

# INQUIRY INTO THE EFFICIENCY AND PERFORMANCE OF WESTERN AUSTRALIAN PRISONS

Discussion Paper

18 March 2015

Economic Regulation Authority

WESTERN AUSTRALIA

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

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## Glossary

<b>Acacia</b>	Acacia Prison, located 54 kilometres east of Perth, is the largest prison in Western Australia. Acacia houses medium security male prisoners and is one of two privately managed prisons operated by Serco Australia.
<b>Bandyup</b>	Bandyup Women’s Prison, located 22 kilometres northeast of Perth, holds the majority of female prisoners in Western Australia.
<b>Boronia</b>	Boronia Pre-release Centre for Women is located in Bentley, 9 kilometres east of Perth and is focused on preparing women for re-entry into the community.
<b>Broome Prison</b>	Broome Regional Prison. Located in Broome, 2,174 kilometres north of Perth, Broome Prison houses both male and female prisoners. The prison is expected to close in the near future.
<b>Capital investment</b>	Investment in new facilities, or the improvement of existing facilities, as opposed to expenditure on day-to-day operations.
<b>Casuarina</b>	Casuarina Prison, located 35 kilometres south of Perth, is the main prison for maximum-security male prisoners.
<b>Commissioning</b>	A strategic-level approach to delivering services, focusing on the Government’s broad objectives. In most commissioning processes, public, private, and not-for-profit sector providers all have an opportunity to tender and show how they are best placed to deliver a service.
<b>Contracting</b>	Establishing a formal, legally binding agreement between the Government and the service provider.
<b>Eastern Goldfields</b>	Eastern Goldfields Regional Prison, located 596 kilometres east of Perth, manages male and female prisoners. Eastern Goldfields has primarily minimum-security prisoners but has the capacity to house medium and maximum-security prisoners.
<b>Effectiveness</b>	The extent to which an entity or activity achieves its desired outcomes.
<b>Efficiency</b>	Making the best use of time, effort, and money to achieve a desired outcome.
<b>Greenough</b>	Greenough Regional Prison, located 420 kilometres north of Perth, manages male and female prisoners from throughout the Midwest region.
<b>Hakea</b>	Hakea Prison, located 19 kilometres south of Perth, manages male remand prisoners and assesses newly sentenced prisoners before they are placed at other prisons.

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<b>OICS</b>	Office of the Inspector of Custodial Services
<b>Recidivism</b>	The repeating of, or return to, criminal behaviour following release from prison.
<b>Remand</b>	Holding a defendant in custody before their trial or sentencing.
<b>Roebourne</b>	Roebourne Regional Prison, located 1,572 kilometres from Perth, houses male and female prisoners from the Pilbara and Kimberley Prisons.
<b>Service Level Agreement</b>	A contract or agreement between public sector agencies that precisely defines the nature, scope, and quality of the service to be provided, in measureable terms.
<b>Superintendent</b>	A Superintendent is responsible for overseeing the operation of a prison.
<b>Wandoo</b>	Wandoo Reintegration Facility. Wandoo is the second privately operated prison in Western Australia and is operated by Serco Australia. Wandoo is houses males aged 18 to 24.
<b>West Kimberley</b>	West Kimberley Regional Prison. Located in Derby, 2,240 kilometres north of Perth, West Kimberley consists of 22 houses that accommodate 6 to 7 prisoners each. West Kimberley houses both male and female prisoners.

# 1. Introduction

## Background to this Inquiry

The Treasurer of Western Australia has requested that 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 prison 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 full Terms of Reference for this Inquiry are provided in Appendix 1.

For more background information on this Inquiry, the ERA refers readers to the [Issues Paper](#) that it published on 11 November 2014. The Issues Paper provides information on what the ERA had been asked to do; the administrative and analytical processes that the ERA will follow in conducting this Inquiry; and the matters that the ERA is likely to consider.

## Purpose of this Discussion Paper

To date, the ERA's investigations into the Western Australian prison system have primarily involved:

- meeting with a range of organisations with an interest in the operation of the prison system;
- tours of five prisons in Western Australia (being Acacia, Bandyup, Casuarina, Hakea and West Kimberley), which included presentations from the Superintendents of each of these prisons;
- the receipt of 17 written submissions in response to the Issues Paper;<sup>1</sup> and
- internal ERA research and analysis.

The ERA has provided a list of organisations that it has met with and those that have made public submissions in Appendix 2.

Stakeholders have consistently identified a specific set of issues with the Western Australian prison system in these consultations and submissions. These issues include the apparent high rates of recidivism, the apparent high cost of providing prison services in Western Australia, high utilisation rates of prisons and inadequacies in the programs

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<sup>1</sup> Three of these submissions were made on a confidential basis. The ERA has not published these confidential submissions on its website.

delivered to prisoners. At this stage, the ERA has not undertaken a detailed examination of these issues to determine their magnitude and importance. This will be a task that the ERA undertakes in preparing the Draft Report.

Stakeholders have also consistently identified a set of causes that may be contributing to these problems in the prison system. These causes include a lack of accountability and transparency in the public prison system, a lack of autonomy for Superintendents in the public prison system, a lack of incentives to encourage high performance in the public prison system, a lack of a clear philosophy and objectives for the public prison system, and poor planning and resource allocation.

The ERA considers that these causes may reflect systemic shortcomings in the governance arrangements of the prison system. In response, the ERA has proposed an approach to improve the governance arrangements of the prison system.

The ERA is committed to engaging with key stakeholders in the prison system throughout this Inquiry. The purpose of this Discussion Paper is to provide an additional, early opportunity for interested parties to engage with this Inquiry and inform the development of the ERA's Draft Report. In particular, the ERA is seeking feedback on whether:

- it has properly identified the key issues regarding the performance of the prison system and the causes of those issues;
- the preliminary proposed approach (outlined in this Discussion Paper) for addressing the core issues with the prison system is likely to be effective; and
- the ERA has appropriately identified the challenges and complexities in implementing the proposed approach.

This Discussion Paper does not cover all the issues that the ERA will canvas in the Draft Report. This Discussion Paper focusses specifically on the ERA's proposed approach to address problems with the governance arrangements of the Western Australian prison system.

The Draft Report, which the ERA expects to publish in early July 2015, will cover a much wider range of issues relating to the Terms of Reference (**Appendix 1**). Interested parties will have a further opportunity to make submissions in response to the Draft Report.

## Stakeholder Feedback

The ERA will primarily be seeking feedback on the issues raised in this Discussion Paper through a roundtable discussion.

The ERA will invite participants to represent the range of parties with an interest in the efficient operation of the prison system. This will likely include senior representatives from the Office of the Inspector of Custodial Services (**OICS**), private providers of prison services, unions, and peak bodies representing not-for-profit organisations that provide services in the justice system.

The ERA acknowledges that it will not be possible for all interested parties to be involved in the roundtable discussions. The ERA will invite organisations that are able to speak on behalf of a significant membership base.



Organisations that the ERA does not invite to participate in the roundtable discussion are welcome to provide a written submission in response to the Discussion Paper.

Written submissions should be made by no later than 4:00 PM (WST) Friday 24 April 2015 via:

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

## **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.

### **General Enquiries**

Daniel Vincent  
Economic Regulation Authority  
Ph: +61 8 6557 7900  
[records@erawa.com.au](mailto:records@erawa.com.au)

### **Media Enquiries**

Richard Taylor  
Riley Mathewson Public Relations  
Ph: +61 8 9381 2144  
[admin@rmpr.com.au](mailto:admin@rmpr.com.au)

## 2. Key issues in the prison system and underlying causes

In 2013-14, the total net cost to the State of providing prisons was \$608 million.<sup>2</sup> Given the high cost that prisons impose on taxpayers, it is in society's best interest to have a prison system that is efficient and effective. It appears that the Western Australian prison system is not operating as efficiently and effectively as it could be.

Stakeholders have consistently identified a specific set of problems with the Western Australian prison system in consultations with, and submissions to, the ERA. These problems include high rates of recidivism, the high cost of providing prison services in Western Australia, high utilisation rates of prisons, and inadequacies in the programs delivered to prisoners. The ERA briefly describes these key problems in this chapter.

Also in this chapter, the ERA describes what it considers may be the causes of these issues. The ERA has focussed on the causes that it considers arise from the existing institutional and governance arrangements of the prison system.

The problems in the prison system and their causes are complex and highly interrelated. For example, a key problem with the prison system appears to be high rates of recidivism. High rates of recidivism are in turn exacerbated by high utilisation rates of prisons and inadequacies in the design of or access to programs delivered to prisoners (which the ERA considers may be problems in and of themselves). The ERA welcomes feedback from stakeholders about how the various problems and causes in the prison system interrelate.

### Overview of key problems and their causes in the Western Australian prison system

Stakeholders have consistently identified a specific set of problems with the Western Australian prison system in consultations with, and submissions to, the ERA.

- *Recidivism*: around 39 per cent of prisoners in Western Australia return to prison within two years of being released.<sup>3</sup> Experience in other jurisdictions indicate that recidivism can be reduced. For example, New Zealand has decreased recidivism rates by over 12 per cent since 2012.<sup>4</sup> Improvements in the rate of recidivism can greatly decrease the long-term cost of the prison system.
- *High cost of prison services*: prisons in Western Australia are more expensive on a per prisoner per day basis than most other states and territories.<sup>5</sup> This may indicate inefficiency. However, high costs may also be driven by geographic and demographic factors, or simply by spending more to deliver a higher quality, more effective prison service.

<sup>2</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>3</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 8.

<sup>4</sup> Department of Corrections, *Annual Report 1 July 2013 – 30 June 2014*, Wellington, New Zealand Government, 2014, p. 14.

<sup>5</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7.

- *High utilisation rates*: prison populations in Western Australia have grown rapidly in recent years, leading to concerns about overcrowding in some prisons. However, the degree of any overcrowding has been difficult to assess, both due to a lack of data, and to changes in the Department of Corrective Services' definition of prison capacity.
- *Inadequate programs delivered to prisoners*: prisons are required to provide a number of services to the people in their care, including physical and mental health services, education and training and rehabilitation programs. Stakeholders have told the ERA that these services are inadequate in that services are provided in insufficient quantities, are poorly designed, and are poorly targeted to the needs of different types of prisoner.

The ERA considers that these problems may be caused by underlying issues with the governance arrangements of the Western Australian prison system, which have also been consistently identified by stakeholders. The causes that stakeholders have identified include:

- *Insufficient transparency and accountability*: public prisons in Western Australia are held to a lower standard of transparency and accountability than private prisons. Notably, there are no Service Level Agreements between the Department of Corrective Services and public prisons, performance frameworks do not appear to be a useful management tool for Superintendents in public prisons and the performance of individual public prisons is not reported on publicly.
- *Lack of autonomy for Superintendents*: Superintendents of prisons appear to have insufficient autonomy to manage the prisons for which they are responsible. If Superintendents are to be held to higher standards of accountability for performance of prisons, they will require greater autonomy to make decisions about the operation of their prisons.
- *Lack of incentives*: contracts with private prison service providers in Western Australia contain a range of incentives for high performance. However, the same practice has not been applied for public prisons. A well-designed incentive framework has the potential to improve service delivery in the public sector.
- *Lack of clear philosophy and objectives*: few public prisons have a clear operating philosophy and objectives that outline what they are trying to achieve. This makes prisons potentially more vulnerable to changes in direction from the Department of Corrective Services (for example, being required to accept more prisoners, or a different cohort of prisoners).
- *Poor planning and resource allocation*: there appear to be some inadequacies in the Department of Corrective Services' data collection and management processes. As a result, it is difficult to make informed decisions about planning and resource allocation. In particular, there appears to be issues in planning for changes in the prison population and in evaluating and providing rehabilitation services.

Figure 1 displays the key issues identified, their potential causes and the elements of the ERA's proposed approach to address those causes.

**Figure 1 Problems, causes and proposed approach**

KEY PROBLEMS	CAUSES	PROPOSED APPROACH
HIGH RATES OF RECIDIVISM	LACK OF TRANSPARENCY & ACCOUNTABILITY	SERVICE LEVEL AGREEMENTS
HIGH COST OF PRISON SERVICES	LACK OF AUTONOMY FOR SUPERINTENDENTS	PERFORMANCE FRAMEWORKS
HIGH UTILISATION RATES	LACK OF INCENTIVES	INCREASED AUTONOMY FOR SUPERINTENDENTS
INADEQUATE IN-PRISON SERVICES	LACK OF CLEAR OPERATING PHILOSOPHIES	INCENTIVES FOR PUBLIC PRISONS
	POOR PLANNING & RESOURCE ALLOCATION	ESTABLISHMENT OF AN OPERATING PHILOSOPHY & OBJECTIVES FOR EACH PRISONS

In the remainder of this chapter, the ERA describes each of these problems in more detail and then describes what it considers to be the causes of the problems. In the subsequent chapter, the ERA outlines its proposed approach to addressing these causes.

## Recidivism

Stakeholders consistently identified rehabilitation as the primary objective of the prison system in submissions to the Issues Paper and further consultations. In a prison context, the rehabilitation of prisoners is measured in rates of recidivism. Recidivism refers to a tendency to relapse into a previous condition or mode of behaviour. In the context of a prison system, it refers to a relapse by former prisoners into criminal behaviour and a corresponding return to prison or community corrections.

