

Inquiry into the Efficiency and Performance of Western Australian Prisons
CPSU/CSA submission
January 2015

The Community and Public Sector Union/Civil Service Association (CPSU/CSA) represents public servants in the Department of Corrective Services working in areas such as offender management, policy, programs, education, administration, bail services, victim mediation, Aboriginal Visitors' Scheme, juvenile detention, and adult custodial. The CPSU/CSA also represents members in other government departments that work in the justice arena and interact with prisons such as the Department of the Attorney General, Police, Legal Aid, and the Department of Aboriginal Affairs. We believe consultation with workers and stakeholders in these areas would also benefit the ERA's inquiry.

We thank the ERA for the opportunity to make a submission to this inquiry on behalf of our members. We are of the view, however, that Treasurer Nahan's terms of reference are too limited in scope and indicative of the government's narrow priorities in the justice sector: cost effectiveness rather than quality service delivery and a reduction in crime. Instead of a narrow and isolated review of the 'efficiency and performance' of the prison system, we believe that what is needed is a broader conversation about the place of prisons in WA society. Merely reviewing 'efficiency and performance' ignores core issues such as the causes of offending (with particular reference to socio-economic factors), and how the justice system and related government agencies such as Child Protection, Housing, and Education, in addition to those agencies mentioned in the above paragraph, can work to reduce offending in our society.

Moreover, a review of the WA prison system needs to take into account the impact of the Barnett government's punitive 'tough on crime' approach to law and order, and have the scope to recommend different policy directions to government. We believe imprisoning people for the reason of 'punishment' or 'deterrence' is a short-sighted approach which, whilst appealing to political parties seeking to win votes by being 'tough on crime', does not address crime rates and community safety in an effective way. Prisons are an important part of a safe community, but the government must place greater emphasis on rehabilitation programs for people while they are in prison, as well as programs to prevent engagement in criminal behavior, and post-release support programs to reduce recidivism rates. We believe that a justice reinvestment approach which redirects money from prisons to initiatives which aim to address the underlying causes of crime could actually be the key to a more 'efficient and effective' justice system. In addition, the economic policies of the Barnett government need to be taken into account – the ERA must examine the impact the 'efficiency dividends' and savings measures imposed on the Department of Corrective Services have had on the prison system.

The rest of this submission is comprised of an independent response from Associate Professor Jane Andrew (University of Sydney Business School) to the ERA *Issues Paper*. Associate Professor Andrew is a prominent academic in the discipline of accounting, specifically in the area of public accountability and prison privatisation, and the views provided in the following response are her own.

Finally, the CPSU/CSA values the opportunity for further participation in this inquiry throughout 2015 in order to present the knowledge and expertise of our members.

SUBMISSION:

INQUIRY INTO THE EFFICIENCY AND PERFORMANCE OF WESTERN AUSTRALIAN
PRISONS: ISSUES PAPER

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OPENING STATEMENT

1. The Western Australian government's effort to improve the efficiency and performance of prisons within the state should be commended.
2. There is little doubt that much work needs to be done to improve both the way prisons function, and also the outcomes they deliver to the WA community.
3. Inquiries into the sector are to be welcomed.
4. A well functioning prison system has significant social benefits.
5. Fiscally constrained State governments must ensure resources are used optimally to achieve the agreed goals of incarceration.
6. In order to facilitate such an assessment, care should be taken to ensure that efficiency and performance are not reduced to comparative assessments of costs alone (Andrew & Cahill, 2009) .
7. Whilst costs are important, it is plausible that a more expensive prison system in the short-term, may achieve better long-term efficiencies and performance.
8. These longer-term efficiencies could be measured through such things as lower rates of recidivism; successful transition into employment; and functional social and familial relationships post incarceration.
9. International examples of successful longer-term strategies can be found, particularly in Scandinavian countries where they operate a large number of small prisons; these are generally located close to communities and family; and there is an emphasis on staff training and prison culture (Von Hofer, 2005).
10. John Pratt's 2006 study of prisons in Scandinavia may be of particular interest to the ERA and the WA government (J. Pratt, 2008; Ugelvik & Dullum, 2012).
11. Well-designed service standards, performance monitoring (benchmarks) and incentives may assist in promoting certain activities and efficiencies within prisons.
12. These metrics should not be the only measures available to the WA Government because they are limited and can have significant negative impacts on the *real* performance within the prison, as opposed to the *reported* performance (Taylor & Cooper, 2008).
13. All prisons are unique. Employees and other stakeholders directly affected by prison operations should be consulted about operational challenges and potential solutions within each prison (Liebling, 2004).
14. Structured opportunities for dialogue with prison employees; inmates; families; departmental employees will be critical to assessments of efficiency and performance.

