principles.
- *Third*, draw upon the analysis in the first two steps to develop recommendations to improve existing practices in Western Australia.

The first of these steps is outlined in greater detail in subsequent chapters of this Issues Paper. The latter two steps will be the subject of the Draft Report for this Inquiry.

### Questions

Do you consider the conceptual approach outlined by the ERA for conducting this Inquiry to be appropriate? If not, why not?

Are there any other steps that need to be included in this conceptual approach? What are these steps and why should they be included?

## Objectives of the prison system

There are four primary objectives of imprisonment: incapacitation, deterrence, rehabilitation and retribution.<sup>31</sup> Table 2 summarises each of these four objectives.

<sup>31</sup> A. Coyle, *Understanding Prison: Key Issues in Policy and Practice*, Open University Press, 2005, pp.12-18, cited in J. Walsh, ‘The Purpose of Prison’, *Daonnacht*, vol. 1, 2013, p.97.

**Table 2: Objectives of the prison system**

Objective	Application
Incapacitation	The incarceration of people who have committed criminal offences prevents them from committing further offences and harm to the general public.
Deterrence	Incarceration is intended to act as a deterrent to committing criminal offences.
Rehabilitation	Rehabilitative imprisonment is based on the belief that people can change. Imprisonment consequently provides opportunities and support for change through reflection, learning, and skill improvement.
Retribution	Depriving criminals of their freedom is a way of punishing offenders for their crimes.

The detention of prisoners in prison is not the service that is being provided by the prison system. Rather, imprisonment is a means of incapacitating prisoners, deterring criminal behaviour, rehabilitating prisoners and punishing prisoners for their crimes. That is, imprisonment aims to achieve the outcomes of: incapacitation, deterrence, rehabilitation and retribution.

Of the four objectives outlined above, incapacitation, deterrence and rehabilitation are concerned with reducing crime, retribution is not.

The ERA considers that prison operators can only be held accountable for achieving, or partially achieving, two of the objectives of prisons: incapacitation and rehabilitation. Prison operators can achieve the incapacitation objective by minimising the number of escapes from prison.

Prison operators can partially achieve the rehabilitation objective by supporting prisoners through high quality and effective rehabilitation programs and training and education programs while prisoners are incarcerated. However, prison operators cannot be held responsible for what happens to the prisoner after they are released.

### Questions

Do you agree that incapacitation, deterrence, rehabilitation and retribution are the objectives of the prison system? Are there other objectives that the ERA has not identified?

Which objectives can prison operators be held accountable for achieving?

## Government involvement in the prison system

To understand how prisons can be made more efficient, the ERA must first understand the unique characteristics of prison services and the circumstances under which prison services can be provided. Only once these necessary circumstances have been established, can the ERA recommend an approach to evaluate whether the prison system is operating efficiently within these circumstances.

The application of competition without any government intervention in the provision of goods and services is usually the most effective way to deliver efficient costs and quality services. However, competition itself can in some cases fail to deliver efficient outcomes and may even prove to be counterproductive. This can occur for a number of reasons, including because the good or service being provided is a public good.

A public good is something that people cannot be excluded from using (non-excludable) and the use of the good or service by one person does not affect its use by others (non-rivalrous). Public goods may not be appropriately provided by private businesses because those private businesses cannot effectively price and sell their product.

Economists generally agree that prison services are public goods.<sup>32</sup> Incarceration of prisoners prevents them from committing further offences and harming the general public, increasing public safety and security. A prison operator is unable to exclude people from the benefits of prison services, which are general public safety and security (that is, it is non-excludable). Similarly, one person’s enjoyment of public safety and security does not prevent others from also enjoying it (that is, it is non-rivalrous).

Accordingly, the ERA concludes that prison services are a public good and the provision of prison services must be facilitated and funded by the Government.

The facilitation and funding of prison services does not imply that prison services must be delivered by the Government. Prison services are already delivered by private providers in Western Australia and many other jurisdictions, domestic and international.<sup>33</sup>

## Efficiency and effectiveness in the context of the prison system

In the remainder of this section, the ERA provides more detail on the definitions of efficiency and effectiveness, how these terms might be interpreted in the context of the prison system, and how performance can be measured by assessing cost and program effectiveness.

### Economic Efficiency

The Productivity Commission states that “economic efficiency is about maximising the aggregate or collective wellbeing of the members of the community”.<sup>34</sup> To achieve economic efficiency, three components of efficiency must be achieved: productive, allocative and dynamic efficiency. Table 3 discusses each of these components.

**Table 3: Components of Economic Efficiency**

Component	Description
Productive Efficiency	<p>Productive efficiency requires that goods and services be produced at the lowest possible cost. A productively efficient outcome uses the least cost of inputs to produce a given output of any good or service.<sup>35</sup></p> <p>In the prison system, this means that services are being produced at their lowest cost, for a given level of quality.</p> <p>Productive efficiency incorporates technical efficiency. Technical efficiency is measured as the ratio of physical outputs to physical inputs. In contrast, productive efficiency is measured as the ratio of the value of outputs to the value of inputs.</p>

<sup>32</sup> D’Amico, 2009, *The prison in economics: private and public incarceration in Ancient Greece*, Public Choice, Vol. 145.

<sup>33</sup> Jurisdictions that have privately operated prisons include: Queensland, New South Wales, Victoria, New Zealand, the U.S.A. and the United Kingdom.

<sup>34</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.3.

<sup>35</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.2.

Allocative Efficiency	Allocative efficiency is about ensuring that the community obtains the greatest benefit from its scarce resources. A jurisdiction's resources can be used in many different ways. The best, or 'most efficient' allocation of resources uses them in a way that contributes most to community wellbeing. <sup>36</sup>
Dynamic Efficiency	Dynamic efficiency refers to the allocation of resources over time, including allocations designed to improve economic efficiency and to generate more resources. This means finding better products and better ways of producing goods and services. <sup>37</sup>

Source: ERA research.

Of these three types of efficiency, productive efficiency is the most easily observable. Productive efficiency is concerned with the identification of the most cost effective way of producing a good or service. This is no straightforward task, but it is much more easily observable than allocative or dynamic efficiency.

Allocative efficiency requires an assessment of how much the community values each good or service. In the context of the prison system, this requires an assessment of the objectives of the prison system and the community's weighting of each objective. For example, does the community have a stronger preference for particular objectives of the prison system, and if so, what is the relative community weighting on the different objectives?

Dynamic efficiency is obtained through both appropriate incentives to improve performance and through innovation and flexibility that allows an organisation to develop more efficient ways of working and effectively respond to changes as they occur. In the context of the prison system, this requires the identification of characteristics that limit innovation and the ability to respond to change.

## Effectiveness

Effectiveness is a measure of how well the outputs of a program or service achieve the stated objectives (desired outcomes) of that program or service.<sup>38</sup> The Productivity Commission notes that the objectives of a program or service can be defined narrowly (for example, reducing rates of reoffending) or broadly (for example, reducing levels of crime in the State) as considered appropriate.

As is noted above, the four broad objectives of the prison system are: incapacitation, deterrence, rehabilitation and retribution. Each objective can be assessed against a narrower set of outcomes. For example, prisoner recidivism rates following release from prison, number of prison escapes and serious assaults occurring in prison are all commonly used to assess prison performance. This Inquiry will identify the outcomes that best reflect the objectives of the prison system.

## Measuring efficiency and effectiveness

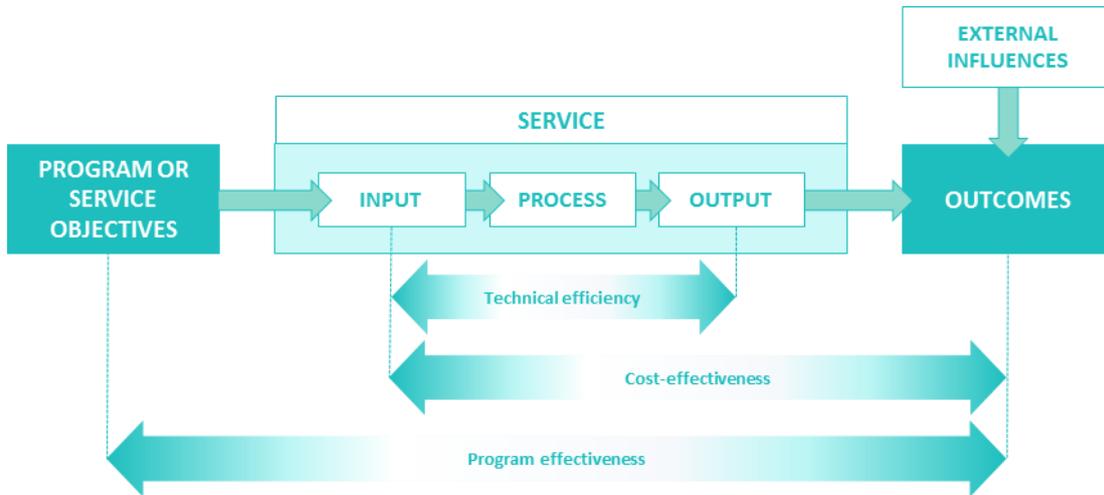
The Productivity Commission has established a framework for measuring the performance of government services for the Report on Governments Services. This framework is set out in Figure 9.