The Department of Corrective Services currently measures recidivism using a simple rate of return measure. That is, the percentage of prisoners returning to prison within two years of their release. This is the measure used in jurisdictions across Australia.

Currently, around 45 per cent (or almost half) of all prisoners are returning to corrective services (prison or community corrections) within two years of their release.<sup>6</sup> Thirty-nine per cent of prisoners who are released return to prison within two years.<sup>7</sup> However, the rate of return is considerably higher for some groups in the prison population. Young people and Aboriginal people, in particular, are far more likely to reoffend.<sup>8</sup> In total, 61 per cent of the people in prison in Western Australia in 2014 had been in prison previously.<sup>9</sup>

When prisoners reoffend and are reimprisoned, it imposes a high cost on taxpayers in addition to the social costs of the crimes that they commit. When a prisoner is not rehabilitated and returns to prison, it costs on average, \$351 per day.<sup>10</sup> In total, the prison system spends over \$1 million every day on prisoners who have previously served

<sup>6</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 6.

<sup>7</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 6.

<sup>8</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 1.

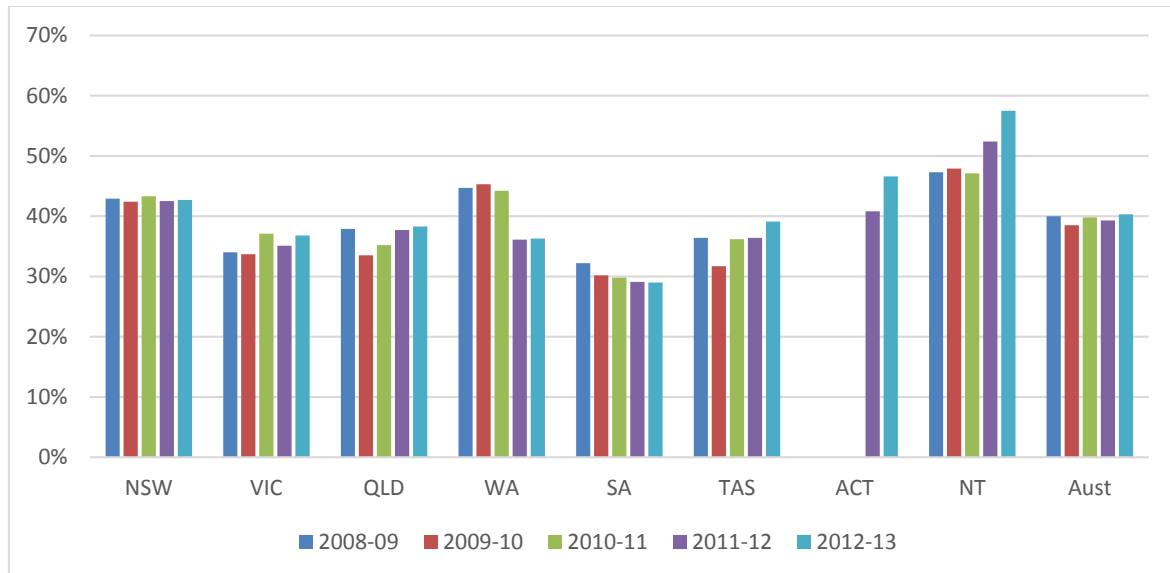
<sup>9</sup> Australian Bureau of Statistics, *Prisoners in Australia 2014*, Government of Australia, December 2014, Table 13.

<sup>10</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7.

sentences and were not effectively rehabilitated.<sup>11</sup> Improvements in rehabilitating prisoners could potentially provide significant savings to the taxpayer over the long term.

Figure 2 provides a comparison of the recidivism rate in Australian states and territories.

**Figure 2 Recidivism rates by prisoner release year 2008-09 to 2012-13**



Source: Productivity Commission, *Report on Government Services 2014* (Note: The same data was not provided in ROGS 2015)

The data shows that recidivism in Western Australia has declined in recent years, from above the national average in the years from 2008-09 to 2010-11 to below the national average in 2011-12 and 2012-13. However, this does not in itself prove that Western Australian prisons have been effective at reducing recidivism, as there are a number of factors that affect the recidivism rate or limit its usefulness as a measure of a prison's performance against rehabilitation objectives.

For example, following changes to the Prisoners Review Board since 2009-10, the rate at which prisoners have been granted parole has declined markedly.<sup>12</sup> As a result, the prisoners who were at the highest risk of reoffending have not been granted parole in recent years.<sup>13</sup> This may have reduced the recidivism rate and given the impression that prisons were more effectively rehabilitating prisoners when, in reality, higher risk prisoners were simply not released from prison and therefore unable to reoffend. Accordingly, the decrease in recidivism may only be temporary and may increase again in coming years when higher risk prisoners reach the end of their sentence and are released. However, OICS notes that

<sup>11</sup> In 2013-14, on average, 3,220 prisoners had served a prior prison sentence. With a cost per prisoner per day of \$351, this equates to a daily cost of \$1,130,220. Source: Australian Bureau of Statistics, *Prisoners in Australia 2014*, Government of Australia, December 2014, Table 27.

<sup>12</sup> When Justice Narelle Johnson commenced as Chairperson of the Prisoners Review Board in 2009, parole decreased. Eighty five per cent of eligible prisoners were granted parole in 2007-08 and only 30 per cent in 2009-10. The Board changed again in 2012 when His Honour Judge Robert Cock QC took over as Chairperson. While parole rates have increased slightly, only 36 per cent of eligible prisoners were granted parole in 2013-14. Source: *Prisoner Review Board Annual Reports*.

<sup>13</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 6.

the change by the Prisoners Review Board was not enough to explain the entire decline in recidivism.<sup>14</sup>

The Department of Corrective Services has recognised the benefits of reducing recidivism, identifying the rehabilitation of prisoners as a high priority. It has recently developed a target of a six per cent reduction in recidivism each year.<sup>15</sup>

At this stage of the Inquiry, the ERA has yet to determine conclusively that recidivism rates in Western Australia are unusually high. However, jurisdictions in Australia and internationally have lower rates of recidivism than Western Australia, indicating that reductions in recidivism can be achieved.

South Australia currently appears to be best practice in Australia, averaging 30 per cent recidivism from 2008-09 to 2012-13. This is 27 per cent lower than Western Australia's average of 41 per cent over the same period. Reductions in recidivism of this magnitude may be achievable. New Zealand is targeting a 25 per cent reduction in recidivism between 2012 and 2017.<sup>16</sup> New Zealand has already achieved a 12.1 per cent reduction against this target.<sup>17</sup> In order to do so, New Zealand Department of Corrections have produced strategic documents to guide how they will achieve reductions in recidivism.

### **High cost of prison services**

The cost of housing a prisoner in Western Australia is high relative to most other states and territories on a per prisoner per day basis. In 2013-14, it cost an average of \$351 per day to house a prisoner in a Western Australian prison, 20 per cent higher than the Australian average.<sup>18</sup> Figure 3 shows the cost per prisoner per day for Australian states and territories.

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<sup>14</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 5.

<sup>15</sup> Office of Inspector of Custodial Services, *Media release of the Report: Recidivism rates and the impact of treatment programs*, Parliament of Western Australia, October 2014.

<sup>16</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. v.

<sup>17</sup> Department of Corrections, *Annual Report 1 July 2013 – 30 June 2014*, Wellington, New Zealand Government, 2014, p. 14.

<sup>18</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7.

**Figure 3 Cost per prisoner per day (\$), Australian jurisdictions 2013-14**

Source: Productivity Commission, *Report on Government Services 2015*.

The ERA notes that a per prisoner per day cost figure may not provide an accurate representation of whether the higher cost of provision in Western Australia represents inefficiencies. This relatively simple metric does not account for a number of factors that are relevant to a debate about the cost of prisons. These factors include that Western Australia may simply have higher cost drivers or that there is a trade-off between cost and quality in the prison system.

There are factors unique to Western Australia that may affect the cost of providing prison services. For example, submissions noted that Western Australia has more prisons in regional and remote locations than any other jurisdiction. Regional prisons are likely to be somewhat more expensive to run given the greater cost of transport, staff housing costs and the difficulty (and higher cost) in attracting quality staff. Other examples of cost drivers that may be specific to Western Australia are higher wages<sup>19</sup>, and the high proportion of indigenous prisoners.<sup>20</sup>

A further important consideration is the trade-off between cost and the quality of service provided in prisons. Any investigation of costs in the prison system should be undertaken with consideration to value for money. If prisons in Western Australia are providing a higher quality service, the value that the State is getting for its investment may be worthwhile. For example, if a prison has a high cost per prisoner per day, but is very effective at rehabilitating prisoners, its high cost may reflect good outcomes not inefficiencies. That is, a high short-term cost is reasonable if the prison is effective and that additional expenditure results in a long-term net benefit to the State (for example, through reduced recidivism).

The other possible explanation for high cost is that there are inefficiencies within the system. At this stage of the Inquiry, the ERA has not examined cost data in sufficient detail to

<sup>19</sup> Western Australians who work full-time earn, on average, 16 per cent more than the Australian average. Source: Australian Bureau of Statistics, *Average Weekly Earnings, Australia*, Government of Australia, November 2014.

<sup>20</sup> WAPOU submitted that housing indigenous prisoners is more expensive, particularly with respect to health costs. Source: Western Australia Prison Officers' Union submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons, 2014, p. 16.

determine which of these factors are affecting the cost of prison services. The ERA will investigate this matter in greater detail in its Draft Report. It is likely that all of these factors are affecting costs in some way.

Through its consultations, the ERA has been told of some areas that may suggest there are some inefficiencies in the way that the prison system is currently operating:

- The Department of Corrective Services does not have control over their cost systems. This control currently resides with the Department of the Attorney General. The ERA understands that this somewhat restricts the Department of Corrective Services' ability to conduct robust examinations of their costs.
- Superintendents do not have access to information that would allow them to better understand the operating costs of their prisons. For example, the ERA has been made aware that Superintendents are not able to compare the costs of operating different units within their prison.
- The ERA understands that public prisons have a budgeted allocation for overtime but that many prisons exceed this budget. Where prisons exceed their overtime budget, the Department of Corrective Services covers the excess. As a result, Superintendents of public prisons have little incentive to limit the use of overtime and thus regularly bring in additional staff to cover for absences.

In completing its Draft Report, the ERA will examine to what extent the relatively high cost of prison services in Western Australia represents inefficiencies within the prison system.

### **High utilisation rates of prisons**

Stakeholders have expressed concern to the ERA that the prison system in Western Australia is overcrowded. The ERA is yet to understand the extent of any overcrowding in individual Western Australian prisons. This is a task that the ERA will undertake in preparing the Draft Report.

Assessing the utilisation rates of individual prisons is complicated by the fact that there are alternative ways of measuring the capacity of prisons: design capacity, operational capacity and total capacity. The Department of Corrective Services has changed the measure that it reports in recent times. The Department of Corrective Services originally reported against design capacity, before changing to operational capacity, and then more recently to reporting total capacity.

Design capacity includes the number of permanent beds available to the Department of Corrective Services that are consistent with the design capacity of cells. This excludes accommodation used for special purposes (for example, segregation or crisis care) and facilities or sections of facilities that are temporarily out of commission or have been decommissioned.<sup>21</sup> Total capacity refers to the total number of beds, including design capacity and temporary beds. Total capacity includes accommodation used for special purposes.<sup>22</sup> There is no publicly available definition of operating capacity.

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<sup>21</sup> Productivity Commission, *Report on Government Services 2015: Corrective Services Data Quality Information*, Government of Australia, 2015, p. 21.

<sup>22</sup> The definition for total capacity was provided by the Department of Corrective Services on request.



The ERA has not come to a conclusion about the appropriateness of the three definitions. However, it does have some concerns about the total capacity definition currently used by the Department of Corrective Services.

While the ERA has not yet assessed utilisation rates of prisons in Western Australia, independent organisations, the Productivity Commission and OICS, have. Productivity Commission data indicates that the Western Australian prison system was operating at 134.9 per cent of design capacity in 2010-11.<sup>23</sup> The most recent data suggests that the situation has improved, with the system operating at 101.1 per cent in 2013-14.<sup>24</sup> However, the Productivity Commission notes that the preferred level of prison utilisation is in fact between 85 per cent and 95 per cent. Operating at less than full capacity assists in accommodating prison transfers, special purpose accommodation and in managing short-term fluctuations in the prisoner population.<sup>25</sup> Reports by OICS provide insight into utilisation rates of individual prisons. The Inspector has stated that most prisons in Western Australia are overcrowded.<sup>26</sup>

The ERA understands that overcrowding is a particular problem in the women's prison estate. This is because the rate at which women are imprisoned has grown strongly<sup>27</sup> and because the women's prison estate has received only a small share of the Department of Corrective Services' recent capital expenditure. Between 2009 and 2014, more than 1500 beds were added to men's prisons and only 101 beds to women's prisons.<sup>28</sup> Since December 2009, the male population has grown by 501 prisoners (11.6 per cent) and the female population has grown by 139 prisoners (36 per cent).<sup>29</sup> There appears to be significant need for greater investment in women's prisons.

