

# Inquiry into the Efficiency and Performance of Western Australian Prisons

Draft Report

9 July 2015

Economic Regulation Authority

WESTERN AUSTRALIA

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## Foreword

The Treasurer asked the ERA to conduct an independent examination of the Western Australian prison system, with the aim of identifying options to improve its efficiency and performance.

The ERA appreciates the opportunity to undertake this important Inquiry. Generally speaking, prisons do not attract as much public interest as other government services (such as schools and hospitals). Nevertheless, there is a strong public interest case for improving the standards of the prison system – for both financial and social reasons.

The State's investment in Western Australia's 14 public and two privately operated prisons is substantial, with a total cost to the State of around \$608 million in 2013-14. It is important to ensure that taxpayers' money is well spent.

Prisons that perform to high standards appear to produce better rehabilitation outcomes. Former prisoners returning to the prison system at high rates adds to the cost of the prison system. The ERA estimates that the prison system as a whole may be spending as much as \$1 million per day on prisoners who have previously served prison sentences and have returned to the system.

Rehabilitation of prisoners also benefits society more generally when prisoners, after being released, have the capacity to be gainfully employed and self-sufficient and not impose an ongoing cost on the welfare and justice systems.

Improving the quality and performance of the prison system cannot be achieved if the prison system continues to operate as it currently does. It will instead require the State Government and the Department of Corrective Services to take a more strategic approach, involving stronger governance arrangements, a better allocation of existing resources within the system, a focus on evidence-based approaches, and greater collaboration with experts.

In conducting this Inquiry, the ERA met with a range of stakeholders (including people working in the Department and prisons, the not-for-profit sector, unions, and private prison providers), visited six prisons and considered approaches used in jurisdictions across Australia and around the world.

From these consultations and investigations, we have formed the view that public prisons in the Western Australian prison system are not performing as well as they could. This opinion primarily stems from shortcomings in governance arrangements and in management systems and processes, which we have observed in undertaking this Inquiry.

In terms of governance arrangements, we consider there to be a lack of clarity about roles and responsibilities between the Department of Corrective Services and Superintendents of individual public prisons. This makes it difficult for key office holders to be held to account for their decisions and performance. Furthermore, there is a lack of transparency about the performance of the public system, limiting the scope for external scrutiny.

We have also observed significant issues with the operational and administrative management systems of the Department. This creates challenges for the Department in understanding its current position, planning for the future and allocating resources.

The two private prisons in Western Australia are generally performing to a high standard, as has been observed by the Inspector of Custodial Services in recent inspection reports of private prisons in Western Australia. This is not to suggest that the private sector is inherently better at delivering prison services than the public sector, nor that the private sector should be the preferred provider. Rather, private prisons are performing to high standards because they are held to clear and robust standards of accountability and transparency.

In forming recommendations for this Inquiry, the ERA has sought to apply some of the settings of the private system to the public system. Specifically, the ERA has made recommendations in four key areas:

- *Ensuring consistent standards across the prison system* – This set of recommendations is focussed on ensuring that public prisons are held to the same standards of accountability and transparency as private prisons. This can primarily be achieved through Service Level Agreements (and supporting reforms) to establish clearer roles and responsibilities and performance management frameworks (including benchmarks).
- *Performance benchmarks* – The publication of performance benchmarks will help to ensure greater accountability and transparency. The ERA has sought to design a set of benchmarks that focuses on the core areas of prison performance that Superintendents can and should be expected to influence. However, we have recognised that Superintendents cannot influence all aspects of prison performance. Hence, we have also recommended benchmarks to apply to the prison system as a whole.
- *Encouraging more effective planning, decision-making and use of information* – This set of recommendations is focussed on developing the Department's capacity to analyse and understand its operations and future needs, improving the integrity of its data and record keeping systems, and adopting a more collegiate and transparent approach to data sharing.
- *Encouraging competition in the prison system* – There is scope to extend competition in the prison system to drive better performance and innovation. We have recommended the introduction of a commissioning model, whereby prisons and prison services can be delivered by a mix of public, private and not-for-profit providers.

We would like to express our appreciation to all that have contributed their knowledge to this Draft Report. We welcome your ongoing input to enable us to further consider our recommendations to the Government in our Final Report.

Stephen King  
**CHAIR, ECONOMIC REGULATION AUTHORITY**

## Summary of key findings

### Purpose of this Inquiry

The Terms of Reference for this Inquiry require the ERA to undertake an inquiry into options to improve the efficiency and performance of the Western Australian prison system.

The Terms of Reference establish that the advice provided by the ERA will be based upon economic, market and regulatory principles and will include advice on the design of appropriate performance standards, incentives and monitoring processes for the prison system.

One of the deliverables 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 (**Department**) would use the benchmarks to identify areas in which the performance of individual prisons could be improved.

A challenge in conducting this Inquiry is that many of the drivers and decisions that affect the cost and performance of the prison system involve parties outside the prison system, and are beyond the Terms of Reference of this Inquiry.

In particular, the prison system is affected by decisions made by the broader justice and human services systems. These include, for example, decisions on justice policy, policing and sentencing, and decisions on the delivery of human services (including health and mental health, education, child protection and disability services). Combined, these decisions influence the size of, and growth in, the prison population, the type of prisoner in the system, and the complexity of prisoner needs.

In turn, the performance of the prison system affects the costs and performance of the justice and human services systems. Prisons have a role in ensuring prisoners are capable of functioning in the community upon release. Effective rehabilitation of prisoners will mean that they require less intensive assistance and management in the community and are less likely to come back into contact with the justice system.