<sup>36</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.3.

<sup>37</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.3.

<sup>38</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.13.

**Figure 9: Framework for measuring the performance of government services in the Report on Government Services**



Source: Productivity Commission

The Productivity Commission assesses the performance of government services against two types of performance indicators:

- *Cost effectiveness* performance indicators are based on productive and technical efficiency. These indicators estimate the unit costs of producing well-defined outcomes.
- *Program effectiveness* performance indicators are based on agreed measures of access, appropriateness, and quality. These indicators aim to reflect the extent to which the objectives of government expenditure are achieved.<sup>39</sup>

The Productivity Commission notes that using this framework, a service would be judged to be more effective in achieving its objective if, say, it provided better quality services or better access to clients. Service options could then be ranked in terms of their degree of effectiveness.<sup>40</sup> For the prison system, greater cost-effectiveness would mean that it is delivering the same services, at the same quality standard for a lower cost. Greater program effectiveness would mean that prisons are, for example, lowering recidivism rates or the number of prisoner escapes for the same cost.

The matter of measuring, comparing and improving prison performance is discussed in greater detail in Chapter 4.

<sup>39</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.6.

<sup>40</sup> Productivity Commission, 2013, *On efficiency and effectiveness: some definitions*, Productivity Commission Staff Research Note, p.6.

## Questions

Should some objectives of the prison system be given greater weighting than others? If so, what should the relative weightings be for each objective? What is the reasoning supporting these weightings?

Do you agree with the ERA's interpretation of efficiency and effectiveness for the purposes of this Inquiry? If you do not agree with the ERA's interpretation, why do you disagree?

Are cost effectiveness and program effectiveness appropriate performance indicators for assessing the performance of prison services? Why or why not?

## 4. Performance framework

### Introduction

The purpose of this chapter is to describe the role of performance frameworks, describe the existing performance framework in Western Australia and discuss the challenges associated with implementing an effective performance framework.

Performance frameworks can be used to assist the improved performance of the prison system. Frameworks contain service standards, incentives and performance monitoring. A good performance framework will allow an organisation to clearly evaluate its performance and give the organisation the incentive to improve its performance. It is in this context that the ERA will develop and calculate a set of benchmarks, which is a key deliverable in the Inquiry Terms of Reference.

A well-designed performance framework needs to be supported by appropriate institutions and governance arrangements in order to be effective. With this in mind, the ERA will examine the objectives and functions of key officials and organisations within the prison system to determine whether they are clearly defined and officials and organisations have the necessary authority to deliver upon them. Additionally, the ERA will examine whether organisations have the institutional skill sets and resources that they need to achieve their functions and objectives.

The remainder of this chapter is set out as follows:

- a discussion of the purpose of a performance framework;
- a description of the characteristics of a good performance framework, including a set of principles that can be used to assess and develop frameworks;
- a description of the performance framework currently in place in the Western Australian prison system, including service standards, incentive mechanisms and performance monitoring;
- a discussion of the challenges in designing good performance benchmarks;
- a discussion of the institutional and governance arrangements needed to support a performance framework; and
- the importance of good governance arrangements in the prison system, and the practices needed to establish these.

### The purpose of a performance framework

A performance framework provides a means by which an organisation can improve its performance. A well-designed framework has a number of components that allow an organisation to measure and evaluate performance and to provide incentives to improve performance.

Performance frameworks can consist of service standards, performance monitoring (including benchmarking) and incentive mechanisms. These three components ensure that organisations adhere to minimum standards, have the incentive to meet objectives and the tools to clearly evaluate how well objectives are met.

Each component plays an important role in improving performance.

Service standards are the standards that an organisation must meet in delivering its operations. These may include minimum standards that must be met (that is, they are non-negotiable and prison operators must adhere to them in all circumstances) or performance standards that will be rewarded if achieved (for example, exceeding targets for a percentage of prisoners completing education and training programs). In a prison context, minimum standards are determined by the judicial system (sentencing in particular), human rights, safety and security. An example of a minimum service standard would be that prisoners must have access to appropriate medical care.

Service standards are particularly important in the absence of strong competition, as is the case in the prison system.

Performance monitoring is the means by which a governing organisation is able to determine if standards are being achieved and organisations are performing well. Performance monitoring includes the responsibilities for compiling, reviewing and auditing reports and the frequency with which performance reviews will be undertaken. This role would typically be undertaken at arms-length from the service provider.

A key component of good performance monitoring is performance benchmarking. Benchmarking provides a comparative measurement of the performance of similar or competing organisations and can be used as a tool for identifying and adopting more efficient or effective practices.<sup>41</sup>

Benchmarking involves the setting of a desired level of performance across a range of performance indicators. In doing this, benchmarks provide a specific metric against which the performance of organisations can be assessed. In conducting benchmarking across several comparable organisations the monitoring agency is able to identify poor performance to be rectified and good processes and programs that could be replicated.

A good performance framework will give organisations the incentive to achieve the performance targets that it sets. These incentive mechanisms can come in a variety of forms and may be different across private and public sector entities. An example of an incentive mechanism often used is performance linked payments. This involves the setting of desired performance levels that attract a fee to the contractor if achieved. Performance linked payments are distinct from service standards as they are not the minimum that is required from the organisation, but are goals designed to incentivise improved performance.

By ensuring that prisons are given the information that they need to succeed and the incentive to do so, the likelihood of improved performance is maximised. A well-designed framework that contains the components outlined above will clearly establish the current level of performance. From this starting point, desired levels of performance across a range of areas can be set and organisations can be evaluated against those targets. Essentially, performance frameworks give organisations the information and incentives that they require in order to do their job properly.

### Questions

Are there components that should be included in a performance framework in addition to service standards, incentives and performance monitoring? What are these components and why should they be included?

---

<sup>41</sup> G. Watson, 'A Perspective on Benchmarking: Gregory H. Watson in conversation with the Editor', *Benchmarking for Quality Management & Technology*, vol. 1, no.1, 1994, p. 5.

## Characteristics of a good performance framework

There are a number of characteristics of good performance frameworks that are consistent across the literature on performance management. These characteristics can be used as a means of assessing existing, and developing new, performance frameworks.

In the Draft Report, the ERA intends to develop a set of principles that it will use to guide its analysis. The principles listed here are derived from a range of work completed by international and domestic public and private sector agencies.<sup>42</sup> The principles listed below would apply to all components of the performance framework (including benchmarks).

**Useful:** A performance framework should be appropriate for and useful to organisations that will use it. In this context, it should assist prison operators with measuring and improving performance individually and should maximise the chance that the prison system as a whole meets its objectives.

**Improvement oriented:** A performance framework should be designed in a way that promotes continuous improvement. The framework should not only assess performance but provide the motivation and tools to prison operators to improve performance. A framework should be able to identify and help to rectify poor performance and also identify areas of good performance within certain organisations to allow cross-fertilisation to occur.

**Balanced:** A performance framework should cover all aspects of what an organisation is trying to achieve. In a prison context, this would include social outcomes against all objectives, as well as financial outcomes.

**Encourage innovation:** A performance framework should not be so prescriptive that it discourages innovation. A framework will ideally be outcome based, allowing prisons to innovate in order to find the best way to achieve that outcome. For example, a performance framework that only rewards a prison operator for the number of prisoners completing rehabilitation programs may discourage prison operators from finding innovative ways of rehabilitating prisoners.

**Accountable:** A performance framework should give ownership and accountability of outcomes to organisations that are capable of influencing those outcomes. Prisons should not be penalised, or rewarded, for the achievement of outcomes that they do not have influence over.

**Robust:** A performance framework should be robust enough that it can withstand organisational change. The framework should be able to be updated to reflect changes in strategy and personnel.

**Cost-effective:** The benefits that are derived from a performance framework should outweigh the costs of administering the framework.

---

<sup>42</sup> Kable, GEAC Library Information System, Microsoft Corporation, and Cap Gemini Sogeti, *Delivering Efficient Public Services Through Better Performance Management Frameworks*, London, Kable, 2005; HM Treasury, Cabinet Office, National Audit Office, Audit Commission, and Office for National Statistics, *Choosing the right FABRIC: A Framework for Performance Information*, Government of the United Kingdom, 2001; Department of Finance, *Performance Information and Indicators (October 2010)*, Canberra, Australian Government, 2010; A. Volokh, *Prison Accountability and Performance Measures*, Atlanta, Emory University School of Law, 2013; MTC Institute, *Measuring Success: Improving the Effectiveness of Correctional Facilities*, Washington D.C., MCT Institute, 2006.

## Characteristics of good performance benchmarks

As specified in the Terms of Reference, a key deliverable of the Inquiry will be the development and calculation of a set of benchmarks that allow comparisons of the performance of individual prisons in Western Australia. The principles that are listed below are specific to performance benchmarks only and do not apply to the other components of the performance framework. These principles are to be considered in conjunction with the principles listed above for performance frameworks more broadly.

**Measurable:** the data that is required to calculate a benchmark must be measurable across all prisons. Data must be reliable and able to be verified.