Bandyup Women's Prison (**Bandyup**) suffers from the most acute overcrowding in the State. Bandyup holds 62 per cent of all female prisoners in Western Australia.<sup>30</sup> The living arrangements at Bandyup are inadequate. During a visit to Bandyup, ERA staff observed instances where women are required to sleep on a mattress on the floor with their head adjacent to a toilet. In addition, female prisoners have insufficient access to rehabilitation programs, education and training, health services and recreation facilities.<sup>31</sup>

<sup>23</sup> Productivity Commission, *Report on Government Services 2012*, Government of Australia, 2012, Table 8A.23.

<sup>24</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.23.

<sup>25</sup> Productivity Commission, *Report on Government Services 2010*, Government of Australia, 2010, Box 8.13.

<sup>26</sup> Office of the Inspector of Custodial Services, *2013-2014 Annual Report*, 2014, p. 8.

<sup>27</sup> The incarceration rate of females in Western Australia has grown 22 per cent since 2011. Source: Australian Bureau of Statistics, *Prisoners in Australia 2014*, Government of Australia, December 2014, Table 14.

<sup>28</sup> The investment in the women's estate included 32 beds at Bandyup in 2011 (reallocated from a new unit at Karnet Prison Farm), 25 beds at West Kimberley Regional Prison in 2012 and 44 beds at Greenough in 2012. The additional beds do not count the double bunking of single-occupancy cells. The ERA notes that the Department of Corrective Services is currently building a new women's facility at Hakea prison.

Source: Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014, p4.

<sup>29</sup> As at 31 December 2009, there were 383 female prisoners. On 12 March 2015, the population has grown to 522. Source: Department of Corrective Services, *Weekly Offender Statistics Week ending 31 December 2009*, Perth, Government of Western Australia, 2009, p. 1, and data provided by the Department of Corrective Services on request.

<sup>30</sup> As at 12 March 2015 there were 522 female prisoners, 324 of which were housed at Bandyup. Source: Data provided from the Department of Corrective Services.

<sup>31</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014.

Overcrowding, to the extent it exists, in the prison system is a matter of concern. Research shows that overcrowding undermines the ability of prisons to achieve rehabilitation objectives.<sup>32</sup> OICS has also found that overcrowding in Western Australian has compromised health and hygiene standards in some prisons,<sup>33</sup> and has restricted the delivery of necessary services to prisoners. These services include access to health services, education, employment, clothing, food, bedding, recreation, programs and visits.<sup>34,35</sup>

### *Inadequate programs delivered to prisoners*

Prisons are required to provide services and programs to the prisoners in their care throughout the duration of a prisoner's sentence. Services provided in Western Australian prisons include health services (both physical and mental health), education and training and rehabilitation programs, among others.

Stakeholders have raised concerns with the ERA about the adequacy of the services available to prisoners. Stakeholders have expressed the view that some of the services provided in prisons are provided in insufficient quantities, are poorly designed, and are poorly targeted to the needs of certain prisoner populations.<sup>36</sup> In particular, stakeholders have expressed concern about the provision of mental health care, drug and alcohol rehabilitation, and the suitability of the rehabilitation programs offered.

### *Mental health care*

The Mental Health Commission estimates that 59 per cent of adult prisoners in Western Australia have mental health issues.<sup>37</sup> There is a well-established connection between major mental health illness and increased rates of criminal offending.<sup>38</sup> People with mental health issues are more likely to be imprisoned because they are more likely to be exposed to risk factors such as unemployment, homelessness, and instability in their lives.<sup>39</sup>

Housing people with mental health issues in prison, instead of in health facilities, is expensive and likely to lead to poor outcomes for the prisoner and society. Time in prison is unlikely to address the health issues of the prisoner (and may even exacerbate them) and is therefore unlikely to reduce their risk of reoffending after release.

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<sup>32</sup> M. Pritikin, 'Is Prison Increasing Crime', *Wisconsin Law Review*, vol. 6, no.1, 2008, p. 1058.

<sup>33</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014, p. 30.

<sup>34</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014.

<sup>35</sup> Restrictions on access to prison services can arise in a couple of ways. For example, the capacity of services may not be increased when the number of prisoners is increased, meaning that there are fewer services to be shared amongst prisoners.

<sup>36</sup> See, for example, the submission from the Aboriginal Legal Service of Western Australia, and the joint submission of WACOSS, WANADA and WAAMH.

<sup>37</sup> Mental Health Commission, *The Western Australian Mental Health, Alcohol and other drug services plan 2015-2025*, Perth, Government of Western Australia, 2014, p 65.

<sup>38</sup> Mental Health Commission, *The Western Australian Mental Health, Alcohol and other drug services plan 2015-2025*, Perth, Government of Western Australia, 2014, p 65.

<sup>39</sup> Latessa, E.J. (no date) *Criminogenic Risk and Mental Health: What Works and What Doesn't in Reducing Recidivism*, School of Criminal Justice - University of Cincinnati.

A range of stakeholders have questioned the adequacy of mental health care in the Western Australian prison system, particularly given the high percentage of prisoners affected by mental health issues.

One concern raised by stakeholders is the fact that entering prison interrupts the treatment that prisoners may have been receiving in the community. Prisoners are not able to immediately continue any medication or treatment when they are imprisoned. Instead, new prisoners must be assessed by a doctor in prison, and re-prescribed any necessary medication. It may take a prisoner up to a couple of weeks to see a mental health nurse or general practitioner. This results in new prisoners not having access to medication or other treatment for a period of time, which is likely to be highly stressful, and potentially undergoing serious health issues from the abrupt discontinuation of treatment.

Additionally, no prison in Western Australia has psychiatrists available on a full-time basis.<sup>40</sup> Instead, psychiatrists are typically available in prisons on a sessional basis a few days a week. Accordingly, prisoners are referred to psychiatrists following appointments with mental health nurses or general practitioners to ensure that priority is given to those in greatest need. Given a fortnight spent waiting to see a nurse or general practitioner, followed by a further wait to have an appointment with a psychiatrist, prisoners may be left without appropriate medical care for an extended period.<sup>41</sup>

Lack of adequate and appropriately resourced mental health facilities may also be a concern. Western Australian prisons are equipped with a unit (usually referred to as a crisis care unit) designed to care for prisoners with acute mental health issues. However, these units are often not set up in a manner that is therapeutic for a person with an acute mental health issue. They also provide, at most, a short-term option for prisoners who are assessed to be at a particularly high risk and are not set up to provide longer-term therapeutic interventions. Hospital-based options are so scarce that they do not provide a realistic alternative and also tend to provide only short-term acute care.<sup>42</sup>

There are only 38 forensic beds<sup>43</sup> outside of the prison system that are capable of housing prisoners with acute mental health conditions. The number of forensic beds in the state has not increased since 1995, despite the prison population increasing from 2,197 to over 5,000 in the same period.<sup>44</sup> Due to the lack of forensic beds, the 'least unwell' prisoners must be returned to prison early, so mental health facilities can accommodate higher priority cases.<sup>45</sup> This leads to an increase in prisoners who have received inadequate health care returning to an environment that potentially exacerbates unresolved problems.

If well-resourced and well-designed, mental health services in prisons have the opportunity to offer care to people who would normally go untreated (for example, people with reduced

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<sup>40</sup> Office of the Inspector of Custodial Services, *Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely*, Perth, Government of Western Australia, 2014, p. 27.

<sup>41</sup> Office of the Inspector of Custodial Services, *Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely*, Perth, Government of Western Australia, 2014, p. 27.

<sup>42</sup> Personal communication with Professor Neil Morgan, Inspector of Custodial Services.

<sup>43</sup> Forensic beds securely house people with acute mental health illness who have been referred from the courts or prison system.

Source: Mental Health Commission, *The Western Australian Mental Health, Alcohol and other drug services plan 2015-2025*, Perth, Government of Western Australia, 2014, p. 66.

<sup>44</sup> Mental Health Commission, *The Western Australian Mental Health, Alcohol and other drug services plan 2015-2025*, Perth, Government of Western Australia, 2014, p. 66.

<sup>45</sup> WACOSS, WAAMH and WANADA submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons, 2014, p. 32.

access to health care, due to poverty or illiteracy).<sup>46</sup> If appropriate assessment processes are in place to identify mental health issues, and services are in place to treat those issues, prisons can provide prisoners with the requisite information and skills to help manage their condition on release.

The ERA expects that prisoners would receive health care that is equivalent to that available outside the prison system. In order to achieve this, there is an urgent need for an increase in the services that are provided in prisons. Given that a prisoner's mental health condition is likely to have been a key factor in their imprisonment, addressing that condition is likely to decrease the likelihood of that prisoner reoffending on release. Prison is a poor environment for people who are suffering from mental health issues and, with inadequate services, prisoners may leave prison with their illness unaddressed and possibly worsened.<sup>47</sup>

### *Drug and alcohol rehabilitation*

There are strong links between criminal behaviour and the use of alcohol and other drugs.<sup>48</sup> It is estimated that around 80 per cent of prisoners have an alcohol and/or drug dependency.<sup>49</sup> In many cases, drug and alcohol use is a direct cause of criminal activity for prisoners. Some research suggests that rehabilitation programs to assist prisoners to address their dependencies have the potential to reduce recidivism rates by around 5 to 7 per cent.<sup>50</sup> A reduction of this magnitude could save over \$20 million a year if those prisoners did not return to prison.<sup>51</sup>

Stakeholders have expressed concern that the current provision of alcohol and drug services in prison are inadequate. Effective treatment requires the availability of a diverse range of services and the comprehensive assessment of a prisoner's issues when they enter the prison system.<sup>52</sup> There appears to be a lack of assessment of a prisoner's drug and alcohol rehabilitation needs, or rehabilitation needs more broadly, when they enter the prison system.<sup>53</sup> For example, the ERA understands that prisons do not drug test prisoners during reception. One submission highlighted that prisons do not know the number of prisoners that would benefit from alcohol and drug rehabilitation and other forms of

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<sup>46</sup> Department of Health, *Review of the Admission or Referral to and the Discharge and Transfer Practices of Public Mental Health facilities/services in Western Australia*, report prepared by B. Stokes, Government of Western Australia, 2012, p. 116.

<sup>47</sup> World Health Organisation, *Information Sheet: Mental Health and Prisons*, Geneva, United Nations, no date, p. 1.

<sup>48</sup> Network of Alcohol and other Drugs Agencies, *Complex needs capable: A practice resource for drug and alcohol services*, Sydney, Network of Alcohol and other Drugs Agencies, 2013, p. 19.

<sup>49</sup> Forensicare, *Western Australian State Forensic Mental Health Service Review*, 2008, p. 9.

<sup>50</sup> Aos, S., Millar, M., Drake, E., 2006, *Evidence-based adult corrections programs: what works and what does not*, Report number #06-01-1201, accessed from: <http://www.wsipp.wa.gov/ReportFile/924>

<sup>51</sup> In 2013-14, on average, 3220 prisoners out of 5242 prisoners had served a prior prison sentence. If this number was reduced by 5 per cent there would be 161 fewer prisoners. At \$351 per prisoner per day, the reduction would result in a saving of \$20,626,515. A reduction of 7 per cent would result in a saving of \$28,877,121.

<sup>52</sup> Department of Health, *Review of the Admission or Referral to and the Discharge and Transfer Practices of Public Mental Health facilities/services in Western Australia*, report prepared by B. Stokes, Government of Western Australia, 2012, p. 112.

<sup>53</sup> WACOSS, WAAMH & WANADA submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons, 2014, p. 37.

assistance.<sup>54</sup> The ERA has not reviewed the Department of Corrective Services' assessment and collection of data on prisoners with drug and alcohol issues.

A lack of data and assessment of needs appears to be a broader issue, covering a number of areas and populations in the prison system. Poor data and assessment limits the ability of prisons to plan for and target the services and programs that they provide. This issue is broader than alcohol and drug rehabilitation and is discussed in more detail in the latter part of this chapter.

The Department of Corrective Services Offender Drug and Alcohol Strategy 2010-14 highlighted the Department's commitment to providing a range of programs to prisoners with drug and alcohol dependencies.<sup>55</sup> Based on its consultations, the ERA understands that these programs are not provided in sufficient quantity.

During its consultations, the ERA has been made aware of instances where prisoners have been denied parole because they have been unable to access oversubscribed drug or alcohol rehabilitation programs. Prisoners' therefore, remained in custody for longer than was necessary at a cost to the State. Insufficient availability of drug and alcohol programs have real implications for the rehabilitation of prisoners and the long term cost of the prison system.