15. In seeking further efficiencies and enhanced performance, the WA Government should clarify what they see as the appropriate role of the government within the prison sector. The removal of an individual's liberty is a significant power, and it should be supported by substantive forms of accountability that ensure the goals of incarceration are achieved.
16. This should include an assessment of what should and should not be sourced from the private sector to optimize prison performance.

TIMEFRAME

17. The *Inquiry into the Efficiency and Performance of Western Australian Prisons Issues Paper* (from hereafter referred to as the *Issues Paper*) was released on the 11th November 2014 and the closing date for submissions to that paper will be the 18th December 2014.
18. This timeframe is insufficient, especially as the *Issues Paper* provides little factual data about WA prisons.
19. Instead, it poses a series of questions about the prison sector in WA. These all require significant time and expertise to answer (p 55-56).
20. A month is insufficient time to produce a quality response to these questions and there is insufficient information within the *Issues Paper* to offer a meaningful comment on many of the issues.
21. Specifically, stakeholders need time to consider issues like the development of appropriate benchmarks; the best way to assess efficiency and performance based on current research; what constitutes a good performance framework; whether incentives can be designed to support policy goals; how to monitor the sector; what 'good governance' would look like in WA.
22. Perhaps most significantly, the issue of costs cannot be debated robustly without the provision of more information. This should detail the Departmental costs associated with the delivery of prisons in WA; the costing methodologies used within the Department; and more specifically, the costs attributed to each prison (Andrew & Cahill, 2009).
23. This cost information would assist dialogue about possible innovations that could support greater efficiency and better performance.
24. Answers to these questions require significant expertise. These are unlikely to be readily available within the timeframe.
25. If the purpose of the Inquiry is to assess the efficiency and performance of WA's prisons, more time should be allowed to enable an informed discussion.
26. The discussion should draw on a variety of experts, current research and the views of key stakeholders.
27. Given the number of matters raised in the *Issues Paper*, and the limited time frame allowed for comment it is hard to view this as a consultative process.

STRUCTURE

28. The *Issues Paper* provides a brief overview of WA prisons; a theoretical guide to the purpose of incarceration; and suggests the qualities of a good performance framework.
29. The *Issues Paper* does not provide detail about current comparative assessment practices within the WA prison service; costing methodologies adopted by the Department of Corrective Services; current performance metrics; the scope of privatization within the sector beyond prison management; or the desired areas of efficiency and performance improvements.
30. The *Issues Paper* asks for comment on matters that should have been outlined in a literature review within the report.
31. This should have included comparative assessments of practice in other jurisdictions (see Cabral & Saussier, 2013 for a discussion of various models in France, Brazil and the USA) and a richer assessment of efficiency and performance within WA that extended beyond cost and size.
32. Accordingly, the *Issues Paper* does not provide enough information about the central matters of concern to enable community consultation.
33. Below are just some of the examples of questions that should have been addressed within the *Issues Paper* prior to its release:
 - a. “How do public policy decisions affect the size of the prison population?”
 - b. “How should performance benchmarks be selected?”
 - c. “Which jurisdictions do you consider are comparable or not comparable to Western Australia when assessing prisons? Why?”
 - d. “What are the limitations on the powers of institutions and officials in the prison system?”
34. Had the *Issues Paper* provided an initial dialogue on these matters based on research, an empirically grounded evidentiary base could be used to inform the community consultation.
35. Many questions posed within the *Issues Paper* require access to information that is not publicly available or readily accessible within the timeframe.
36. Some examples of these questions include:
 - a. “How does the cost of infrastructure affect the cost of delivering prison services?” It is not possible to answer this question without knowing the cost of infrastructure; the ways infrastructure can be resourced; how infrastructure is maintained; and how these costs are allocated to each prison.