**Minimise perverse incentives:** Benchmarks should be selected and set in a way that does not encourage perverse behaviour by prison operators.

**Comparable:** Benchmarks must be comparable between prisons and over time.

**Attributable:** Benchmarks must measure an outcome that prisons are capable of influencing. There is no gain from benchmarking an outcome that a prison is not able to influence.

### Questions

Are the principles outlined by the ERA for designing performance frameworks and performance benchmarks appropriate? Why or why not?

Are there other principles that should be considered? What are these?

## The current performance framework in Western Australia

### Service standards

The Department of Corrective Services has an extensive set of compliance testing standards that are used to monitor the compliance of public prisons. These standards are service standards, setting out the requirements of prison services. Each standard highlights a key objective and prescribes a number of outcomes to be achieved to ensure compliance with that objective. Following from these outcomes, each standard sets out the tests to be undertaken to determine compliance with the standard.

In total there are 27 service standards that cover areas of care and wellbeing, custody and containment, rehabilitation and reintegration and governance.

The standards are influenced by:

- Policy Directives issued by the Commissioner of the Department of Corrective Services, which cover areas such as search procedures, attendance at funerals, access to information and dietary and nutritional requirements;

- Adult Custodial Rules<sup>43</sup> issued by the Commissioner and approved by the Minister, which typically cover the conduct of prisoners and prison officers; and
- Assistant Commissioner Adult Custodial Notices, which are internal documents that are used to announce operational changes in prisons. Notices often contain security information and are therefore not publicly available.

The service standards for the privately operated Acacia prison and Wandoo Reintegration Facility are specified in the respective contracts for these facilities as Operation Service Requirements.

The Acacia contract contains a broader range of service standards than those specified in the compliance testing standards for public prisons. Again, standards are divided among a number of categories, being custody and containment, care and well-being, rehabilitation and reintegration, reparation, business systems and human resources and occupational health and safety.<sup>44</sup> The standards included in the contract are similar in nature to the service standards applied to public prisons, but cover a broader range of categories.

The service requirements of the Wandoo Reintegration Facility contract are suppressed for confidentiality reasons.

### Questions

Should service standards be consistent across private and public prisons? Why, or why not?

What do you consider the service standards in the Western Australian prison system should be?

### Incentives

The current performance framework in Western Australia applies formal incentive mechanisms to encourage improved performance of privately operated prisons but not publicly operated prisons.

The ERA considers that there is no reason that formal incentive mechanisms should not be applied to public prisons as they are to private prisons. However, consideration would need to be given to designing these incentives to ensure that they effectively encourage improved performance by public operators. In particular, incentives for public prisons cannot rely on profit motivation that typically provides the basis for incentives applied to private prisons.

There are a number of financial incentives for Serco to perform well in its operation of both Acacia Prison and the Wandoo Reintegration Facility. These financial incentives come about as a result of the contracting process and the contracts themselves.

Both contracts are for a term of five years, and were awarded following a tendering process. Serco won the Acacia contract in 2006 ahead of the incumbent provider, Australasian Integration Management Services. The contract was awarded to Serco partly on the basis

<sup>43</sup> Department of Corrective Services, 'Adult Custodial Rules', <http://www.correctiveservices.wa.gov.au/prisons/adult-custodial-rules/default.aspx>, 2013, (accessed 27 October 2014).

<sup>44</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Perth, Government of Western Australia, 2006, p. 153.

that it was believed Acacia was not reaching its full potential, despite the fact that many Key Performance Indicators were being met.<sup>45</sup> In 2011 Serco was awarded a five year extension on the Acacia contract in light of its good performance at that time.<sup>46</sup>

The contracting process provides significant performance incentive in itself, given that failing to perform to a sufficiently high level has the potential to cost a private provider renewed contracts. Additionally, poor performance has the potential to cost private providers further contracts both locally and in other jurisdictions. These incentives are strongest when there is healthy competition for contracts.

There are also a number of financial incentives embedded into the specific contracts. Both the Acacia and Wandoo contracts contain performance linked fees for the achievement of Key Performance Indicators. If Serco meets the specified indicators, then it will receive their full fixed fee. If they fail to meet any of their indicators, the fee they receive is reduced. Performance indicators are largely focussed on security and safety (for example, minimising the number of serious assaults in a year) and social outcomes for prisoners (for example, the percentage of prisoners who complete education and training programs).<sup>47, 48</sup>

Contracts also contain disincentives for poor performance. Specific events result in an abatement fee to be paid by Serco. Events that draw a fee include escapes, deaths by unnatural causes and failure to report or provide accurate information, among others.<sup>49, 50</sup>

In addition to the formal financial incentives faced by Serco, there are a number of informal incentives that exist for both public and private prisons. These incentives are more directed at the performance of individuals than entire prisons. As is the case at any workplace, employees in public prisons will be incentivised to perform well in order to ensure continued employment and to enhance the likelihood of career advancement. In addition, individuals have an incentive to perform purely for the personal satisfaction that they get from doing their job well.

These individual incentives will extend to individuals who are responsible for the performance of entire prisons. These individuals are assessed against the performance of entire prisons and therefore have the individual incentive to improve overall performance.

## Questions

Are there reasons for not applying incentives to publicly operated prisons? If yes, what are these reasons?

<sup>45</sup> Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Acacia Prison*, Government of Western Australia, 2014, p. iv.

<sup>46</sup> Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Acacia Prison*, Government of Western Australia, 2014.

<sup>47</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Government of Western Australia, 2006, p. 276.

<sup>48</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Government of Western Australia, 2012, p. 144.

<sup>49</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Government of Western Australia, 2006, p. 117.

<sup>50</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Government of Western Australia, 2012, p. 142.

Are the incentives for private sector providers appropriate? Are there any factors that limit their effectiveness? If there are factors that limit their effectiveness, please explain what these factors are and how they limit effectiveness.

### *Performance Monitoring*

As a part of its annual report, the Department of Corrective Services develops a corporate scorecard that evaluates its performance against its Key Performance Indicators. Key Performance Indicators are selected that help to assess whether the Department of Corrective Services is providing safe, secure and decent corrective services that contribute to community safety and reduces prisoners' involvement in the justice system.

The Corporate Scorecard shows performance across all 14 publicly operated prisons at an aggregate level. It does not provide information from individual prisons for benchmarking purposes.

The components of the Corporate Scorecard that relate to the provision of prison services are set out in Table 4. The Department achieved several of its goals in 2013-14, particularly those pertaining to adult facilities. The major area of concern related to escapes from adult facilities.

**Table 4: 2013-14 Corporate Scorecard**

	Unit of measurement	What was achieved	Target	Achieved target indicator
<b>Service 1: Adult Corrective Services</b>				
Outcomes: Community Safety Improved and Reoffending Reduced				
Number of escapes	Escapes	15	0	
Rate of return- offender programs	Per cent	40.20	45.00	
Average out of cell hours	Hours per day	12.55	12.00	
Rate of serious assault per 100 prisoners	Rate per 100 prisoners	0.48	0.48	
Cost per day of keeping a prisoner in custody <sup>(a)</sup>	\$ per prisoner per day	334	315	
Cost per day of managing a prisoner through community sentences	\$ per prisoner per day	46	51	

Source: Department of Corrective Services, Department of Corrective Services Annual Report 2013–14, Perth, Government of Western Australia, 2014, p. 13.

 More than 10% behind target     Up to 10 % behind target     Achieved or exceeded target

<sup>(a)</sup> Please note that this is different from the previously quoted figure as it is the total cost of keeping a prisoner in custody rather than operating cost.

### Questions

Do you consider the performance framework applied by the Department of Corrective Services to be appropriate? Why, or why not?

Are you aware of effective performance frameworks in other jurisdictions? If so, why do you consider them to be effective?

## *The construction of good benchmarks*

A key deliverable of the Inquiry will be the development and calculation of a set of benchmarks to evaluate the performance of individual prisons. This section outlines some difficulties that are likely to be present when developing benchmarks.

Benchmarks are an important part of the overall performance framework. However, in order to ensure that benchmarking has the desired effect, benchmarks will need to be considered carefully to ensure that the right outcomes are being measured and that benchmarks are set at the appropriate level. Consideration will also need to be given to how to account for the complexity and diversity of the prison population and the prison system as a whole.

### *Identifying appropriate measures*

Organisations conducting benchmarking need to decide the specific outcomes that they will measure. It is important that metrics are selected that make a meaningful contribution to maximising the achievement of the organisations' objectives.

Benchmarks should be selected that stem from the objectives of prisons. Each objective will have a number of indicators that can be used to assess the achievement of that objective. These performance indicators can be used as benchmarks for assessing the performance of prisons. Selecting benchmarks in this way assures that benchmarks address an objective of the prison system.

As an example, consider the objective of rehabilitation. Whether an individual prisoner has been rehabilitated cannot be easily assessed. However, there are a number of factors that indicate the success in rehabilitating the broader prison population. One such indicator would be the rate at which former prisoners reoffend. Prison operators that are reducing the rate of reoffending in the prisoners that they release are likely to be having a positive effect on rehabilitating those prisoners.