### *Suitability of rehabilitation programs*

Prisoners from different backgrounds or with different needs are likely to need programs that are adapted to their specific circumstances. Stakeholders have told the ERA that rehabilitation programs offered in prison do not appear to be adapted to the specific needs of certain prisoners. This issue appears to be particularly relevant in the context of the culture of Aboriginal prisoners<sup>56</sup> and in the delivery of programs to prisoners with intellectual disabilities.<sup>57</sup>

There are a number of cultural considerations that need to be taken into account when offering programs to Aboriginal prisoners. Aboriginal prisoners are more likely to respond to programs that are culturally appropriate and, ideally, delivered by Aboriginal people.<sup>58</sup> Submitters (such as the Aboriginal Legal Service of Western Australia) raised concern that there is a lack of culturally appropriate programs available to Aboriginal prisoners, particularly in regional prisons. This issue is of particular concern given both the high proportion of Aboriginal prisoners (40 per cent<sup>59</sup>) and the high rates of recidivism in the Aboriginal population.<sup>60</sup>

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<sup>54</sup> WACOSS, WAAMH & WANADA submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons, 2014, p. 36.

<sup>55</sup> Department of Corrective Services, *Offender Drug and Alcohol Strategy 2010-2014*, Perth, Government of Western Australia, 2010, p. 11.

<sup>56</sup> Aboriginal Legal Service submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons (2014).

<sup>57</sup> Consultations with Developmental Disability Western Australia.

<sup>58</sup> Aboriginal Legal Service's submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons (2014).

<sup>59</sup> Australian Bureau of Statistics, *Prisoners in Australia*, Government of Australia, December 2014, Table 8A.45.

<sup>60</sup> 78.7 per cent of Aboriginal prisoners in 2014 had served a prior prison sentence. Source: Australian Bureau of Statistics, *Prisoners in Australia*, Government of Australia, December 2014, Table 28

Similar concerns have been raised in reference to the programs offered to prisoners with intellectual disabilities.<sup>61</sup> People with intellectual disabilities typically learn in different ways and at a different pace.<sup>62</sup> This is likely to affect their ability to benefit from the rehabilitation programs that are offered in prison. Programs delivered to prisoners with intellectual disabilities may need to be adapted to reflect the fundamental differences in the way that they learn.

## Underlying causes of issues in the Western Australian prison system

In this section, the ERA describes the key governance issues within the prison system that appear to be contributing to the problems outlined above. Specifically, the ERA describes issues relating to insufficient transparency and accountability within the public prison system; inadequate performance frameworks or Service Level Agreements; lack of autonomy of Superintendents; lack of clear philosophies and objectives; and poor planning and resource allocation.

### *Insufficient transparency and accountability*

High levels of transparency and accountability ensure that organisations (and their leaders) are answerable for meeting their objectives, making efficient and effective use of resources, and making ethical decisions.

Transparency allows the public to understand what a public organisation is doing, how well it is doing it, and why. Transparency improves whenever an organisation provides open and readily accessible information about its activities. The opportunity for public scrutiny is an important part of the democratic process, as it allows the wider community to assess a public organisation's performance, and ensure it is answerable for the consequences of its decisions.

Transparency allows for the assessment of a public organisation's actions and should be coupled with ensuring that organisations are held accountable for those actions. Accountability is important for two reasons. First, it means that people in senior positions have a thorough understanding of what is expected of them, since expectations are formally and clearly stated. Second, it creates incentives to improve performance, by ensuring that those who achieve the stated outcomes are recognised and rewarded, and those that do not are penalised.

Transparency and accountability are particularly important in prison systems for several reasons. The service is not highly visible to the public in the way that, for example, hospital and education services are. Prisoners are held involuntarily by the State, requiring specific transparency and accountability measures to ensure they are treated humanely. Finally, prisons are inherently exposed to a number of corruption risks, including in the form of organised crime.<sup>63</sup> These corruption risks are not discretely contained within prisons and can affect the general public.

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<sup>61</sup> WACOSS, WAAMH & WANADA joint submission to the Economic Regulation Authority's Issue Paper on the Efficiency and Performance of Western Australian Prisons (2014).

<sup>62</sup> The Centre for Developmental Disability Health Victoria, *CDDH Fact Sheet*, Melbourne, 2014, p. 1.

<sup>63</sup> ABC News, 2014, 'WA prisons awash with drugs; Corrective Services Minister Joe Francis feels 'vindicated'', published on 8 April 2014, accessed from: <http://www.abc.net.au/news/2014-04-08/wa-prisons-awash-with-drugs-joe-francis-feels-vindicated/5374328>

Transparency and accountability measures across prisons in Western Australia are inconsistent. Specifically, the Department of Corrective Services does not apply the same level of scrutiny to publicly operated prisons as it does to privately operated prisons.

There is very little public information relating to the objectives of prison operated by the public sector, the standards to which they are expected to operate, or how they operate against these standards. The role of OICS in reporting on the performance of the prison system is fundamental to the system's integrity. However, the role of the Inspector should be a complement to, not a substitute for, wider public scrutiny of the prison system.

The outcomes that the Department of Corrective Services expects from Serco in its operation of Acacia Prison (**Acacia**) and the Wandoo Reintegration Facility (**Wandoo**) are clearly set out in a contract between the two parties. This contract sets the Department of Corrective Services' expectations for Serco's performance and sets a range of financial incentives and penalties that can be applied to Serco depending upon its performance. Serco is required to report on its performance against this contract in an annual report that is made publicly available.<sup>64</sup>

In contrast, there are no commensurate contracts between the Department of Corrective Services and public prisons. (Contracts between public sector agencies are generally referred to as Service Level Agreements.) The ERA's enquiries suggest that existing performance frameworks of public prisons are not useful and meaningful management tools for Superintendents. Finally, the performance of individual public prisons is not reported on publicly. Overall, the expectations and standards that private operators are held to are higher than those of public prisons.

The Inspector of Custodial Services has previously commented on this issue, stating that:

*"It can safely be said that the expectations of the State's public sector prisons are less detailed, less transparent, less clear and less robustly monitored than those of Acacia."*<sup>65</sup>

The benefits of more consistent and wider public scrutiny of prisons are obvious. The current state of the women's estate provides an example of where a lack of transparency and accountability has contributed to negative outcomes. Since 2009, OICS has strongly advocated for increased investment in women's prisons.<sup>66</sup> The issue has been raised repeatedly over the past five years, with OICS characterising women's imprisonment in Western Australia as a crisis in 2014. However, until recently, there has been little sense of urgency, forward planning, or lateral thinking on this issue on the part of the Department of Corrective Services.<sup>67</sup>

It is not possible to know whether greater transparency and accountability would have resulted in the Department of Corrective Services acting on this matter earlier. However, it is clear that there is considerable public interest in the operation of the prison system in

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<sup>64</sup> See, for example, Department of Corrective Services, *Annual Report 2012/2013 - Band Prison Services Agreement*, Perth, Government of Western Australia, 2013.

<sup>65</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Acacia Prison*, Perth, Government of Western Australia, 2011, p. vi.

<sup>66</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014, p. iv.

<sup>67</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014, p. iv.

Western Australia.<sup>68</sup> Without access to information about the operation of prisons, the public is limited in its ability to raise concerns, or amplify concerns already raised, should it wish to do so.

Two elements that are currently lacking or inadequate could contribute to improving accountability and transparency in the prison system: Service Level Agreements and performance frameworks.

### *Service Level Agreements*

A Service Level Agreement sets out the standard of service that the Department of Corrective Services expects from a prison. Service Level Agreements set out the commitments and expectations of both parties (the Department of Corrective Services and the service provider), financial arrangements and the performance framework that will be used to assess the service provider's performance. A Service Level Agreement will set out the expectations of the operation of public prisons in a similar way to the contracts between Serco and the Department of Corrective Services for the operation of Wandoo and Acacia.

Service Level Agreements should cover the expected services that will be provided in the prison and an overview of the facility, including the objectives of the prison and the expected size and characteristics of the prison population. Elements of a performance framework, such as service standards and key performance targets or benchmarks, should also be included to allow for an assessment of a prison's performance against the contents of its Service Level Agreement. An agreement also sets the budget that each prison has for operating, allowing prison operators the certainty to plan future operations.

Because the Department of Corrective Services does not enter into Service Level Agreements with Superintendents of public prisons, Superintendents lack clear and formal expectations about the standard of services that they should be providing. In addition, individual agreements would allow the Department of Corrective Services to carefully consider the objectives and operating philosophy of each prison and reflect these in each agreement.

The absence of a Service Level Agreement means that the Department of Corrective Services can impose requirements on public prisons that may adversely affect their performance. For example, the Department of Corrective Services can continue to send more prisoners to a prison, even if the prison is overcrowded, because there is no formal agreement for the number of prisoners that the prison can hold, or for its expected performance at different population levels. This limits the autonomy and independence of the prison, making it more difficult for the Superintendent to control and improve performance.

### *Performance frameworks*

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:

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As demonstrated by the recent protest against Aboriginal deaths in custody. *Source:* AAP, 'WA Premier Colin Barnett mobbed by protesters outside Parliament during rally against deaths in custody', Perth Now, 23 October 2013, <http://www.perthnow.com.au/news/western-australia/wa-premier-colin-barnett-mobbed-by-protesters-outside-parliament-during-rally-against-deaths-in-custody/story-fnhocxo3-1227100029671>



- **Service Standards:** The minimum standards that an organisation must meet in delivering its operations (for example, prisoners must be afforded access to appropriate medical care).
- **Performance Monitoring:** 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 practises.
- **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.

Both public and private prisons in Western Australia have performance frameworks that include a list of performance indicators. These performance indicators include measures of safety (for example, the percentage of prisoners and staff assaulted), security (for example, the number of escapes) and indicators of rehabilitation (for example, the percentage of prisoners involved in employment and education).

The ERA detected a difference in the way Superintendents of private prisons interact with their performance indicators compared to the way Superintendents of public prisons did.

It is the ERA's perception that the performance indicators for public prisons are not a useful management tool for Superintendents. The performance indicators may not provide Superintendents with useful information that would assist them to improve the performance of their prison. Superintendents of public prisons do not appear to have a strong motivation to improve the usefulness of the performance indicators applied to their prison because there are no meaningful consequences of doing so.

In contrast, the administrator of the privately operated prison that the ERA spoke to appeared to regularly renegotiate their performance indicators with the Department of Corrective Services. The administrator of the privately operated prison had a strong motivation for doing so: financial incentives and penalties are based upon the performance of the prison against the performance indicators. As such, the private prison administrator is motivated to ensure that the performance indicators are well-designed and capable of being influenced by the prison administrator. The ERA considers that this greater engagement with the performance indicators by private operators reflects better contracting arrangements and incentives, rather than differences of ownership.

The performance indicators for public prisons are uniform across public prisons (although the target values vary from prison to prison). The ERA would expect that a sub-set of the key performance indicators of prisons would vary from prison to prison to reflect the fundamentally different roles of individual prisons within the system.

Well-designed performance frameworks that reflect the objectives of individual prisons give clear direction to prison operators about their prison's objectives and the priority of each objective. This allows the Department of Corrective Services to specify exactly the

outcomes it wants from each prison and maximise the chance of achieving them. This should result in better outcomes across prisons.

### *Lack of autonomy*

In the previous section, the ERA discussed the need for the public prison system to be held to higher standards of transparency and accountability for performance. However, the ERA considers that higher standards of transparency and accountability ideally need to be balanced by sufficient autonomy for Superintendents to ensure that performance targets can be met.

Superintendents have primary responsibility for the performance of individual prisons. Autonomy is important because each prison is different and people who have an intimate knowledge of the prison (i.e. those working in the prison) are likely to be the best equipped to run it efficiently.

Stakeholders have suggested to the ERA that some aspects of prison performance, and by extension the performance of Superintendents, are outside the control of Superintendents. For example, services such as health, counselling, programs, education and re-entry services are managed centrally by the Department of Corrective Services, not by individual Superintendents.

If Superintendents are to be made more accountable for the performance of the prison for which they are responsible, they need sufficient autonomy to control the factors against which their performance is assessed. Autonomy should ensure Superintendents:

- Are provided with a budget that is appropriate for the quantity and quality of services expected. Superintendents should also have flexibility to allocate funds to the areas of the prison as they see fit.
- Are sufficiently trained to manage all aspects of the prison for which they are responsible. Superintendents are generally prison officers by training. They may not (initially at least) have sufficient training in organisational management, for example, human resources or financial reporting. It is incumbent on the Department of Corrective Services to ensure that Superintendents have access to training in all aspects of their role.
- Are able to engage suitably qualified support staff to assist with the management of the prison. The number and capacity of the staff may need to be adjusted periodically to reflect the size and complexity of the prisoner population.
- Have access to data about integral aspects of their prison. If Superintendents are to be assessed on the performance of their prison, they themselves must be able to observe performance within their prison. For example, Superintendents must be able to observe the detailed cost of operating each unit in their prison, or the cost of individual activities provided within the prison. The obligation for collecting data is likely to fall on both the Department of Corrective Services and the Superintendent, depending on the data in question. Where data on the performance of individual prisons is the responsibility of the Department of Corrective Services, it will need to ensure that the data is readily available to Superintendents.
- Are not subject to overly prescriptive Service Level Agreements. Prescriptive Service Level Agreements may prevent Superintendents from introducing innovation to the prison system or from developing more efficient processes and practises.

It is not possible to fully devolve responsibilities to Superintendents. There will need to be a balance between central control by the Department of Corrective Services and Superintendents. The roles and responsibilities of the Department of Corrective Services and Superintendents need to be clearly defined as this will provide Superintendents with clear parameters within which they can operate.