- b. *“To what extent can the Department of Corrective Services influence the cost factors associated with prison infrastructure?”* This is a question that should be directed to the Department of Corrective Services.
 - c. *“To what extent can prison operators influence the cost factors associated with prison infrastructure?”* This is a question that should be directed to the other providers of infrastructure related prison services within WA.
37. Seeking input from the public is always commendable, but in this case the *Issues Paper* does not provide enough initial information about current practice to solicit community responses.

TERMS OF REFERENCE

38. The terms of reference for the Inquiry, as outlined by the Treasurer, Dr Michael Dennis Nahan, are to be based on “economic, market and regulatory principles”.
39. The Terms of Reference provide grounds for a narrowly focused assessment of economic efficiency within the current regulatory architecture that frames the sector.
40. Notably, the terms of reference make no mention of other expert knowledge that could help inform the efficiency and performance assessment of WA prisons.
41. Such expertise could be found within the professional fields of corrections or social policy.

RATIONALE

42. According to the “Terms of Reference”, the key deliverable of the inquiry is the “development and calculation of a set of benchmarks” to allow comparisons between individual prisons.
43. The *Issues Paper* provides a theoretical outline of what this may look like. There is an absence of detail.
44. No comment can be made on the veracity of any proposed benchmarks.
45. Whilst benchmarking can be a useful activity, reliance on benchmarks alone is likely to be insufficient. According to Kaplan (2005) “benchmarking works well when the process being benchmarked is essentially the same...benchmarking is not informative when it is used to compare fundamentally different processes”.
46. Benchmarking requires accurate reporting, and where incentives or consequences for performance are not properly aligned, the quality of the reporting is impacted (Mennicken, 2013).
47. This can have a number of unintended consequences (Radnor, Kennerley, & Pidd, 2005):
 - a. Reporting against benchmarks can become a strategic activity to optimize the appearance of efficiency and performance and thereby optimize any incentives (Taylor & Cooper, 2008);
 - b. Significant time and resources may be spent on securing acceptable benchmarks that could be better spent on the functional performance of the prison;
 - c. Benchmarks are aggregates and snapshots. These unlikely to capture other essential information that explains the efficiency and performance within a particular prison (such as culture; age of facilities; rapport between prisoners and wardens).
48. Benchmarks should not replace meaningful dialogue with key actors within the prison system.
49. The uniqueness of each prison (location; architecture; scale; prisoner population; employees; age; gender) suggests that benchmarks should only be one part of the toolkit mobilised by the Department to assess and compare prisons in WA (Kish & Lipton, 2013).
50. It is important to note that the culture of a prison may be poorly represented through benchmarks and that improving performance is likely to require more detailed knowledge of the culture of each individual prison (Crewe, Liebling, & Hulley, 2011; Liebling, 2007).

EVIDENCE OF CURRENT COSTS AND EFFICIENCIES WITHIN THE WA PRISON SECTOR

Cost per prisoner per day

51. It is feasible that the WA prison system is more expensive to operate than prisons in other jurisdictions within Australia.
52. As noted in the *Issues Paper*, WA has a significantly higher incarceration rate than the rest of the country and it operates prisons across much greater geographical distances (259.9 per 100,000 compared to 172.4 per 100,000 nationally).
53. However, it is difficult to compare costs per prisoner per day across different jurisdictions. This is because the cost allocation decisions made at the departmental level often lack transparency (refer to page 1: WA \$342 per prisoner per day compared to \$297 per prisoner per day).
54. There is a body of research that shows how these cost allocations distort the comparisons made between private and the public prison operators (Andrew, 2012; Andrew & Cahill, 2009; Kish & Lipton, 2013).
55. The ERA should interrogate this cost data before issuing their draft report to enable comparability between WA and other Australian States. The basis for their assessments should also be made public.
56. It is possible that WA is running a particularly efficient prison system but that the total cost is high (affected by geography; numbers of prisoners; prisoner categorization and so on).
57. The total cost of the prison system (\$608 million in 2013-14) may be the most useful figure for the ERA to work with in terms of achieving overall efficiency and performance gains.