An additional important consideration is the distinction between inputs, outputs and outcomes and how they should be used for benchmarking.

Inputs are the resources that contribute to the delivery of the prison service. This includes, things such as labour, physical assets and IT systems.<sup>51</sup> Typically, inputs should not be used as benchmarks as they limit flexibility, discouraging innovation.

Outputs are the final services that are produced by an organisation from its inputs. An example of an output that a prison may produce could be the completion of drug rehabilitation programs. Again, outputs are typically not used as benchmarks as they can be overly prescriptive and do not measure the achievement of objectives. For example, the

<sup>51</sup> HM Treasury, Cabinet Office, National Audit Office, Audit Commission, and Office for National Statistics, *Choosing the right FABRIC: A Framework for Performance Information*, Government of the United Kingdom, 2001, p. 8.

completion of a drug rehabilitation program does not guarantee success against the objective of reducing drug use.

Outcomes are the effects, or consequences to the community of a prison's activities. Typically, outcomes are what organisations are endeavouring to achieve. In the drug rehabilitation example used, the desired outcome of the drug rehabilitation program would be a reduction in the number of prisoners with a drug addiction.

Ensuring that benchmarks measure outcomes, not outputs, ensures that the prison system can maintain flexibility and find innovative ways of achieving that outcome. In continuing our example, if a prison can find an innovative method of reducing drug use, then it should not be unduly restricted in doing so.

Some outcomes that are desirable for a prison system to achieve can be measured, but other desirable outcomes cannot. A well-functioning prison system will need to achieve both the measurable and unmeasurable outcomes. However, the selection of benchmarks can influence the way in which prison operators focus their efforts. In particular, prison operators may focus greater effort on achieving the outcomes that can be measured and less effort on the outcomes that cannot be measured. Benchmarks need to be selected carefully to ensure that prison operators also put effort into achieving desirable, but unmeasurable outcomes.

Another issue that will need to be considered in the development of benchmarks is the difficulty in identifying which prisoners are to be counted in a prison's benchmarks. There is significant movement of prisoners between prisons for a variety of reasons, including, for example, the need to attend a program that may only be run at a particular prison. In addition, many prisoners are moved between prisons shortly prior to their release to be closer to their home. In this case the prison from which the prisoner is released from may have had no effect on the prisoner's rehabilitation.

### Question

How should performance benchmarks be selected?

### *Setting target values for benchmarks*

Benchmarks are the outcomes against which the performance of a prison will be assessed. However, to measure performance, target values need to be assigned to benchmarks. Target values for benchmarks provide a clear definition for what can be considered success for a program or organisation.<sup>52</sup> Therefore values should be set at a level that is consistent with the desired performance of prisons.

The method typically used for setting a target value is assessing the performance of comparable organisations in comparable jurisdictions. This method would involve assessing the performance of prisons in other Australian States and Territories, or jurisdictions internationally against the benchmarks selected. There are a number of difficulties with this approach, including that:

- It may be difficult to find jurisdictions that are comparable with Western Australia. Western Australia is a very large and geographically dispersed state. Additionally, the demographics of the State differ to that of other jurisdictions.

<sup>52</sup> New Jersey City University, *Tips for Setting Benchmarks and Performance Targets*, New Jersey City University, p. 1.

- Other jurisdictions may not have data available on the benchmarks selected. In selecting new benchmarks there is a chance that there is a lack of data against which a benchmark value can be based.
- The performance of other jurisdictions may not be at a desirable level. There is little to be gained from using this method for setting target values if the comparable prisons are not performing well. Target values should reflect high levels of performance, not simply values that can be easily met.

In setting target values, the ERA will need to find ways of overcoming these difficulties. It is likely that due to certain state level differences, the target values obtained from this method will need to be altered somewhat. The ERA will consult with relevant agencies and organisations involved in the prison system to ensure that values are consistent with the expectations of organisations that are likely to use them.

### Questions

Which jurisdictions do you consider are comparable or not comparable to Western Australia when assessing prisons? Why?

## Institutions and governance arrangements to support performance

A well-designed performance framework needs to be supported by appropriate institutions and governance arrangements<sup>53</sup> in order to be effective. With this in mind, the ERA will:

- examine the objectives and functions of key officials and organisations within the prison system to determine whether they are clearly defined and officials and organisations have the necessary authority to deliver upon them; and
- examine the governance arrangements specific to the prison system in Western Australia to ensure that these support the implementation of a strong performance framework.

### *Institutions required to support performance*

It is important that the roles, responsibilities, and relationships between the various parties with responsibilities for the performance of the prison system are made clear, and that each party is held accountable for achieving its objectives. Organisations also need to be enabled to achieve their objectives if they are to be held accountable. Enablers include authority to make changes and institutional skill-sets and resources.

Government agencies perform a range of different functions such as policy making, service delivery, regulatory oversight, and other specialist roles. It is possible for multiple roles to be assigned to the same agency, or for these functions to be separated between various agencies.

To the ERA's knowledge, there are no generally accepted guidelines regarding the optimal structure and separation of powers within the justice system (other than the principal of

<sup>53</sup> 'Governance' refers to the processes followed when making and implementing decisions. Good governance should establish processes that lead to optimal decisions and outcomes for the wider community, including efficient and responsible use of Government resources.

separation of legislators from the judiciary). For instance, there is no single model that outlines:

- the most appropriate mix of Ministerial portfolios, and agencies sitting within those portfolios;
- any specific functions that should be separated between different agencies (for example, should policy development, service delivery, and oversight functions be assigned to separate agencies?); and
- whether organisations with particular oversight functions should report directly to Parliament, or to the relevant Minister.

Typically, the structure of a given justice system is informed less by specific principles, and more by factors such as the established system of government (for example, Western Australia is a parliamentary democracy with a judiciary that is separate from Parliament), as well as historical and political factors.

Nevertheless, it is valuable to consider whether the individual institutions that make up the system have been assigned appropriate responsibilities, with clear separation of powers, since decisions made by many parties within the wider justice system often have an effect on the prison system.

The roles and responsibilities of the Minister for Corrective Services, the Commissioner of the Department of Corrective Services and the Inspector of Custodial Services have been described in Chapter 2 of this Issues Paper.

There appears to be a strong oversight and regulatory function within the prison system. For example, the Inspector of Custodial Services reports directly to Parliament, while also providing independent advice to the Minister on the operation of prisons. The Minister has the power to direct both the Inspector and the Commissioner to perform inquiries into any issue of concern (although the Inspector is not required to comply with such a direction if, in his opinion, there are exceptional circumstances for not doing so). The Inspector of Custodial Services does not have the power to implement any recommendations made as a result of investigations. These powers rest with the Minister and the Commissioner of Corrective Services.

The Department of Corrective Services is responsible for the administration of prisons, although decision-making powers relating to the day-to-day operations are largely delegated to the superintendent of individual prisons. The ERA will be interested in understanding any limitations on the Commissioner and superintendents to influence the efficiency and performance of the prison system. For example, the ERA understands that:

- some of the operational aspects of individual prisons, such as staff to prisoner ratios, are established in 'local agreements', which may prevent the Commissioner from reallocating staff resources to areas of greater need; and
- neither individual prisons nor the Department of Corrective Services has the power to refuse to accept any prisoner, limiting the ability of superintendents to influence the utilisation rate of the prison they have been charged with operating.

### Questions

Do the institutions and officials in the prison system have the functions and powers that they need to improve the efficiency and performance of the prison system? If not, which institutions and/or officials do not currently have appropriate functions and powers and why are the arrangements not appropriate?

What are the limitations on the powers of institutions and officials in the prison system? What effect do these limitations have on the efficiency and performance of the prison system?

## *Governance arrangements and the prison system*

Governance refers to the processes followed when making and implementing decisions, in addition to broader organisational structure within which these decisions are made. As discussed above, good governance provides the link between establishing performance frameworks, and actually using those performance frameworks to help an organisation achieve its objectives. Good governance should establish processes that lead to optimal decisions and outcomes for the wider community, including efficient and responsible use of Government resources. These arrangements support an organisation in achieving its objectives, and limit its exposure to a variety of risks (for instance, financial risks, the consequences of failing to meet objectives, or the risk of corruption within the organisation).

### *The importance of good governance*

Good governance arrangements increase the likelihood and degree to which an agency will deliver on its objectives, and meet its intended purpose. For example:

- clearly defined roles and responsibilities allow decision-makers to be confident in providing appropriate advice and in exercising effective leadership;
- transparency and accountability ensures that the agency is answerable for meeting its objectives, making efficient and effective use of its resources, and making ethical decisions; and
- participatory processes provide the agency with feedback that allows it to make more informed decisions, and promotes community confidence in the agency's integrity.

Good governance arrangements allow an agency to promptly identify and address any issues or risks that arise. For instance:

- clear relationships between the agency, independent overseers, and Government assign responsibility for investigating potential problems and proposing solutions;
- prompt identification, disclosure, and mitigation of risks helps ensure that these can be addressed before they cause a problem for the agency; and
- flexible and responsive governance arrangements reduce the risk that the agency may no longer be able to meet its objectives in the face of changing circumstances.