### **Lack of 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.

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

- 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 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 the full fixed fee. If Serco fails to meet any of its indicators, the fee it receives is reduced.<sup>69,70</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>71, 72</sup>

These incentive mechanisms do not currently apply to public prisons in Western Australia. The ERA considers that it is important to increase the incentives for public prisons to perform to a high standard. At this stage, the ERA has not examined the prospect of applying financial incentives and penalties to public prisons. This is something that the ERA may give further consideration in developing the Draft Report.

However, the ERA considers that its proposed approach (outlined in Chapter 4) would increase performance incentives for public prisons by holding public prisons to higher standards of transparency and accountability for their performance.

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<sup>69</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Government of Western Australia, 2006, p. 276.

<sup>70</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Government of Western Australia, 2012, p. 144.

<sup>71</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Government of Western Australia, 2006, p. 117.

<sup>72</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Government of Western Australia, 2012, p. 142.

## Lack of clear philosophy and objectives

A clear and publicly available operating philosophy and objective appears to be a characteristic of well-performing prisons. An operating philosophy should set out the objectives of the prison system as a whole and provide guidance to staff in individual prisons in their daily decision-making.<sup>73</sup> Operating philosophies should inform the operating model of a prison, its security strategies and its design.

Few prisons in Western Australia have a clear operating philosophy and objectives. The ERA understands that Serco produced an operating philosophy and objectives in responding to the tender processes to operate private prisons. As such, both Acacia and the Wandoo have a clear operating philosophy that is publicly available.

Serco operates on the concept of the 'Responsible Prisoner'. Serco believes that a responsible prisoner should actively participate in their schedule, play a part in the identification of his needs, and the services he requires as a response, from managing his daily routines and progress towards targets, to preparing for his release.<sup>74</sup> Serco's operating philosophy is based on facilitating prisoners becoming 'responsible prisoners'.

To the ERA's knowledge, the West Kimberley Regional Prison (**West Kimberley**) and Boronia Pre-release Centre for Women are the only public prisons with an operating philosophy that is publicly available.

Acacia, Wandoo and West Kimberley appear to be amongst the best prisons in the State. OICS found that in many areas, Wandoo was best practice in Western Australia.<sup>75</sup> Findings from the most recent inspection at Acacia indicated that the prison was also performing well.<sup>76</sup> A report on a recent inspection at West Kimberley is due for release this year. Based on the ERA's consultations, West Kimberley appears to be operating very well.

The absence of a clear operating philosophy can contribute to situations where staff hold a variety of views on matters that are fundamental to the operation of a prison. This was a finding of OICS' directed review following the Banksia Hill riot in 2013.<sup>77</sup>

A clear operating philosophy and objectives for individual prisons are also important for ensuring that the prison system can continue to operate in an integrated manner. Individual prisons have different functions within the broader prison system.<sup>78</sup> These functions in turn have implications for the number and types of prisoners held within an individual prison. There is a risk that the performance of individual prisons will be disrupted if the Department of Corrective Services makes decisions that fail to understand and appreciate the operating philosophy and objectives of individual prisons.

<sup>73</sup> Office of the Inspector of Custodial Services, *Directed review into an incident at Banksia Hill Detention Centre on 20 January 2013*, Perth, Government of Western Australia, 2013, p 6.

<sup>74</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Perth, Government of Western Australia, 2006, p. 131.

<sup>75</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Wandoo Prison*, Perth, Government of Western Australia, 2014, p. 75.

<sup>76</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Acacia Prison*, Perth, Government of Western Australia, 2014, p 72.

<sup>77</sup> Office of the Inspector of Custodial Services, *Directed review into an incident at Banksia Hill Detention Centre on 20 January 2013*, Perth, Government of Western Australia, 2013, p 7.

<sup>78</sup> For example, some prisons are designed to focus on readying prisoners for re-integration into society, while other prisons are responsible for receiving prisoners who are on remand or are newly sentenced.

For example, the West Kimberley Regional Prison Philosophy clearly establishes the facility as one focussed on the rehabilitation of Aboriginal prisoners. West Kimberley has a long-term and stable population of inmates. The objectives of the West Kimberley Regional Prison as a rehabilitation facility could be severely compromised if it were expected to take a large cohort of remand prisoners, which are typically more volatile. Such a situation could arise if Broome Regional Prison (**Broome**) is closed as planned<sup>79</sup> and the prisoners transferred to West Kimberley Regional Prison.

By setting and adhering to clear operating philosophies and objectives, the Department of Corrective Services can set clear roles for each of its prisons and allocate prisoners to where they will be best suited. This will assist in the rehabilitation of prisoners with the aim of reducing the rate of recidivism in the State.

### *Poor planning and resource allocation*

The Department of Corrective Services does not appear to plan and allocate resources well. Failing to do so limits the ability of prisons to meet their objectives. Good planning and resource allocation would allow the Department of Corrective Services to be well positioned to cope with changes in the prison system and its broader environment and better target the services that it provides.

The ERA is aware of significant examples of poor planning and resource allocation in the prison system.

- *Poor planning of the prison estate:* The Department of Corrective Services seems to have been unprepared for the rapid growth in the female prison population. There also appears to be a significant disparity between the security classification of cells and the security classification of prisoners. These incidents indicate that the Department of Corrective Services' population forecasting is inadequate.
- *Service needs of prisoners:* There is poor mapping between rehabilitation needs of the prison population and allocation of resources to rehabilitation services. Some programs are over-subscribed.

This contributes to all of the problems outlined in Chapter 2. For example, a failure to plan for the increase in the female population has led to acute overcrowding at Bandyup. An excess of maximum security accommodation cells has resulted in prisoners being housed in more expensive regimes. General poor planning of rehabilitation services contributes to a higher recidivism rate, which comes with its own cost concerns.

Data collection and management issues, and difficulties in collaborating with non-government organisations, appear to be contributing factors to poor planning and resource allocation. A number of stakeholders have informed the ERA that the Department of Corrective Services' current data collection processes are inadequate. In particular, some important data is not collected and data is not shared to support improved outcomes in the sector (as is discussed in more detail below).

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<sup>79</sup> Herald Sun 'Broome to close earlier than expected', 15 October 2012, <http://www.heraldsun.com.au/news/national/broome-prison-to-close-earlier-than-expected/story-fndo486p-1226496584393> (accessed 5 March 2015)

## Population forecasting

Recent events have raised questions regarding the adequacy, or accuracy, of the Department of Corrective Services' population forecasting. In order to plan its capital expenditure, the Department of Corrective Services needs to have a reliable forecast of the size and composition of the State's prison population. This includes the size of the male and female populations and the likely proportion of maximum, medium and minimum security prisoners.

The recent capital investment program was largely focussed on accommodation for maximum security male prisoners.<sup>80</sup> This was not reflective of the changing composition of the prison population. As a result, there is inadequate capacity in female prisons and a mismatch in the accommodation available and populations of prisoners at different security levels.

The overcrowding at Bandyup, as discussed above, is the result of either failed forecasting or poor planning of capital investment. The Department of Corrective Services either failed to accurately forecast the rapid increase in the female prison population, or failed to put in place plans to deal with the increase. Given the lack of funding allocated to female prisons in recent years, it appears likely that the Department of Corrective Services lacked the ability to forecast the rapid increase in the female population.

Similarly, there is a large mismatch in the number of prisoners and the capacity available at different security classifications. There are over 2,500 maximum security beds for fewer than 1,000 prisoners, resulting in prisoners being housed in more expensive and restrictive conditions than is necessary.<sup>81</sup> Additionally, it means that the scarce funds spent on these expansions were unable to be used on much needed investment in women's prisons.

It seems likely that, had the Department of Corrective Services been able to forecast population changes, the capital expenditure program would have been undertaken differently. The failure to forecast and plan for the changing population has led to conditions where prisons are used at excessively high utilisation rates or prisoners are exposed to regimes that are not necessary for their security level.<sup>82</sup> Both of these factors are likely to be limiting the prison system's ability to rehabilitate prisoners.<sup>83</sup> Failing to rehabilitate prisoners imposes extra costs on the prison system and society as a whole.

## Mapping the rehabilitation needs of prisoners

There appears to be poor cohesion between the rehabilitation needs of the prison population and the allocation of resources to rehabilitation services. There appears to be insufficient consideration of the variety of programs that are offered to various prisoners and how programs may be adapted to specific groups to ensure that their rehabilitation needs are met.

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<sup>80</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Bandyup Women's Prison*, Perth, Government of Western Australia, 2014, p. vi.

<sup>81</sup> Office of the Inspector of Custodial Services, *Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 11.

<sup>82</sup> Office of the Inspector of Custodial Services, *Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 11.

<sup>83</sup> Office of the Inspector of Custodial Services, *Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 11.

OICS considers that there are two major problems with the delivery of rehabilitation programs in prisons:<sup>84</sup>

1. There are too few programs available to women prisoners and prisoners in the Aboriginal-dominated prisons in Broome, Roebourne, Greenough and Eastern Goldfields Regional Prisons.
2. The Department of Corrective Services does not have robust evaluation processes that can assess which programs work in Western Australia.

The first point indicates that the Department of Corrective Services does not appear able to adjust the rehabilitation services that it provides to account for changes in the composition of the prison population. It appears that, in addition to a lack of capital investment, or perhaps as a result of, poor population forecasting has led to an under provision of rehabilitation services to female prisoners.

The Department of Corrective Services is unable to evaluate its rehabilitation programs to consider which programs should be continued or replaced or to inform the design of new programs. The Commissioner highlighted this problem in a recent report from the Department of Corrective Services:

*“The reasons why recidivism rates are reducing among both adults and young people in Western Australia are unclear. There is no doubt that some of what we are doing is highly effective, but without reliable evidence to the contrary, I must assume that some of the measures we currently undertake in an effort to reduce recidivism do not work. To find out for certain will require a robust framework of reliable data collection and monitoring, along with independent evaluation.”<sup>85</sup>*

This shows that, even when an outcome is positive, the Department of Corrective Services may not have the capability to determine whether its actions are having a positive effect. Hence, the Department of Corrective Services lacks the processes to evaluate the activities that it undertakes, particularly with reference to rehabilitation.

There are obvious implications for recidivism (and, in turn, prison utilisation rates and cost) if the Department of Corrective Services is not providing well-considered, evidence based rehabilitation services in sufficient quantity.

### *Data inadequacy*

A large portion of the planning and resource allocation problems in the prison system are a result of inadequate data collection and management processes in the Department of Corrective Services. In particular, there seems to be poor data around the effect of rehabilitation programs, the performance of individual prisons and the health needs of prisoners.

Robust data collection and management is essential for the Department of Corrective Services to be able to assess its performance as a whole and the performance of individual prisons. Good data would provide important feedback to the Department of Corrective Services about its performance and the needs of its prisoners. Without this feedback the

<sup>84</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. iii.

<sup>85</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 1.

Department of Corrective Services is unable to design and target its services in areas in which they will be most productive. In a recent report, OICS highlighted inadequate data as one of the significant barriers the Department of Corrective Services faces in attempting to improve the performance of the prison system.<sup>86</sup>

Specific areas that have been raised as data concerns are the lack of readily available baseline data on recidivism and the effect of rehabilitation programs and the lack of data on the characteristics and needs of prisoners.

The ERA has met with a number of prominent Non-Government Organisations responsible for providing community rehabilitation services across the justice sector, and advocating for prisoners with social and health disadvantages. Without exception, these organisations stated that there is a lack of data about the number of prisoners subject to various aspects of social and health disadvantage. These prisoners include people with mental health issues and drug and alcohol dependencies. Without this information, prison operators lack knowledge of the number of prisoners who would benefit from certain programs (for example, drug and alcohol rehabilitation) and the specific services that they require.

This limits the extent to which prison operators and officers can manage the associated risks (to both prisoners and staff) and makes it difficult to provide appropriate services to prisoners.

Stakeholders have also raised concern about the availability of data that the Department of Corrective Services does collect and maintain. The ERA has been made aware of incidents in which the data and information sharing between the Department of Corrective Services and not-for-profit providers of rehabilitation services external to the prison system has been poor. In particular, when a prisoner is released and is provided rehabilitation services outside of prison the external service provider is given little or no information about the prisoner and the programs that the prisoner has completed. This situation makes the provision of through-care to prisoners particularly difficult. Greater collaboration between sectors could assist with the establishment of an effective through-care model that improves the transition of prisoners to the community.

The ERA notes that the Department of Corrective Services is beginning to respond to these concerns with the recent establishment of the Knowledge and Information Technology Directorate as part of an information management strategy.<sup>87</sup> As a part of this process there needs to be a greater collection of data on prisoners and rehabilitation programs in particular. Additionally, there needs to be greater transparency of the data that the Department of Corrective Services does collect.

### *Lack of collaboration*

There may also be benefit in seeking to collaborate with the key stakeholders in designing and providing services in prisons. There are opportunities for collaboration within Government and with other sectors in order to use their collective resources and expertise

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<sup>86</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 1.