Reasons for unevenness of costs across prisons in WA

58. As noted in the *Issues Paper*, the cost per prisoner per day in WA is affected by the type of prison provider (public or private); geography; and the number of prisoners within the prison system.
59. The *Issues Paper* makes no comment on the extent to which these impact costs per prisoner per day. This is worthy of further investigation by the ERA as it will help provide a better basis for assessment of efficiency and performance.
60. With regard to the specific cost issues raised by the ERA:
 - a. Research remains inconclusive about the cost advantages of private providers of prisons (S. D. Camp, Gaes, & Saylor, 2002; Oppel Jr, May 18, 2011; D. Perrone & T. C. Pratt, 2003). In their extensive study of prison privatisation in Scotland, Cooper and Taylor (2005, p. 506) found that “despite the promise of cost reduction, much evidence shows that the cost differences between state and private prisons are insignificant”.

- b. There is very little empirically grounded evidence to support the view that private prisons are cheaper and/or more innovative in Australia: In the case of WA, Acacia Prison was purpose built for a private provider and it was designed to facilitate modern prisoner management techniques. These allow for greater use of technology and other innovations that assist in cost reductions. Employment conditions are also significantly different (Andrew, 2012). Looking at Figure 4 on page 13 of the *Issues Paper*, Hakea Prison and Acacia Prison may be useful comparators to explore the impact privatisation may have on cost efficiencies.
 - c. Geography has a significant impact on costs: Clearly the Department of Corrective Services must operate prisons across significant physical distances. This will increase the cost of the service because there is limited local competition for goods and services; there are fewer employment and training options in remote regions; it is costly to provide medical services to inmates in rural and remote areas; and the cost of transporting inmates is much higher.
 - d. The number of prisoners in WA is significantly higher when compared to other states: The sheer volume of people within the prison system increases the costs of provision significantly.
61. There are other factors that affect the costs of prisons in WA that have not been mentioned including the age of the prisons themselves; gender distributions; the ethnicity of the prison population and more specifically the level of indigenous incarceration within the state (40% of WA's prison population compared to the national average of 27%); the security levels of prisons; the needs of the prison population in terms of education, medical services, rehabilitation programs and so on.
62. Outliers such as Broome Regional Prison distort the overall cost per prison per day figure. Broome Regional Prison runs at a significant cost to the state, it has a tiny inmate population (28) and provides services to prisoners at all three levels of security classification.
63. The ERA will need to consider these other cost differentiators.
64. The costs by source information provided in figure 5, page 13 is useful, but it remains unclear how the Departmental overheads are allocated to each prison and whether or not this affects the cost per prisoner per day calculation. As noted previously, it is also important to note that costing methodologies (including the allocation of overheads and the calculation of staffing costs) vary substantially across jurisdictions.
65. This is likely to impair the comparability of per prisoner cost data provided by the Productivity Commission.
66. Given that employee costs account for over half the costs associated with prisons operations, and the ERA has indicated that costs can differ between private and publicly operated prisons it would be helpful to compare this figure directly. It would also be useful to compare the experience, training and satisfaction of the staff to help interrogate how differences in cost are achieved.

67. The Department of Corrective Services annual report does not provide this breakdown.

Understanding the nature and effect of cost increases in 2013-2014

68. Whilst the source of the additional 6% cost over 2012-2013 can be understood as a direct result of the growth in prison numbers (\$3.5 Million) and a significant rise in Risk Cover insurance costs (\$13.3 Million).
69. At the same time, the Department of Corrective Services offset these increases through the “rationalization of costs and spending restrictions” (DCS Annual Report 2013-2014, Perth. Government of WA, p.18). Given the nature of the annual report, it is impossible to tell where or how these savings were achieved.
70. It would be useful for the ERA to identify these savings and track the impact this may have on prison performance.
71. Cost rationalizations can have longer-term impacts that are not restricted to the year they are implemented and are more difficult to identify.