### *Good governance in prison systems*

A well-governed prison system identifies the critical issues and objectives at hand, and acts to address them as directly as possible. The means to do this vary from jurisdiction to jurisdiction based on many factors, including the cultural, social, and economic contexts in which the system operates.

However, regardless of the model adopted, a well-governed prison system will display a number of characteristics that include:

- absence of corruption;
- minimal influence of political lobbying;
- strong policies and procedures in place to manage risks or failures within the system;
- uptake of new ideas and opportunities to improve service delivery;
- clear disclosure as to how well the system is meeting its objectives; and
- well-informed, professional management with appropriate experience.

The ERA has compiled a list of the practices that are necessary to establish such a system, as shown in Table 5. These practices can be applied in designing, assessing, or redesigning a system, to help maintain a high standard of governance.

**Table 5: Leading practices in prison system governance**

Practice	For example:
Accountability	<ul style="list-style-type: none"> <li>• Clear performance standards have been established and are appropriately monitored.</li> <li>• Consequences for breaches of performance standards are established and well communicated.</li> <li>• Lines of reporting are clear, and divisions of responsibilities are documented and well understood.</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• Information regarding performance, spending, incidents and breaches of standards is made available and accessible to the public, in the absence of any compelling reason to limit disclosure.</li> <li>• Reasons for major decisions are clearly disclosed and available to the public, along with any supporting information necessary to follow the reasoning.</li> </ul>
Measurement and comparability	<ul style="list-style-type: none"> <li>• Performance measures adopted are broadly comparable to national and international measures.</li> <li>• The measures adopted are practical and cost effective to apply.</li> <li>• The measures can be applied consistently, without imposing an undue burden on staff.</li> </ul>
Collaboration	<ul style="list-style-type: none"> <li>• Staff at all levels engage with counterparts in the wider justice system, to improve and inform decision-making and operations.</li> <li>• The agency responsible for the prison system consults widely and considers the views of stakeholders when making decisions.</li> </ul>
Flexibility	<ul style="list-style-type: none"> <li>• Clear decision-making processes and lines of reporting are in place so that the prison system can adapt quickly to any change in circumstances.</li> <li>• Decision-makers have sufficient authority to respond promptly to issues and changes.</li> <li>• Permitted use of funding and resources is flexible enough to allow the best possible outcome for the resources deployed.</li> </ul>
Appropriate separation of duties	<ul style="list-style-type: none"> <li>• Various functions – for example, administrative, policy-making, sentencing, parole, and disciplinary decision-making – are separated wherever necessary to avoid perverse outcomes or conflicts of interest.</li> <li>• Where conflicts of interest cannot be avoided, these are clearly disclosed and managed.</li> </ul>
Risk management	<ul style="list-style-type: none"> <li>• Risks and risk management strategies are clearly and transparently disclosed.</li> <li>• Ongoing monitoring of existing and potential risks is undertaken, both by the agency and via independent review.</li> </ul>
Innovation	<ul style="list-style-type: none"> <li>• Incentives are in place to encourage the identification and adoption of new ideas and practices to improve the operation of the system.</li> <li>• The agency is open to ideas and proposals, from both outside and within Government.</li> <li>• Appropriate agency resources are allocated to research and innovation.</li> </ul>

Source: ERA research.

**Questions**

Are the current powers and responsibilities of institutions in the Western Australian prison system consistent with principles of good governance? Why or why not?

Are you aware of any other governance arrangements, whether in other sectors (for example, mental health, aged care, schools) or in other jurisdictions, that may benefit the Western Australian prison system? In what ways would these arrangements benefit the Western Australian prison system?

Is there currently sufficient oversight and review of Western Australia's prison system? In what ways could oversight and review arrangements be improved?

Do you have any further comments on improving governance and decision-making in the Western Australian prison system?

## 5. Complexities in developing a performance framework for the prison system

### Introduction

The development of a performance framework for the prison system is complicated by the fact that many of the factors that affect the overall cost and performance of delivering prison services, are external to, or cannot be influenced by, the prison system. Operators and administrators of the prison system can only be held accountable for factors over which they have influence.<sup>54</sup>

The purpose of this chapter is for the ERA to set out its understanding of: the factors that influence the cost and performance of the prison system and the extent to which the administrator of the prison system (being the Department of Corrective Services) and prison operators (also being the Department of Corrective Services and private prison operators) can influence these factors.

The ERA will be seeking feedback from interested parties on whether it has: identified all the relevant factors influencing cost and performance; understood how these factors can be influenced; and understood the extent to which they can be influenced.

In the remainder of this chapter, the ERA will discuss:

- the main factors that affect costs in the prison system; and
- the main factors that influence achievement of prison objectives by prison administrators and operators.

### Factors affecting the cost of the prison system

As set out in Chapter 3, cost-effectiveness performance indicators are part of the framework that the Productivity Commission applies to assess the performance of government services. These indicators are estimates of the unit costs of producing well-defined outcomes.

The ERA considers that there are two major factors in the prison system that may influence cost effectiveness performance indicators: the prison facility infrastructure and the size of the prison population. These factors are discussed in turn.

#### *Prison infrastructure*

Prison infrastructure can have a significant effect on the operational costs of the prison system in a number of ways.

- *Age* – There is a wide variability in the age of the prison facilities in Western Australia with some buildings being over 100 years old. All other things being equal, the ERA expects that older prison facilities will be more expensive to operate because of

<sup>54</sup> This relates to the principle of attribution set out in Chapter 4 of this Issue Paper, which established that benchmarks for the prison system should only measure outcomes that can be influenced by administrators of, and operators within, the prison system.

greater maintenance issues and potentially because they are less efficient (for example, in terms of energy and water consumption).

- *Technology* – New prison facilities are likely to make greater use of technology to reduce operating costs.
- *Design* – An efficient lay-out of a prison facility can potentially reduce the operating costs of the facility. For example, better physical separation of different prison populations (including for the protection of prisoners) can reduce the need for staff supervision.
- *Utilisation* – The utilisation rate of the prison will affect operating costs, with an under-utilised prison expected to have a high cost per prisoner per day. The type and complexity of prisoner mix of a prison can also affect the operating costs. Having low-risk prisoners unnecessarily accommodated in more expensive high security facilities can also affect costs.
- *Remoteness* – Remote prisons will be more expensive to operate than metropolitan prisons because of the higher cost of transporting goods to remote facilities. It may also be harder to attract and retain staff with appropriate skills in remote locations.

The ERA expects that the costs driven by the existing prison infrastructure are largely beyond the control of prison administrators and the prison operators charged with operating individual prisons, as most of the existing infrastructure is the legacy of decisions made by previous Western Australian Governments.

The ERA expects that prison administrators can have a greater influence on the future cost of the prison system through planning and resource allocation decisions that are made now about the size, design and purpose of future infrastructure. For example, there is a relative oversupply of maximum security cells compared to minimum and medium security cells. This has resulted in minimum and medium security prisoners being housed in more expensive maximum security conditions.<sup>55</sup>

In the short-term, the ERA expects that prison operators will have fairly limited control over the costs of operating prison infrastructure. For example, it is understood that prison operators cannot influence the number, or even potentially the type, of prisoners it is allocated. As such, prison operators may be limited in influencing the utilisation rate of the prison in an attempt to optimise costs.

In the longer-term, the performance of prison operators may affect the required capital expenditure on prisons. For example, if prisons are ineffective in rehabilitating prisoners, then the prison population will be higher than it could be. A higher prison population will ultimately result in the unnecessary expansion of existing prisons or the construction of new prisons, further adding to the cost of the prison system.

---

<sup>55</sup> The Inspector of Custodial Services, *2013-14 Annual Report*, Perth, Government of Western Australia, 2014, pg.11.

## Questions

How does prison infrastructure affect the cost of delivering prison services?

To what extent can the Department of Corrective Services influence the cost factors associated with prison infrastructure?

To what extent can prison operators influence the cost factors associated with prison infrastructure?

How should the ERA adjust for infrastructure-related factors in setting cost targets for individual prisons?

## *Prison population*

The size of the prison population will primarily affect the variable costs of operating a prison. For example, each additional prisoner will add to the cost of the prison system because that additional person needs to be supervised and provided for (for example, in terms of food, clothing and linen).

The prison population also ultimately affects the fixed capital cost associated with providing prison infrastructure. For example, as different parts of the prison population grow, prison facilities need to be expanded to accommodate these populations.

In this section the ERA discusses the key factors that influence the size of the prison population.

### *Demographic issues of the general Western Australian population*

As discussed in Chapter 2, parts of the general Western Australian population are incarcerated at different rates to other parts. In particular:

- the incarceration rate for males is higher than that for females;
- younger people are incarcerated at a higher rate than older people; and
- Indigenous people are incarcerated at a higher rate than other ethnic groups.

The prison population will be affected to the extent that these demographic groups are represented at higher rates in Western Australia compared to other jurisdictions.

The demographics of the Western Australian population are beyond the influence of the prison system, or indeed, the Western Australian Government.