<sup>87</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013-2014*, Perth, Government of Western Australia, 2014, p. 42.



to improve service delivery.<sup>88</sup> This issue seems to be particularly evident within the prison system in Western Australia.

Not-for-profit and non-government organisations provide a significant volume of the community rehabilitation services in the justice sector, and appear to operate very well. Despite this apparent expertise, there is a distinct lack of collaboration between the Department of Corrective Services and these sectors in designing and operating services.

In engaging the expertise on offer in other sectors more meaningfully, the Department of Corrective Services has the opportunity to improve rehabilitation outcomes in prison and in the transition to the community. There is also greater scope to collaborate with regard to the provision of health care and assessment amongst other services.

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<sup>88</sup> Department of Premier and Cabinet, *Putting the Public First: Partnering with the Community and Business to Deliver Outcomes*, report prepared by the Economic Audit Committee, Perth, Government of Western Australia 2009, p. 18

### 3. The ERA's proposed approach

In the previous chapter, the ERA summarised the key problems that stakeholders have identified in the Western Australian prison system and the governance issues that may be contributing to these issues. In this chapter, the ERA proposes an approach that it considers may address the underlying governance issues.

The ERA's proposed approach focuses on ensuring that: public and private prisons are held to the same standards of transparency and accountability as private prisons; that Superintendents have the autonomy that they need to ensure the good performance of the prison they are responsible for; and ensuring appropriate separation of entities to support these outcomes.

The remainder of this chapter comprises:

- A brief discussion of the reasoning supporting the ERA's proposed approach;
- A description of the ERA's proposed approach; and
- A discussion of how the proposed approach addresses the governance issues discussed in Chapter 2.

#### Reasoning behind the proposed approach

The *Prisons Act 1981* (the **Act**) imposes a much higher standard of accountability and transparency on privately run prisons (and the Department of Corrective Services as their contracting agent) than it does on publicly operated prisons.

These conditions, outlined in Part IIIA of the Act, include the requirement that the contract between the Department of Corrective Services and any private prison operator is to be publicly available. The current contracts impose requirements on Serco (as the sole private prison operator in Western Australia) with respect to issues such as security, safety, and the delivery of education, employment opportunities, health services, treatment programs and training.

Additionally, Part IIIA of the Act requires the Department of Corrective Services to monitor the contracts with Serco and provide Parliament (and consequently the public) with an annual report detailing the performance of private providers against the terms in their contract.

The Inspector of Custodial Services observed this point in his Office's 2011 inspection report for Acacia:<sup>89</sup>

*"It is no coincidence that the best private prisons are found where there is transparency and where strong external accountability mechanisms are in place. In Western Australia and nationally Acacia sets a benchmark.*

...

*It can safely be said that the expectations of the State's public sector prisons are less detailed, less transparent, less clear and less robustly monitored than those of Acacia.*

...

<sup>89</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Acacia Prison*, Perth, Government of Western Australia, 2011, p. vi.

*Ideally, mechanisms for external oversight should complement and not replace internal mechanisms.”*

The need for private prison providers to be subject to an ongoing robust and transparent accountability framework is clear. What is not clear is why Western Australia’s public prisons are currently subject to a ‘less detailed, less transparent, less clear and less robustly monitored’ performance assessment. That is, why public prisons are held to lower standards than their privately-operated counterparts.

OICS has expressed a similar view in its inspection report of Wandoo. OICS expressed satisfaction with the service expectations and performance monitoring placed upon Wandoo, and suggested that the Department of Corrective Services should seriously consider subjecting publicly run prisons to similarly strong expectations and monitoring.<sup>90</sup>

A concern commonly expressed about private prisons is that they will be less effective at rehabilitating prisoners. However, evidence suggests that this is not the case in Western Australia. In its report assessing recidivism rates and the impact of treatment programs, OICS observed that prisons that were performing well against their standards were also delivering lower recidivism rates than prisons that were struggling to provide services and meet the standards of the Office.<sup>91</sup>

At the time of the recidivism report, OICS viewed both Acacia<sup>92</sup> and Wandoo<sup>93</sup> as being high performing facilities.

OICS has since undertaken a subsequent inspection of Acacia. The inspection had found ‘slippage,’ some of which was due to the risks associated with the expansion of Acacia’s capacity. The Inspector stated Acacia is still performing well in most areas.<sup>94</sup>

In its recidivism report OICS stated that, based on prisoner characteristics and recidivism rates, Acacia’s performance was ‘well above expectations’.<sup>95</sup> OICS was unable to assess Wandoo’s performance at reducing recidivism, as it had not been operating long enough to allow the collection of sufficient data.

The ERA considers it very likely that the higher standards of transparency and accountability imposed on privately-run prisons have been at least partially responsible for Acacia and Wandoo’s positive performance against the standards set by OICS (and in the case of Acacia, the delivery of lower recidivism rates).

The ERA is not aware of evidence that there is a benefit in subjecting public prisons to lower standards of accountability and transparency. The ERA concludes that public prisons should be subject to a Service Level Agreement comparable to the contracts between the Department of Corrective Services and privately operated prisons.

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<sup>90</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Wandoo Prison*, Perth, Government of Western Australia, 2014, p. vii.

<sup>91</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. ii.

<sup>92</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 10.

<sup>93</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 13-14.

<sup>94</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Acacia Prison*, Perth, Government of Western Australia, 2014, pp. iv - xi.

<sup>95</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, Table 2, p.10.

## The ERA's proposed approach

In this section, the ERA proposes an approach that seeks to address the issues raised earlier in this Paper. The core elements of this approach are:

- All prisons, public and private, have a contract or Service Level Agreement with the Department of Corrective Services;
- Implementation of a commissioning style approach to service delivery;
- Altering the structure of the Department of Corrective Services to support the commissioning model; and
- Oversight of Service Level Agreements and who should be responsible for monitoring prison compliance with the agreements.

Each of these elements is discussed in detail below.

### *Service Level Agreement*

Each public prison should be subject to a Service Level Agreement, which effectively forms a 'contract' between the (public) prison operator and the Department of Corrective Services.

As with the contracts between the Department of Corrective Services and private prison operators, the Service Level Agreement should be publicly available and the Department of Corrective Services should be required to report annually on each prison's performance against its Service Level Agreement.

Service Level Agreements generally include three components: the expectations and commitments of both parties to the agreement, financial arrangements, and the performance framework.

### *Expectations*

A Service Level Agreement would describe the expectations placed on both parties to the Agreement, including the manner in which both parties will behave and interact with each other, how each party will respond to unexpected events and the specifications of the prison.

This may include:

- The requirement that in the event of a serious disturbance, unplanned loss of available accommodation or other unplanned and unexpected events, both parties to the contract engage constructively in developing appropriate plans to manage and minimise disruption.
- The obligations imposed on both parties to ensure any modifications to a prison (expansion, upgrade of facilities, etc.) are well-managed.
- The frequency of regular management meetings between the two parties and the information that must be provided at each meeting.
- The operating population capacity of the prison and the type of prisoners to be housed (male/female, remand/sentenced, age, security classification, etc.).

- The operating philosophy of the prison.

The Service Level Agreement would also describe any additional reporting requirements expected from either party to the agreement.

The ERA considers that each Service Level Agreement should establish a requirement on the Department of Corrective Services to prepare and deliver to the Minister of Corrective Services a report on the performance of the prison. The report should summarise the actions of the prison operator for the previous 12 months and describe the extent to which the operator has complied with the conditions of the Service Level Agreement. The report should also be made available to the public on the Department of Corrective Services' website no later than 20 days after being delivered to the Minister. This is an existing requirement of the contract for Acacia.

### *Financial Arrangement*

The Service Level Agreement would detail the financial agreement between the Department of Corrective Services and the prison operator, in particular the level of funding available to the prison operator for operating the prison.

The Service Level Agreement would establish the expected operating capacity of the prison and mix of prisoners. The aggregate funding available to the prison operator would be based on this population and the mix of prisoners being housed.

In practice, there are aspects of the prison population that the Department of Corrective Services is unable to control and this is likely to have implications for the number of prisoners dispatched throughout the prison system. Accordingly, the Department of Corrective Services may require the prison to operate above, or below, the stated headline population, or operate with a different mix of prisoners. To provide the Department of Corrective Services with the flexibility to manage the prison population, the Service Level Agreement would be expected to include a table that sets out the funding level due to the prison for a range of daily average populations and mix of prisoners.

The contract for Acacia sets out the payment rate due to Serco for different levels of prisoner populations, but does not do so for differing prisoner mix.<sup>96</sup>

### *Performance framework*

The performance framework sets out the service standards required from the prison and the performance monitoring framework applied to the prison.

#### *Service Standards*

Service standards set out the minimum standards that an organisation must meet in delivering its operations. These can be considered to be 'core' services and include (but are not limited to):

- Prisoner care and wellbeing, including food and nutrition, recreation, religious and spiritual needs, and clothing;
- Processes for reporting serious incidents;

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<sup>96</sup> As Acacia is a medium security prison, it does not have a mix of prisoner security classifications.

- Processes for drug testing prisoners;
- Mechanisms for identifying and managing prisoners at risk of suicide or self-harm;
- Hygiene and accommodation standards;
- Standards for prisoners receiving visits and communication with family and friends; and
- Data collection, including processes for collecting data and stipulating data that must be collected.

Because service standards describe the 'core' operations of the prison, they should be uniform across all prisons. Assessment of service standards is binary; that is, the standards are either achieved, or they are not.

The performance of individual prisons against these standards would be monitored, audited and publicly reported on.

### *Performance Standards*

Performance standards are used to set out the objectives of the prison and the outcomes expected of the prison.

Performance standards differ from service standards in that service standards are generally binary in nature and relate to operational standards. Performance standards relate to the outcomes expected from prisons. These outcomes are generally non-binary in nature and operators can be rewarded for exceeding the performance expected of them, or alternatively punished for not achieving the expected performance standards.

Performance standards can generally be classed into one of three categories: Safety, Security and Rehabilitation. Each is discussed below:

- **Safety:** Standards relating to safety measure factors such as the number of occurrences of assault in the prison (prisoner on prisoner and prisoner on staff), prisoner self-harm or attempted suicide and staffing levels.
- **Security:** Standards relating to security measure the incidence of outcomes such as the number of escapes or prisoner security breaches and the number of positive drug tests.
- **Rehabilitation:** Rehabilitation measures can vary widely depending on the contracting that has taken place. Rehabilitation performance should be measured on outcomes achieved by the prison in question, for example rates of recidivism following release.

The manner in which the performance standards are monitored would also be set out in the Service Level Agreement. It will outline who has the responsibility for assessing performance against the standards, how the assessment will be conducted and audited, and how regularly performance monitoring will be undertaken.

Benchmarks are a key means for assessing whether a provider is achieving the performance standards that are expected. Well-constructed benchmarks also offer the opportunity to compare the performance of similar or competing prison operators. This allows the Department of Corrective Services to identify and remedy poor performance.

Similarly, benchmarking allows the Department of Corrective Services to identify areas in which individual prisons are performing well. In both instances, the Department of Corrective Services can investigate the reasons for good/bad performance and use the findings to lift performance across the entire system.

## Commissioning

### *The aims of commissioning*

Commissioning is a model of decision-making that aims to provide choices in the way government services are provided. It prioritises collaborative and flexible decision-making, emphasising the need for service outcomes to be consistent with the Government's objectives, rather than dictating the way in which services should be provided.

The commissioning approach recognises that the public sector is not always best placed to provide a range of public services. For example, it is common for governments to contract out bus services, since the day-to-day operation of a bus company is rarely considered a core business of government. Conversely, the Government may be best placed to operate other services (for example, many of the core functions in public schools).

The defining characteristic of commissioning is that it does not rely on a pre-determined model for the way in which public services are delivered. Hence, it moves away from a 'Department as default provider' approach, and establishes processes and guidelines that allow agencies to consider and choose from a wide range of alternative providers.<sup>97</sup>

Consequently, wholesale privatisation of the prison system is neither the aim of the commissioning approach, nor its likely outcome. Rather, the approach focuses on providing choice and ensuring that the organisations that are most likely to achieve the stated objectives are the ones providing the services. It aims to offer a rich service environment in which contestability, competition, and collaboration between public, private and non-government service providers are actively encouraged.<sup>98, 99</sup>

This section provides an overview of how commissioning works, the differences between commissioning and traditional procurement, and the implications a commissioning approach would have for the Western Australian prison system.

### *How commissioning works*

There are a variety of ways that prison services could be sourced. For example, a contract could be awarded to an organisation to take full responsibility for managing an individual prison (either including or excluding the contract for maintenance of the prison) or, alternatively, individual services within a prison could be discretely tendered out (for example, health services and training). The ERA has not formed a view on the best model. However, the commissioning approach would not preclude either approach or a combination of approaches within the prison system.

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<sup>97</sup> CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia, 2010, p. 5.

<sup>98</sup> Ernst and Young, *Public Service Commissioning: A catalyst for better citizen outcomes*, Ernst and Young, 2014, p. 3.

<sup>99</sup> For example, a commissioning approach may result in a group of purely public sector organisations working together to deliver the best outcome, where the Department of Corrective Service, police, courts, and health or education agencies collaborate to deliver a particular service.