Recidivism

72. Given the high rates of recidivism within WA and across the nation more broadly, it is reasonable to question the performance of prisons against their stated aims – incapacitation; deterrence; rehabilitation; and retribution (page 20 of the *Issues Paper*).
73. Recidivism increases the cost of prisons.
74. It is important that any assessment of the efficiency and performance of prisons considers the possibility that spending more on prisons and prison related services may lead to a reduction in reoffending and have a long term pay back of reduced overall costs (Bierie, 2009 study explored the outcomes of incurring 'extra' costs associated with an early release program and found that these were justified in terms of reduced rates of recidivism).
75. It is easy when undertaking assessments such as this to focus on short term costs, and cost cutting but it is also important to think about what kind of investment could take place in the sector to support better long term outcomes both in terms of costs, and in terms of the aims of incarceration (Bierie, 2009)
76. Further to this, the standard definition of recidivism is limited to those who return to prison within 2 years and the actual figure is likely to be much higher. This would also have an impact on the cost of prison services that may be manageable using other means beyond short term cost minimization and comparable benchmarks.

INCENTIVES, SOLUTIONS AND OPTIONS

77. Whilst WA has experimented with privatisation as a solution to efficiency and performance issues within the sector, the success of such initiatives in terms of cost and performance remain inconclusive.
78. Private prisons have been plagued with similar performance problems to prisons delivered by the public sector (S. C. Camp, G. G. Gaes, et al. , 2002; Dolovich, 2005; Lapsley, 1999; Lippke, 1997).
79. The cost-effectiveness of private prisons has yet to be established (Cooper & Taylor, 2005; D. Perrone & T. Pratt, 2003; T. Pratt & Maahs, 1999; Taylor & Cooper, 2008).
80. Recently, Kish and Lipton (2013) cautioned that “analysing and comparing the true costs of private and public prisons is thus problematic. Focus on cost disclosure, accounting for hidden or indirect costs, quantifying the impact of cost savings on quality, and calculation methodology overall could significantly improve the process. Only then will governments and other constituents be able properly to evaluate the process of contracting for prison services”.
81. The Director of the Bureau of Prisons in the United States (BOP), Gerry Gaes, wrote that the lessons learned from their efforts to compare public and private prisons include:
 - “Cost comparisons are deceptively complex, and great care should be taken when comparing the costs of privately and publicly operated prisons”
 - “Special care should be given to an analysis of overhead costs”
 - “A uniform method of comparing publicly and privately operated prisons on the basis of audits should be developed”
 - “Quantitative measures of prison performance, such as serious misconduct and drug use, should be incorporated into any analysis” (<https://www.ncjrs.gov/pdffiles1/nij/221507.pdf>, 2008, p. 33).
82. Often costs are used to justify policy decisions without substantive critique. This is not isolated to the USA, but has also been noted in Australia (Andrew, 2010).
83. In WA, Acacia was purpose built for a private operator, but its relative success against other WA prisons has been hard to measure (Andrew, 2012).
84. Privatizing the management of older, publicly operated prisons involves significant challenges and does not offer the same opportunities for innovation that can happen within a new, purpose built prison.
85. The internal efficiencies of private prisons are often opaque (Andrew, 2007) and the pressure to produce a profit can distort the performance of the provider.
86. Whilst incentives can function to enhance efficiency and performance, these can also induce dysfunctional behaviour (Andrew, 2007).

87. The WA government should look at a range of possible alternatives to improve long-term efficiency and performance, including strategies to reduce recidivism.

CONCLUDING STATEMENT

88. In order to facilitate an informed discussion about the efficiency and performance of WA prisons, it is incumbent on the ERA to provide additional information to the public to enable public consultation.
89. Whilst the ERA has raised a number of important questions within the *Issues Paper*, there is insufficient time for stakeholders and/or researchers within the field to engage meaningfully with these.
90. Whilst benchmarking may assist the WA government assess relative performance across the sector, this should only be one part of the performance framework. The uniqueness of each prison means that metrics of this kind will be inadequate.
91. Drawing on the knowledge of people with direct experience of each prison will be essential to any robust performance assessment exercise.
92. Consultation with staff is essential.
93. Costs are an important feature of any efficiency and performance assessment, but at this stage the cost data made available to the public is limited and insufficient.
94. Further to this, it is essential that the ERA interrogate cost data used to inform their work. Research in other jurisdictions indicates that prison policy has been distorted because policy makers have relied on poor, inadequate or limited cost information.

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