### *Demographic issues of the prison population*

The demographics of the prison population affect the cost of operating prisons. In particular, the cost of providing prison services:

- to female prisoners is higher than for male prisoners (for example, because of the need for maternity and nursery facilities)<sup>56</sup>;

<sup>56</sup> Women Lawyers of Western Australia (Inc.), *20<sup>th</sup> Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report*, 2014, p. 541.

- to high security prisoners is higher than for low security prisoners;
- is different depending on the age of the prison population reflecting for example, the greater need to provide education and training to young prisoners and the greater need to provide health services to older prisoners.

As noted above, operators of individual prisons have limited control over the number and type of prisoners they must receive and hence the costs associated with those prisoners.

### Questions

How do the demographics of the general Western Australian population affect the prison population?

How do the demographics of the prison population affect the costs of the prison system?

To what extent can the Department of Corrective Services influence the cost drivers associated with the demographics of the prison population?

To what extent can prison operators influence the cost drivers associated with demographics of the prison population?

How should the ERA adjust for demographic-related factors in setting cost targets for individual prisons?

### *Public policy*

The Executive Government (including the Premier and Cabinet) has substantial influence over the prison population through its public policy settings. The major public policy settings that influence the prison population include:

- decisions about what constitutes a crime that warrants a prison sentence;
- the minimum and maximum sentences for these crimes; and
- the application of any mandatory sentences for specific crimes.

Public policy decisions made by the Executive Government in other policy portfolios may also have an effect on the prison population. One such example may include decisions not to institutionalise people with serious mental health issues in psychiatric facilities. These patients may instead be channelled into the prison system.

The ERA considers that recommendations on such public policy settings are beyond the scope of this Inquiry. Nevertheless, the ERA will need to be cognisant of these matters and understand how they affect the prison system.

### Questions

How do public policy decisions affect the size of the prison population?

How do public policy decisions affect the demographics of the prison population?

## *Interactions of the justice system*

The Western Australian prison system is part of a broader justice system that also includes legislators, police, and the courts.

Decisions made elsewhere within the justice system can have multiple and complex effects (either directly or indirectly) on the prison population and hence the cost of the prison system. These decisions may include:

- the number of people charged by the Western Australian Police;
- the proportion of offences brought to court by the Director of Public Prosecutions;
- the availability of non-custodial options and the willingness of the judiciary to apply those options;
- the length of sentences imposed by the judiciary;
- the proportion of prisoners held in remand before receiving a custodial sentence; and
- the decisions of the parole board.

Separation of functions can sometimes make it difficult to resolve administrative issues and conflicting objectives. This can be exacerbated by a lack of collaboration between organisations, which can make it difficult to identify system-wide problems and mutually agreeable solutions. One organisation's decisions may result in a significant financial burden for another, as discussed in the case study below.

### **Case Study: Holding prisoners on remand**

Around 25 per cent of prisoners in Western Australia are on remand\* (that is to say, they have been charged by police but have either not yet faced court, or have not been sentenced). While it may be appropriate for prisoners to be held on remand where they are a flight risk or pose a danger to others, remand prisoners may also be held in custody for other reasons – for instance an administrative technicality in the bail process, or an inability to find someone to act as a surety. The prison system then bears the cost of incarcerating these remand prisoners, who would otherwise have been released on bail.

The separation of functions makes it difficult to weigh the merits of holding these prisoners in custody against the costs of imprisonment. The Department of Corrective Services has a strong incentive to minimise the number of remand prisoners, since they impose additional costs on the prison system. However, the Department has no decision making powers around the administration of bail, which is granted by either police or the court. Since neither the police, the courts, nor the Department share a line of reporting, it becomes a complex exercise for these parties to agree on the appropriate use of remand imprisonment, let alone negotiate solutions to any administrative issues.

\* *Australian Bureau of Statistics, 4517.0 - Prisoners in Australia (5 December 2013 release), Canberra, Australian Government, 2013.*

A justice system needs good management of shared responsibilities to achieve its objectives. There are already many cases of collaborative decision-making within the Western Australian justice system, where decisions are made or informed by groups representing a variety of stakeholders.

For example, the Prisoners Review Board conducts parole hearings, and makes decisions on the release of prisoners. It is convened by the Department of the Attorney General, but consists of:

- a Chair, two Deputy Chairs, and community members (nominated by the Attorney General, and appointed by the Governor);
- Department of Corrective Services Officers (appointed by the Commissioner of the Department of Corrective Services); and
- Police Officers (appointed by the Police Commissioner).

New Zealand also offers an example of cross-agency collaboration between organisations in the justice system to improve overall outcomes.

#### Case Study: The New Zealand experience

Recent reforms in New Zealand have attempted to move focus away from individual agencies, towards the overall outcomes of the justice system. This has been driven by the establishment of a number of cross-agency teams with significant resources and decision-making powers.

For instance, the Chief Executives of the Ministry of Justice, New Zealand Police, and Department of Corrections established a Justice Sector Leadership Board. The Board establishes overall priorities and desired outcomes for New Zealand's justice sector. To achieve these goals, they have established a Justice Sector Fund that allows agencies to pool funds and transfer savings between agencies, to ensure Government money is used to the best effect.

New Zealand Ministry of Justice, *Delivering better public services: reducing crime and re-offending – result action plan*, Wellington, Government of New Zealand, 2012, p. 2.

Ideally, collaboration should help to bring the wider objectives of the justice system to the foreground when decisions are being made, rather than narrower administrative concerns. Input from across Government and the community provides decision-makers with a broader context, and an understanding of the larger problem they are attempting to solve.

As part of this Inquiry, the ERA will consider whether any adjustments can be made to the interactions between the prison system and the broader justice system to improve the performance of the prison system.

#### Questions

How do the decisions of the broader justice system affect the size and demographics of the prison population?

How effectively do the different officials and organisations within the broader justice system collaborate?

What practical changes could be made to the existing institutional arrangements in the justice system to support the prison system in achieving its objectives?

## Factors affecting performance

The purpose of this section is to set out the ERA's understanding of the ability of administrators and operators in the prison system to influence the performance of the system.

The ERA considers that performance should be measured as the achievement of the objectives of the prison system over which these groups have some influence. This is consistent with the program effectiveness performance indicators that the Productivity Commission applies to assess the performance of government services, as described in Chapter 3.

The ERA considers that prison operators can only be held accountable for influencing two of the objectives of prisons: incapacitation and rehabilitation, as was discussed in Chapter 3.<sup>57</sup>

In the remainder of this section, the ERA will consider:

- the factors that influence the achievement of the rehabilitation and incapacitation objective of prisons;
- the extent to which administrators and operators within the prison system can influence these factors; and
- any variation in the ability of different prisons to influence the rehabilitation and incapacitation objectives.

### ***Factors affecting the achievement of the rehabilitation objective***

The ERA considers that the following factors are likely to affect the achievement of the rehabilitation objective.

- *Demographics of the prison population* – Individuals that have committed serious crimes, or those that have a long history of committing crimes, are likely to be the hardest to rehabilitate. As has previously been discussed, prison operators have little influence over the demographics of their prisoners and hence little influence over this factor.
- *Intent of prison* – Some prisons (such as reintegration facilities) have a greater focus on rehabilitation than other prisons reflecting their core purpose. These prisons are likely to be more successful at reducing rates of recidivism, but should also be held to a higher standard than prisons that do not have this focus.
- *Quality of rehabilitation programs provided in prisons* – This is the factor over which prison operators can exert most influence. Rehabilitation programs should be tailored to the needs of different prison populations.

---

<sup>57</sup> The executive government and the judiciary has some influence over the deterrence and retribution objectives of prisons through its public policy settings on crimes and associated sentences. Hence, executive government and judiciary can influence the performance of the prison system as far as it relates to these objectives.

- *Quality of post-release programs* – Prisoners will need assistance reintegrating into society upon release. This will include finding appropriate housing, employment and reconnecting with social networks. The Department of Corrective Services can influence the quality of post-release programs through their non-custodial corrective services and interactions with other State Government agencies. The ERA is unsure about the extent to which operators of individual prisons interact with, and can have an influence upon, post-release programs.

### Questions

What factors influence the achievement of the rehabilitation objective? How do they influence rehabilitation?

To what extent can prison administrators and prison operators influence the factors affecting the rehabilitation objective?

How should the ERA adjust for rehabilitation-related factors in setting performance targets for individual prisons?

### ***Factors affecting the achievement of the incapacitation objective***

One of the objectives of prisons is to improve public safety by incarcerating prisoners in order to prevent them from further crimes in the community. This is known as the incapacitation objective of prisons.

The ERA considers that the following factors are likely to affect the achievement of the incapacitation objective.

- *Intent of prison* – The type of prison will influence the ease and propensity for prisoners to escape. For example, it is easier for prisoners to escape from minimum security prisons than maximum security prisons. The ERA considers that maximum security prisons should be held to a higher standard for achieving the incapacitation objective, reflecting that this is what the facilities have been designed for and the greater risks associated with a high-security prisoner escaping.
- *Appropriate utilisation of prisons* – Care needs to be taken to ensure that prisoners are classified correctly when first entering into the prison system and are channelled into a prison with an appropriate level of security. Prison operators may not be able to influence the type of prisoner they receive.
- *Security processes* – Prison operators should have robust processes for ensuring that prisoners do not escape and apply these processes consistently. Prison operators should be held accountable for this factor affecting the achievement of the incapacitation objective.