Commissioning focuses on unbundling the services needed to operate the prison system successfully, and better understanding the component parts.<sup>100</sup> This involves the commissioning agency (in this case, the Department of Corrective Services) defining each service individually, and determining the outcomes for each service that are required to deliver the broader objectives of the prison system.

Once each service has been defined and the outcomes expected from each service have been determined, the Department of Corrective Services can identify the organisations that are best placed to deliver the desired outcomes. This can be done in a number of ways. For example, where there is ample supply of a particular service, the Department of Corrective Services may undertake a procurement process, seeking tenders from businesses, not-for-profit or non-government organisations, the Department of Corrective Services' own service delivery branch, and partnerships of these.<sup>101</sup> Conversely, for services for which a supply is not readily available, the Department of Corrective Services may choose to approach not-for-profit organisations, commercial entities or other Government agencies to collaborate on developing and delivering a given service.

While identifying the best possible provider (or combination of providers) for the service, the Department of Corrective Services can begin work on designing the Service Level Agreements and incentive structures discussed earlier in this chapter. Once a provider has been selected, these agreements and incentives can be further developed to address the specific risks and capabilities of that provider.

### *The differences between commissioning and traditional procurement*

Procurement is a part of the commissioning process. However, commissioning has a broader focus on the 'big picture', seeking to understand the fundamental aims of agencies and governments, and the resources available to achieve them. In doing so, it prioritises flexibility, innovation, collaboration, and a focus on core objectives.

Figure 4 provides an overview of the key stages of traditional procurement, and shows how they compare to the stages of commissioning shown in the outer circle.<sup>102</sup>

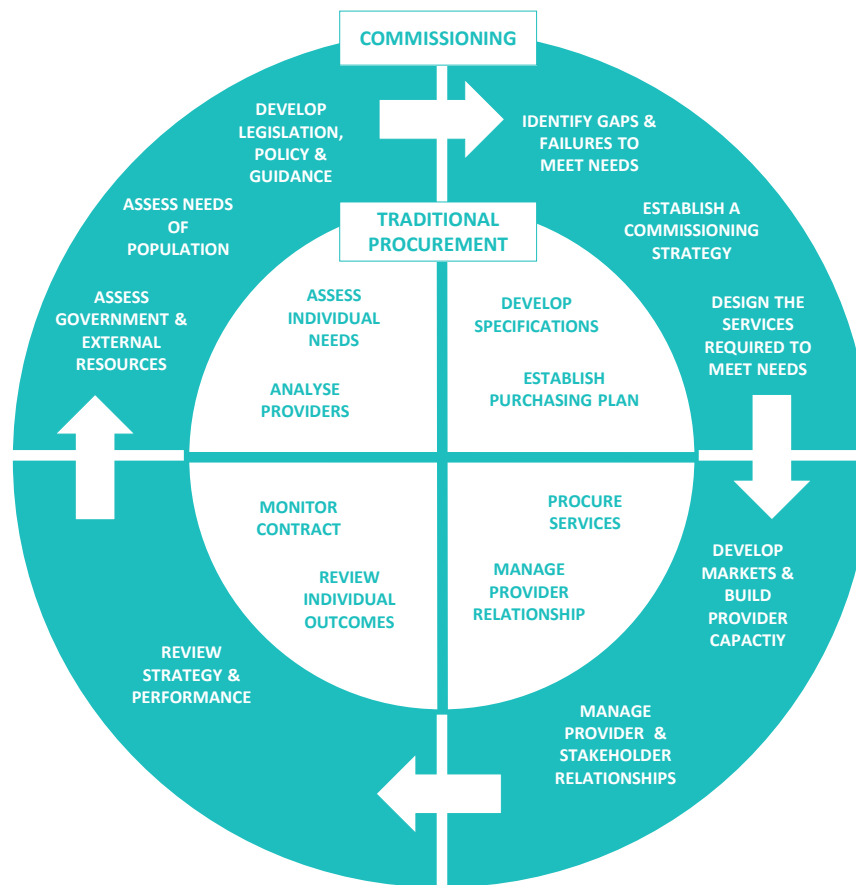
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<sup>100</sup> Ernst and Young, *Public Service Commissioning: A catalyst for better citizen outcomes*, Ernst and Young, 2014, p.8.

<sup>101</sup> The following section on structural change provides a response to the conflict of interest issues that arise when the Department of Corrective Services elects to 'contract with itself'.

<sup>102</sup> Based on CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia, 2010, p. 10.



**Figure 4 Commissioning versus traditional procurement**

### *Outcomes of commissioning*

On a basic level, the introduction of a commissioning approach would establish a framework and processes in which Government and non-government prison providers can tender for the opportunity to deliver prison services.

However, on a broader strategic level, it would provide the Government with greater choice and flexibility in how individual services will be delivered. This will help Western Australia move beyond the simplistic 'privatisation debate' as to who should own and operate prisons, towards a far more discerning and mature assessment on a service-by-service (and prison-by-prison) basis.

This approach requires a fundamental change in the way in which the Department of Corrective Services operates, and is clearly not a change that can be implemented without significant planning and effort. In Chapter 4, the ERA discusses some of the complexities that need to be addressed in transitioning to a commissioning approach. In particular, the ERA considers the skills the Department of Corrective Services would need to cultivate to take on the commissioning role, and the need for a choice of quality service providers that can present the Department of Corrective Services with meaningful alternatives.

### *Structural change*

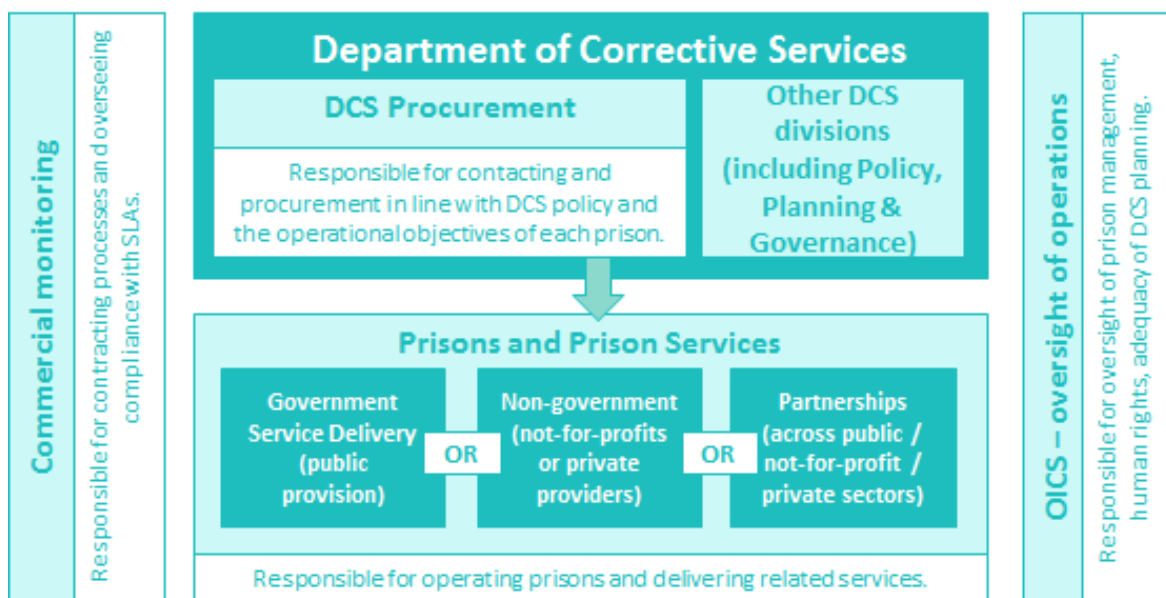
The ERA considers that the introduction of a commissioning model would have implications for the structure of the Department of Corrective Services and for the way in which the prison system is regulated.

Because the commissioning model allows competition between Government and non-government service providers, there must be appropriate separation between an entity responsible for procuring prison services (which the ERA refers to as **DCS Procurement**) and the government's service delivery function (which the ERA refers to as **Government Service Delivery**).

In this model, DCS Procurement would be responsible for administering tender processes for the right to operate prisons in Western Australia. This may involve assessing the merits of a tender from Government Service Delivery against tenders from non-government operators. To ensure that the integrity of the commissioning process is not compromised, DCS Procurement and Government Service Delivery cannot be housed in the same organisation and should be separated.

The ERA proposes that DCS Procurement would reside in the Department of Corrective Service and Government Service Delivery would become a separate entity. The Department of Corrective Services would retain its other functions including policy development. Figure 5 illustrates the ERA's proposed structure of the prison system.

**Figure 5 ERA's proposed Structure of the Prison System**



In this model, the policy function of the Department of Corrective Services focusses on developing policies in response to the corrective services environment. These policies determine the outcomes that the Department of Corrective Services requires from a particular prison. DCS Procurement is then tasked with facilitating a tender process and selecting the tender that best achieves the desired outcomes. The tender process would be open to the Government Service Delivery entity and non-government operators. Government Service Delivery and private prison operators would not be limited in their ability to partner with other organisations (such as not-for-profits) or each other, in order to improve their tender.

### ***Oversight of Service Level Agreements***

Establishment of Service Level Agreements and a shift to a commissioning approach would require additional oversight to ensure that public prisons comply with their Service Level Agreements and the integrity of the tendering process.

The Department of Corrective Services could have responsibility for this oversight role. As the contracting agent, the Department of Corrective Services would be responsible for assessing whether it is satisfied with the performance of any particular prison.

However, having the Department of Corrective Services take on this oversight role could result in perceived or actual conflicts of interest, with one government agency (Department of Corrective Services) potentially awarding contracts to, and monitoring the performance of, another government agency (Government Service Delivery), despite being separate entities.

In the event a potential or actual conflict of interest is identified and it is unable to be suitably managed by the Department of Corrective Services, it may be appropriate to assign responsibility for monitoring the performance of prisons to another entity. OICS may be capable of assuming this oversight role, reflecting that it is an independent organisation with existing knowledge of the Western Australian prison system. However, the ERA considers that there may be difficulties reconciling the current role of OICS (which has a strong focus on the humanitarian aspects of prisons) with a more commercial focus on the performance of prisons.

The roles and responsibilities of the oversight body (or bodies) and the Department of Corrective Services would need to be clearly defined to prevent overlap and duplication of functions.

At this stage in the Inquiry, the ERA has not made any conclusion about the appropriate arrangements for overseeing the prison system.

## How the model addresses issues in the prison system

In this section, the ERA explains how it considers its proposed approach addresses each of the governance issues identified in Chapter 2.

### *Transparency and accountability*

The requirement for all prisons to be subject to a contract with the Department of Corrective Services, irrespective of whether a prison is publicly or privately operated, and making these contracts available to the public, ensures that there is considerable public information about the objectives of all prisons and the standards to which they are expected to operate.

Consistent publication of information on how individual prisons are performing against services standards is a necessary part of transparency. Requiring the Department of Corrective Services to issue an annual report for each prison detailing the prison's performance against its Service Level Agreement, coupled with periodic inspections by the OICS, should help to ensure that the prison system is subject to an appropriate level of transparency.

Greater transparency around the performance of individual prisons increases the accountability of prison operators. Prison services are not highly visible to the public; because of this, public scrutiny becomes of greater importance. Enabling the public to better scrutinise a prison's standards and performance allows for greater public debate about the performance of individual prisons, as well as the system as a whole.

Moving to a commissioning model also adds the possibility that poorly performing prisons do not have their services retained following the end of their contract or Service Level Agreement. This is the ultimate form of accountability and provides all prison operators with

considerable incentives to ensure that the prison(s) they operate meet or exceed the required standards.

## **Autonomy**

Greater accountability should be accompanied with greater autonomy. Prison operators will ultimately be judged by their performance against the 'contracted' outcomes and must be given the autonomy to establish long-term operational strategies and processes that they consider will best achieve the contracted outcomes in the knowledge these will not be unreasonably altered by directives from the Department of Corrective Services.

The heavy cost of such bureaucratic intervention has long been recognised in England and Wales. These jurisdictions have recognised that the autonomy provided by 'contracting' can help to reduce this cost, and enhance efficiency, as it regulates the manner in which head office intervenes in the management of individual institutions.<sup>103</sup>

Service Level Agreements will help to ensure that Superintendents have the necessary level of autonomy to operate prisons efficiently. Service Level Agreements should clearly delineate the role and responsibilities of Superintendents from those of the Department of Corrective Services. Service Level Agreement should give Superintendents clear guidance about their level of authority to make decisions affecting their prison and any parameters they must operate within before seeking the approval of the Department of Corrective Services.

## **Philosophy and objectives**

Clear, well-defined objectives are a defining element of good Service Level Agreements. Before the Department of Corrective Services can draft contracts with each of the State's public prisons, it must understand and articulate its objectives for the prison system as a whole. Further, it should consider – at a strategic level – the ways in which these objectives can be achieved.

Having established system-wide objectives, the Department of Corrective Services should structure the objectives and operating philosophies of individual prisons in a manner that will reflect these system-wide objectives. It is important for the Department of Corrective Services to address each prison individually, given that Western Australia's prisons vary in character, having different roles and functions. Requiring the Department of Corrective Services to draft a Service Level Agreement for each prison will place the operating philosophy and objectives of the prison system at the forefront of the Department of Corrective Services' operations.