### Questions

What factors influence the achievement of the incapacitation objective? How do they influence incapacitation?

To what extent can prison administrators and prison operators influence the factors affecting the incapacitation objective?

How should the ERA adjust for incapacitation-related factors in setting performance targets for individual prisons?

## 6. How to incentivise performance in the prison system

### Introduction

The previous chapters of this Issues Paper have discussed the importance of developing a performance framework that helps improve the performance of the prison system and why it is necessary to establish the effective institutional and governance arrangements to support the performance framework.

When combined, these structures will create a robust prison system that can support many different approaches to service delivery. Consideration can be given to how service delivery options can be structured to incentivise providers of prison services to improve their performance, resulting in better outcomes for the Government and taxpayers.

Central to establishing an efficient prison system is the identification of the incentives that align the interests of the prison operator with those of the State. Consideration needs to be given to how best to maximise the benefits from alternative service delivery options, while identifying and mitigating any associated risks.

The focus of this chapter is to discuss the ways in which the prison system can be structured, such that appropriate incentives are created for it to produce efficient outcomes.

The remainder of this chapter addresses:

- the importance of incentives in a well-designed prison system;
- the current design of the prison system in Western Australia; and
- the spectrum across which prison service delivery can span.

### The importance of incentives in prison system design

Incentives are central to a well-designed prison system because, if they are harnessed appropriately, they will maximise the chance that prisons achieve the objectives set out in the performance framework. Incentives can encourage prisons to find more innovative ways to effectively rehabilitate prisoners and reduce costs, ultimately improving performance.

Conversely, a prison system in which these incentives are absent is less likely to achieve the objectives of its performance framework. Prisons without good incentives are more likely to fail to achieve fundamental objectives, deliver poorer outcomes for prisoners and the community, and operate at an unnecessarily high cost.

A poorly designed prison system has implications beyond simply having higher recidivism rates or paying more for prison services, although these are significant considerations. Prisoners are inherently vulnerable and because of this vulnerability, there is a unique human element to the prison system. History and psychological research demonstrate that where power imbalances exist, power can be misused.<sup>58</sup> Having taken away their liberty, the State must ensure that prisoners are treated appropriately. A well-designed prison

---

<sup>58</sup> For example see: Haney, Banks and Zimbardo, 1973, *Interpersonal Dynamics in a Simulated Prison*, *International Journal of Criminology and Penology*, 69-97 and Lammers, Galinsky, Gordijn, & Otten, 2008, *Illegitimacy moderates the effects of power on approach*, *Psychological Science*, 19, 558-564.

system can create incentives that ensure power imbalances are not misused, ensuring the decent treatment of prisoners.

The prison system should be designed in a way that allows these incentives to have their desired effect, assisting with improved performance and efficiency.

## Design of the current prison system in Western Australia

The design of a prison system has implications on the incentives that are present for prison providers.

The prison system in Western Australia is a mixed delivery system that involves both the public sector and the private sector. The public sector is responsible for the majority of service delivery with some involvement from the private sector.

The Department of Corrective Services owns all 16 prisons and is responsible for operating 14 of those. The remaining two prisons (Acacia and Wandoo) are operated by Serco, which is a private sector provider.

Serco must operate the prisons according to the management contract created by the Department of Corrective Services. The management contract is designed to ensure the safety and wellbeing of prisoners and society, emphasising the need to ensure security of the prison, while providing suitable prisoner programs aimed at meeting department goals.<sup>59</sup> The Department of Correctives Services provides onsite monitoring of privately operated prisons to ensure that Serco is meeting its contractual requirements.

## The alternatives and options available

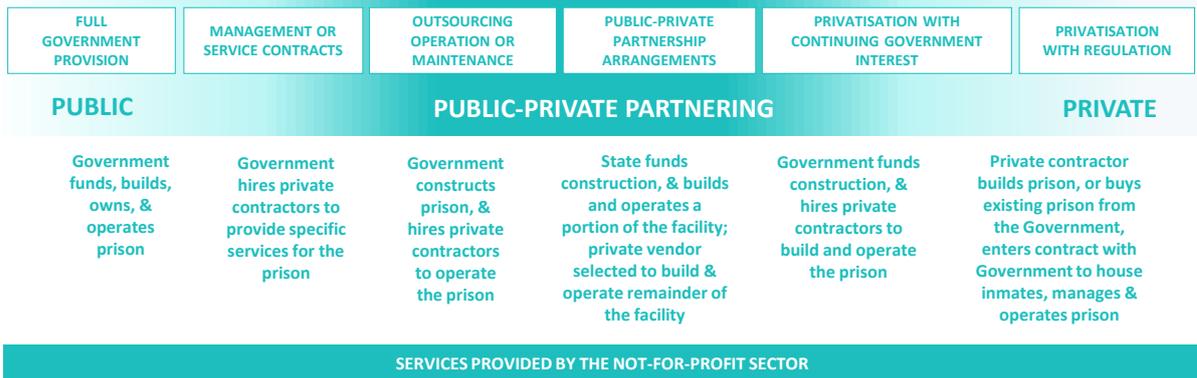
Considering alternative designs for the State's prison system will highlight opportunities to make better use of resources and Government funding. Ultimately, this knowledge will assist the Government in adopting a model that provides a sustainable, efficient prison system that provides high-quality outcomes to the community at a reasonable price.

One approach is to develop appropriate mechanisms for private participation of the prison system. There are a range of ways in which this can be achieved and the delivery of prison facilities and prison services differs significantly across the world. The main point of difference between various models is the degree and type of private sector involvement.

The establishment of a working prison requires a number of different components, including funding, construction, management, and operation. Each of these components can be provided by the Government, the private sector, or a mix of the two. Charities and other not-for-profit organisations also provide a range of services to prisoners that might otherwise be provided by the Government or private sector prison-owner.

Figure 10 shows the spectrum of possible public and private involvement in the sector, and provides a number of specific examples of prison system models that sit along the spectrum.

<sup>59</sup> Department of Corrective Services, *Acacia Prison Contract*, the Western Australian Government, [Accessed 16 October 2014] <http://www.correctiveservices.wa.gov.au/about-us/business-with-us/tenders-contracts/acacia-prison-contract.aspx>.

**Figure 10: The spectrum of public versus private involvement in the prison system**

Source: ERA research.

Private sector involvement in delivering prison facilities and services is a contentious issue. A number of commonly held arguments for and against involvement of the private sector in the prison system are provided in Table 6.

**Table 6: Private sector involvement in the prison system: commonly cited advantages and disadvantages**

Advantages	Disadvantages
Private providers may run prisons and prison services more efficiently than public sector agencies, since their aim is to maximise profit.	Private providers may aim to maximise profit by 'cutting corners' on prison security, the safety of the community, or the basic welfare of inmates.
Private providers can remove some of the burden of operating the prison system from Government, allowing the Government to better use its resources elsewhere.	Since private providers profit from housing inmates, they may attempt to lobby legislators and the judiciary to introduce longer sentences or 'tougher' legislation.
The introduction of private providers stimulates competition and innovation, resulting in broad improvements to, and modernisation of, the prison system.	Private providers generally only profit from prisoners while they are incarcerated, and may have little incentive to provide rehabilitation, training and re-entry services, even though effective reform services benefit the community.
Private providers rely on their reputation to win and maintain contracts, and so may have greater incentives than the public sector to meet performance standards and other contractual obligations.	Since private providers are accountable to their shareholders, rather than to the community, they may give less weight to humanitarian and human rights concerns.

Source: ERA research.

In practice, good governance, strong accountability, and well-designed incentives (and repercussions) are critical parts of an effective prison system. These should be applied equally irrespective of whether the public sector or the private sector operates prisons. These elements encourage the design and achievement of appropriate goals, both financial and social. Most importantly, they move beyond the 'inefficient public sector versus unregulated private sector' debate, and question what it takes to make a prison system – any prison system – work most efficiently.

One common approach to determining how prison services could be best delivered is to implement a 'commissioning' approach. Commissioning is used widely in the United Kingdom and has been in place for a number of years. Commissioning is discussed in more detail in the case study below.

### Case Study: Commissioning service delivery

Commissioning is a model of decision-making that aims to provide choices in the way government services are provided. Rather than dictating the way in which services should be provided, it assesses each of the possible choices to determine the option that best achieves the desired outcome. It emphasises the need for service outcomes to be consistent with the Government's broader strategies and objectives.

As a result, commissioning does not result in a pre-determined outcome for the way in which public services are funded and delivered. Rather, it establishes processes and guidelines that allow agencies to consider and choose from a range of different options.<sup>1</sup> For instance, agencies may continue to provide a service in-house (that is, public sector delivery of public sector services), or they may contract with an external provider (whether the private sector or the not-for-profit sector) to deliver the service.

Privatisation is not the aim of commissioning. Rather, commissioning focuses primarily on providing choice. It aims to generate a service market in which contestability, competition, and collaboration between public, private and non-government service providers are actively encouraged.<sup>2</sup>

The manner in which a service is to be provided is set out in a contract between the service provider and the Government. The primary risk associated with commissioning is ensuring that the contract is drafted in a manner that effectively aligns the interests of the government and the service provider. It is when the interests of the two parties are not aligned that problems with the performance of the provider arise. These problems include those outlined in Table 6 as disadvantages of private sector involvement in the prison sector.

<sup>1</sup> CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia, 2010, p. 5.

<sup>2</sup> Ernst and Young, *Public Service Commissioning: A catalyst for better citizen outcomes*, Ernst and Young, 2014, p. 3.

Many of the approaches across the spectrum involve the private sector, which, as Table 6 notes, may create new risks in the prison system. A key factor in assessing where along the spectrum the Western Australian prison system should sit, is understanding the risks associated with each option and the extent to which these risks can be eliminated or mitigated. For example, should the Department of Corrective Services seek greater engagement with the private sector in the future, it would represent a shift in the way that the Department operates. Such a shift may require it to develop institutional skills that it may not currently have. There are risks associated with ensuring that the Department appropriately identifies areas in which it may need to develop additional skills and with ensuring that the identified skill shortages are suitably addressed.

This chapter has discussed the importance of incentives in the delivery of efficient prison services and the spectrum across which prison services can be delivered. The ERA seeks feedback from interested parties about how best to create incentives for efficient performance in the prison system, the approaches that can be used to create these incentives, the benefits and the risks that each approach can carry and any strategies that can be used to maximise the benefits and mitigate the risks.

**Questions**

In what way can the delivery of prison services be better structured, such that service providers have stronger incentives to operate more efficiently and to a higher standard?

What are the main risks associated with the private sector operating prisons on a for-profit basis? How might these risks be managed?

Can greater competition between service providers, including those from the private and not-for-profit sectors, create a prison system that is more efficient and performs to a higher standard? If so, how can this be achieved?

Are you aware of any other ways to provide prison services to the community that have not been raised in this chapter? If so, can you provide an example of how they have worked in other jurisdictions?

## Appendix 1: Inquiry Terms of Reference

I, Dr Michael Dennis Nahan, Treasurer, following consultation with the Minister for Corrective Services, and pursuant to Section 38 (1) of the *Economic Regulation Authority Act 2003*, request that the Economic Regulation Authority (the Authority) undertake an inquiry into options to improve the efficiency and performance of public and private prisons.

The advice provided by the Authority will be based upon economic, market and regulatory principles and will include advice on the design of appropriate performance standards, incentives and performance monitoring processes for the prisons system.

In conducting this inquiry, the Authority will:

- draw upon new and existing costing models of prison services belonging to the Department of Corrective Services (DCS);
- ensure that its findings are informed by other State Government reform processes related to the prisons system;
- review current administration and performance management practices of public and private prisons in Western Australia (WA); and
- survey inter-State and international experience and literature on the efficient performance management of prisons.

A key deliverable of the inquiry will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in WA. The DCS would use the benchmarks to identify areas in which the performance of individual prisons could be improved. In developing these benchmarks, the Authority will:

- take into account different categories of prisons and any other significant operational differences and the implications these will have for the cost of service provision;
- consider the need for the DCS to be able to update and report on the benchmark on a regular basis;
- prepare a stand-alone document explaining how benchmarks have been calculated; and
- seek to identify ways the DCS could use the benchmark information to improve the performance of the prison system.

The Authority will release an issues paper as soon as possible after receiving the Terms of Reference (ToR). The paper is to facilitate public consultation on the basis of invitations for initial written submissions from State and Local Governments, the not for profit sector, industry and other relevant stakeholder groups, including the general community.

The Authority will release a draft report including recommendations for further public consultation.

The Authority will complete a final report, including recommendations, no later than one year after receiving the ToR.

**HON DR. MICHAEL DENNIS NAHAN MLA  
TREASURER; MINISTER FOR ENERGY; CITIZENSHIP AND MULTICULTURAL  
INTERESTS**

## Appendix 2: Consolidated List of Questions

### The Prison System in Western Australia

Do you agree that prisons are more expensive to run in Western Australia? If not, why not?

If yes, what are the specific factors that result in Western Australian prisons being more expensive to run (in terms of cost per prisoner per day) compared to other States? Are any of these factors within the control of the Government, the prison system or individual prison operators?

### Proposed analytical approach

Do you consider the conceptual approach outlined by the ERA for conducting this Inquiry to be appropriate? If not, why not?

Are there any other steps that need to be included in this conceptual approach? What are these steps and why should they be included?

### Objectives of the prison system

Do you agree that incapacitation, deterrence, rehabilitation and retribution are the objectives of the prison system? Are there other objectives that the ERA has not identified?

Which objectives can prison operators be held accountable for achieving?

### Efficiency and effectiveness in the context of the prison system

Should some objectives of the prison system be given greater weighting than others? If so, what should the relative weightings be for each objective? What is the reasoning supporting these weightings?

Do you agree with the ERA's interpretation of efficiency and effectiveness for the purposes of this Inquiry? If you do not agree with the ERA's interpretation, why do you disagree?

Are cost effectiveness and program effectiveness appropriate performance indicators for assessing the performance of prison services? Why or why not?

### Performance frameworks

Are there components that should be included in a performance framework in addition to service standards, incentives and performance monitoring? What are these components and why should they be included?

### Characteristics of a good performance framework

Are the principles outlined by the ERA for designing performance frameworks and performance benchmarks appropriate? Why or why not?

Are there other principles that should be considered? What are these?

Should service standards be consistent across private and public prisons? Why, or why not?

What do you consider the service standards in the Western Australian prison system should be?

### **Incentives**

Are there reasons for not applying incentives to publicly operated prisons? If yes, what are these reasons?

Are the incentives for private sector providers appropriate? Are there any factors that limit their effectiveness? If there are factors that limit their effectiveness, please explain what these factors are and how they limit effectiveness.

### **Performance monitoring**

Do you consider the performance framework applied by the Department of Corrective Services to be appropriate? Why, or why not?

Are you aware of effective performance frameworks in other jurisdictions? If so, why do you consider them to be effective?

How should performance benchmarks be selected?

Which jurisdictions do you consider are comparable or not comparable to Western Australia when assessing prisons? Why?

### **Institutions and governance arrangements**

Do the institutions and officials in the prison system have the functions and powers that they need to improve the efficiency and performance of the prison system? If not, which institutions and/or officials do not currently have appropriate functions and powers and why are the arrangements not appropriate?

What are the limitations on the powers of institutions and officials in the prison system? What effect do these limitations have on the efficiency and performance of the prison system?

Are the current powers and responsibilities of institutions in the Western Australian prison system consistent with principles of good governance? Why or why not?

Are you aware of any other governance arrangements, whether in other sectors (for example, mental health, aged care, schools) or in other jurisdictions, that may benefit the Western Australian prison system? In what ways would these arrangements benefit the Western Australian prison system?

Is there currently sufficient oversight and review of Western Australia's prison system? In what ways could oversight and review arrangements be improved?

Do you have any further comments on improving governance and decision-making in the Western Australian prison system?

### **Factors affecting the cost of the prison system**

How does prison infrastructure affect the cost of delivering prison services?

To what extent can the Department of Corrective Services influence the cost factors associated with prison infrastructure?

To what extent can prison operators influence the cost factors associated with prison infrastructure?

How should the ERA adjust for infrastructure-related factors in setting cost targets for individual prisons?

How do the demographics of the general Western Australian population affect the prison population?

How do the demographics of the prison population affect the costs of the prison system?

To what extent can the Department of Corrective Services influence the cost drivers associated with the demographics of the prison population?

To what extent can prison operators influence the cost drivers associated with demographics of the prison population?

How should the ERA adjust for demographic-related factors in setting cost targets for individual prisons?

How do public policy decisions affect the size of the prison population?

How do public policy decisions affect the demographics of the prison population?

How do the decisions of the broader justice system affect the size and demographics of the prison population?

How effectively do the different officials and organisations within the broader justice system collaborate?

What practical changes could be made to the existing institutional arrangements in the justice system to support the prison system in achieving its objectives?

#### **Factors affecting prison performance**

What factors influence the achievement of the rehabilitation objective? How do they influence rehabilitation?

To what extent can prison administrators and prison operators influence the factors affecting the rehabilitation objective?

How should the ERA adjust for rehabilitation-related factors in setting performance targets for individual prisons?

What factors influence the achievement of the incapacitation objective? How do they influence incapacitation?

To what extent can prison administrators and prison operators influence the factors affecting the incapacitation objective?

How should the ERA adjust for incapacitation-related factors in setting performance targets for individual prisons?

#### **Incentives in the prison system**

In what way can the delivery of prison services be better structured, such that service providers have stronger incentives to operate more efficiently and to a higher standard?

What are the main risks associated with the private sector operating prisons on a for-profit basis? How might these risks be managed?

Can greater competition between service providers, including those from the private and not-for-profit sectors, create a prison system that is more efficient and performs to a higher standard? If so, how can this be achieved?

Are you aware of any other ways to provide prison services to the community that have not been raised in this chapter? If so, can you provide an example of how they have worked in other jurisdictions?