## **Planning and resource allocation**

Establishment of Service Level Agreements between the Department of Corrective Services and each individual prison could potentially impose greater discipline on the Department of Corrective Services in the planning and allocation of its resources.

The ERA understands that Superintendents of public prisons are currently required to accept any additional prisoners at the request of the Department of Corrective Services.

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<sup>103</sup> Home Office Lord Laming of Tewin, *'Modernising the Management of the Prison Service'*, Home Office, 2000, pp.3, 14.

The Department of Corrective Services is not currently required to provide additional funding to prisons to reflect the higher prisoner population.

In contrast, the contract for Acacia sets out the funding rates due to Serco for different levels of prisoner populations.<sup>104</sup> The ERA may recommend that Service Level Agreements with public prisons contain similar funding tables. This would require the Department of Corrective Services to give greater consideration to the cost implications of different prison populations.

The cost implications of inaccurate prisoner population forecasting could be considerable for the Department of Corrective Services. Accordingly, the Department of Corrective Services will need to ensure that it has adequate population forecasting capabilities.

A comprehensive forward planning program will allow the Department of Corrective Services to prevent issues from arising in the first place by proactively directing resources to identified areas of concern.

However, the Department of Corrective Services will be unable to engage in robust forward planning without first understanding what is already occurring in the prison system. The use of Service Level Agreements will provide the Department of Corrective Services with the incentives to improve its current data collection and analysis capabilities to a level that allows it to undertake meaningful and reliable forward planning.

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<sup>104</sup> As Acacia is a medium security prison, it does not have a mix of prisoner security classifications.

## 4. Risks and complexities

The approach proposed in this Discussion Paper differs considerably from current practice in the Western Australian prison system.

The ERA appreciates that potentially restructuring the Department of Corrective Services, along with a move towards commissioning, will introduce a range of complexities. This is largely because the change to a new approach and organisational structure will also result in a change in the type (and degree) of risks faced by the Department of Corrective Services. A thorough reassessment and understanding of these risks is critical to ensure successful implementation of the approach.<sup>105</sup>

This chapter outlines three risks that the ERA considers particularly significant. These are:

1. failure to build sufficient flexibility into plans and contracts to allow the Department of Corrective Services to respond to unforeseen circumstances;
2. failure to develop the skill sets required within both the Department of Corrective Services and individual prisons to successfully implement the proposed approach; and
3. insufficient supply of organisations capable of providing prison services.

The ERA does not consider these risks represent an insurmountable barrier to implementing its proposed approach. However, addressing these risks may involve a substantial lead-time (for example, raising institutional skill sets) and on-going management (for example, ongoing liaison with potential service providers to assess their interest in providing prison services).

The chapter is not intended to provide an exhaustive list of possible issues, and the ERA welcomes input from stakeholders on other concerns relating to the proposed approach.

### Flexibility in planning and contracting

One of the main challenges in managing a prison system is uncertainty, particularly around the anticipated number (and demographic split) of future inmates, and around exceptional events.

A lack of certainty around prisoner numbers and demographics makes it more difficult to plan prison services and contract with external providers.<sup>106</sup> Both plans and contracts need to be designed with this in mind, providing some capacity to absorb unanticipated increases in prisoner levels, or sudden changes in the mix of prisoners and their requirements.

Furthermore, exceptional events will inevitably occur over the life of a prison, and the Department of Corrective Services is ultimately responsible for managing them when they

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<sup>105</sup> J. Graham and D. Kaye, *A Risk Management Approach to Business Continuity: Aligning Business Continuity with Corporate Governance*, Brookfield, Rothstein Associates Inc., 2006, p.179.

<sup>106</sup> These factors are subject to the decisions of legislators (for example, mandatory sentencing), courts (in interpreting legislation and deciding on an appropriate sentence), and the number of prisoners held on remand. Of these, the Department of Corrective Services is only responsible for remand centres. Individual prisons have no control over these factors, though they remain significant drivers of prison expenditure.

do. However, contracting out service delivery risks weakening the Department of Corrective Services' ability to respond promptly to unforeseen events.

Good contracting between the Department of Corrective Services and service providers is critical, and generally provides an effective way to manage this risk. However, from time to time, unanticipated events will occur, in spite of best efforts. The case of the Banksia Hill Detention Centre riot in 2013 is a prime example of such an event that, although rare, has had serious adverse consequences on the prison system and community safety.

Contracts should allow enough flexibility for the Department of Corrective Services to override contracts in such unanticipated circumstances and resume control of a prison. Further, the Department of Corrective Services should have the power to intervene in prison operation when a provider does not meet agreed service levels. The Department of Corrective Services would need to ensure that it retains sufficient institutional capacity to undertake this task.

In such cases, the Department of Corrective Services should be required to provide justification in its Annual Report for any decision to override contracts or intervene in prison operations. This means the Department of Corrective Services would have sufficient power to address unforeseen circumstances, but it would be accountable for its decisions to exercise that power.

Additional measures should also be taken to ensure that the power to override a contract or resume control of a prison is not subject to misuse. For instance, an independent overseer, such as the OICS, should examine all cases of Departmental intervention. The overseer's findings should comment on the legitimacy of the intervention, and may provide advice as to whether the need for intervention could have been avoided through better planning and contracting.

## Institutional skill sets

A shift from a 'default provider approach' (where there is a presumption that the public sector will provide prison services) to a commissioning approach involves a fundamental change in the way that the Department of Corrective Services operates. Consequently, it is important to ensure that Department of Corrective Services and prison staff have the skills necessary to take on new roles and responsibilities. The gap between existing skills and those required to implement the approach is significant, and will add a layer of complexity to the transitional process.

The Department of Corrective Services' capabilities are currently geared towards public management of prisons, with only 2 out of 16 of the State's prisons operated privately. However, under the approach described in Chapter 3, the public sector would no longer act as the default provider of services. Instead, the Department of Corrective Services' role would be to focus on the design and management of mixed service delivery.<sup>107</sup> To take on this role successfully, the Department of Corrective Services would need to develop, recruit, and retain staff with a range of strategic and system management capabilities.

Most critically, a move away from a default provider approach would require DCS Procurement to develop and prioritise advanced skills in procurement and regulation. Promoting contestability would also require the Department of Corrective Services to take on a more expansive 'relationship manager' role with all service providers, whether they be

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<sup>107</sup> Ernst and Young, *Public Service Commissioning: A catalyst for better citizen outcomes*, 2014.

public, private, or not-for-profit institutions. This will require a higher level of skill than the conventional procurement process of prescribing a service and putting it out for tender.

Government Service Delivery would need to develop skills in responding to tenders for prison services, so they are able to compete with private sector providers. The existing Department of Corrective Services does not currently need to do this, because they are largely presumed to be the default provider. Specific skills that Government Service Delivery would need to develop would include writing a business plan, financial modelling, negotiation and an understanding of the intricacies of performance frameworks. Government Service Delivery would need to develop these skills in addition to maintaining service delivery capabilities.

Prison Superintendents and senior prison staff would also need a level and breadth of skill that is commensurate with their increase in autonomy. Their extensive understanding of prisons' day-to-day operations may be well complemented by financial management and planning expertise.

The time, planning, and resourcing needed to cultivate this level of expertise in the State's prison system should not be underestimated. However, each of these capabilities is fundamental to the system's ability to deliver on its objectives, to the benefit of all Western Australians.

## Building better capability for the supply of prison services

Successful implementation of a commissioning approach relies on there being a sufficient number of enterprises with the ability and capacity to provide prison services or to operate a prison or prison services to an appropriate standard.

As noted above, a Commissioning approach requires the Government Service Delivery entity to develop a range of additional skills in order to successfully bid and provide prison services. These skills include responding to tenders, writing business plans, financial modelling, strategic and system management and negotiation.

Building capability to supply individual services within prisons (for example, security, health services, training and rehabilitation), either by the private sector or the not-for-profit sector, is not expected to present a significant challenge. Organisations already exist that provide services to other sectors of the public service (for example, to the Department of Health). The not-for-profit sector already has substantial involvement in delivering services to prisons and community corrections and has demonstrated a willingness to collaborate with both the public and private sector.

Furthermore, the Western Australian Government has sought to improve the way it collaborates with the not-for-profit community sector in recent years through a Partnership Forum and development of principles and behaviours.<sup>108</sup> The foundation knowledge developed through this initiative will help to guide greater collaboration between the Department of Corrective Services and not-for-profit agencies. Ideally, the Department of

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<sup>108</sup> The mission of the Partnership Forum is to bring together leaders from State Government agencies and the not-for-profit community sector to improve outcomes for all Western Australians through a genuine partnership in the policy, planning and delivery of community services in Western Australia. Source: Department of the Premier and Cabinet, 2014, Partnership Forum, accessed from <http://www.partnershipforum.dpc.wa.gov.au/Pages/Default.aspx>



Corrective Services would be represented on the Partnership Forum if there were to be greater collaboration between the Government and the not-for-profit sector in the delivery of prison and community corrective services.

Determining the extent to which non-government organisations are willing to take responsibility for managing an individual prison is likely to represent a greater challenge. Companies with the necessary skills and capacity to operate a prison are generally multi-national companies (for example Serco, G4S, GEO). The willingness of such companies to compete to operate prisons in Western Australia is likely to depend upon a range of different factors. Such factors could potentially include:

- *Financial and operational capacity:* Companies will need to consider whether they have the financial and operational capacity (including a workforce with the necessary skills) to expand their business.
- *Business strategy:* Companies will need to consider whether competing to provide prison services in Western Australia aligns with their strategic direction. This may include, for example, whether they are actively seeking to expand their operations or are focussed on consolidating existing contracts, and whether they are prepared to take the reputational risks associated with providing correctional services or would rather focus on less contentious services.
- *Location of major business interests:* Multi-national companies are more likely to be willing to compete to provide services in or near areas where they already have business interests.<sup>109</sup> Companies will have greater knowledge of these jurisdictions and it will involve less effort to expand an existing presence and workforce than establishing a new one. This factor is likely to present a particular barrier for companies expanding their operations to Western Australia, which has a small, geographically isolated population.
- *Expected profit margins:* The ERA understands that operating prisons does not yield high profit margins. Companies would need to have a reasonable profit expectation in order to induce them to invest resources and time in developing a high-quality proposal to supply prison services.

These factors are dynamic and a company's assessment of whether they are willing to compete will change depending upon the company's particular circumstances and their assessment of the State's political and economic environment (including in relation to the situation in alternative jurisdictions).

Another consideration is that there may be limits on the extent to which the private sector can be involved in delivery of prison services. For example, stakeholders have expressed the view that maximum security prisons should be delivered by the public sector. This is a matter that the ERA has not yet assessed, but will give further consideration in developing the Draft Report.

Given the highly specialised nature of prison services, it may be that there is limited interest from non-government organisations in operating prisons in Western Australia. Accordingly, the Department of Corrective Services may, initially at least, need to develop supply

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<sup>109</sup> Harding, Prof. R, 2005, *Acacia Prison Contract, memorandum from the Office of the Inspector of Custodial Services to the Minister for Justice*, 9 May 2005, Perth.

capabilities through cooperation with the private sector.<sup>110</sup> This will require skills that have been, to date, outside the scope of the Department of Corrective Services' activities.

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<sup>110</sup> CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia 2010, p. 4.

## Appendix 1 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;
- 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 List of submissions received by the ERA and meetings held

The ERA published the Issues Paper on 11 November 2014 and received 17 submissions in response. Three of these submissions were submitted confidentially. Submissions were received from the following stakeholders:

- Aboriginal Legal Services of Western Australia
- Community and Public Sector Union/Civil Services Association
- Department of Health
- Infrastructure Partnerships Australia
- Jim Watmore
- Office of the Information Commissioner
- Public Sector Commission
- Serco Australia
- Serco Watch
- Simon Faulkner
- Social Ventures Australia
- Uniting Church in Western Australia
- Western Australian Council of Social Services, Western Australian Association of Mental Health and the Western Australians Network of Alcohol and other Drug Agencies
- Western Australia Prison Officers' Union

In addition to the public consultation process, the ERA met with the following stakeholders:

- Aboriginal Legal Service of Western Australia
- Community and Public Sector Union/Civil Service Association
- Crime and Corruption Commission
- Department of Corrective Services
- Department of Premier and Cabinet
- Department of Treasury
- Developmental Disability Council of Western Australia
- New Zealand Department of Corrections
- Office of the Auditor-General
- Office of the Inspector of Custodial Services
- Outcare Western Australia
- Paul Papalia CSC MLA
- Prison Chaplains
- Professor Richard Harding
- Serco Australia
- Western Australian Association of Mental Health
- Western Australian Council of Social Services
- Western Australian Network of Alcohol and other Drug Agencies
- Western Australia Police
- Western Australian Prison Officers' Union

The ERA also conducted visits to the following prisons:

- Acacia Prison
- Bandyup Women's Prison
- Casuarina Prison
- Hakea Prison
- West Kimberley Regional Prison