Prisons that achieve good rehabilitation outcomes may alleviate broader costs to Government and taxpayers. The costs associated with preventing and responding to crime include the costs of maintaining the remaining areas of the criminal justice system (police, prosecution and courts) and the lost contribution to the economy of individuals due to their involvement in crime. The Australian Institute of Criminology estimated the cost of crime<sup>1</sup> in Australia totalled \$47.6 billion in 2011.<sup>2</sup>

Stakeholders have told the ERA that it is important to consider the interactions between the prison system and the justice and human services systems in conducting this Inquiry. The ERA has sought to do this by thinking about the broad costs to society of the prison system, rather than just the narrow costs of delivering the prison system. In particular, in its proposed approach the ERA has recognised the importance of prisons that focus on rehabilitation. There will clearly be a trade-off between cost and performance, but in the long term, a more sophisticated approach to managing offenders is likely to represent the best value for money to the Government (and hence taxpayers).

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<sup>1</sup> Excluding the cost of prisons and community corrections.

<sup>2</sup> Australian Institute of Criminology, *Counting the costs of crime in Australia: A 2011 estimate*, report prepared by R. Smith, P. Jorna, J. Sweeney and G. Fuller, Canberra, Government of Australia, 2014, p. xiii.



## Assessment of the prison system

The ERA has observed that the governance arrangements applying to public prisons in Western Australia are not robust. In particular, the ERA has observed:

- *A lack of clarity about roles and responsibilities* – There is a significant level of uncertainty in the public prison system about roles and responsibilities between the head office of the Department and prison Superintendents. The ERA has observed a degree of informality in decision-making that permits changes without appropriate analysis and reallocation of resources.
- *A lack of accountability* – The uncertainty around roles and responsibilities makes it difficult to establish accountability for specific outcomes because it is not clear who is responsible for the outcome. This lack of clarity serves to diminish accountability between various parties in the prison system.
- *A lack of transparency* – The Department does not publish data that allows all stakeholders to make a robust, independent assessment of the performance of public prisons. In addition, the Department does not provide information that would allow service providers working with the prison system to assess how well they are performing and improve their service offerings.
- *General inadequacies in information system, planning and controls* – The Department and individual prisons lack robust and reliable information systems and have limited capacity to analyse information and plan appropriately for the future.

In addition, the ERA has observed that there are some issues with the culture of segments of the workforce in the Department and individual public prisons. In particular, the ERA has observed that there is some resistance to change and a sense of entitlement among some staff. This creates a barrier to reform and the introduction of more effective working arrangements.

The ERA considers that deficiencies in the governance arrangements of the prison system necessarily have an adverse effect on its performance, including in terms of rehabilitation outcomes for prisoners, the cost of providing prison services and utilisation rates of prisons.<sup>3</sup>

## Overview of the proposed approach

The Terms of Reference establishes that a key mechanism for achieving an improvement in the efficiency and performance of the prison system will be the development of a performance framework, incorporating service standards, monitoring processes and incentives.

Consistent with the Terms of Reference, the ERA has recommended:

- *Consistent standards across the prison system* – Public prisons to be held to the same standards of accountability and transparency as private prisons. Service Level Agreements (and supporting reforms) will establish clearer roles and responsibilities and performance management frameworks (including benchmarks).

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<sup>3</sup> The ERA notes that it is usually desirable for infrastructure to be used at, or close to, its full capacity (that is, a high utilisation rate). However, when prison infrastructure has a very high utilisation rate it can result in occupational health and safety issues for prison officers and prisoners and limit the access of prisoners to programs and services. This reduces prisoner rehabilitation opportunities and is therefore likely to increase recidivism rates. Ideally, prison utilisation rates will be around 85 to 95 per cent of prison capacity to allow for prisoner movements and the needs of discrete prisoner cohorts.

- *Performance benchmarks* – Performance benchmarks be published to ensure greater accountability and transparency. The ERA has identified a set of benchmarks focusing on the core areas of prison performance that Superintendents can and should be expected to influence. The ERA has also recommended benchmarks to apply to the prison system as a whole, recognising that Superintendents cannot influence all important aspects of prison performance.
- *Encouraging more effective planning, decision-making and use of information* – The Department develop its capacity to analyse and understand its operations and future needs, improve the integrity of its administrative data and record keeping systems, and adopt a more collegiate and transparent approach to data sharing.
- *Encouraging competition in the prison system* – Competition in the prison system be extended to drive better performance and innovation. The ERA recommends this be achieved through the introduction of a commissioning model, whereby prisons and prison services can be delivered by a mix of public, private and not-for-profit providers.

Each element is discussed below.

## Consistent standards across the prison system

Private prisons in Western Australia are subject to robust governance arrangements. Contracts between the Department and Serco for the management of Acacia and Wandoo establish clear roles and responsibilities, performance targets and consequences for non-performance. The contracts between the Department and Serco establish high levels of accountability and transparency.

There is no such document formalising the relationship between the Department and public prisons. The consequence is that there is less clarity about respective roles and responsibilities and less accountability and transparency about the performance of public prisons.

Furthermore, the objective of each prison in the prison system is not clearly defined. This can lead to ad hoc changes, rather than robust planning to ensure that the combined objectives of individual prisons meet the overall objectives of the prison system, allowing the use of prison resources and infrastructure to be optimised.

To address these issues, the ERA recommends that every prison in the public system be subject to Service Level Agreements that are similar to the terms and conditions of commercial contracts.

A Service Level Agreement would set out:

- *Expectations* – the manner in which both parties to the Agreement will behave and interact with each other, how each party will respond to unexpected events and the specifications of the prison.
- *Financial agreement* – the level of funding available to the Superintendent for operating the prison and arrangements for adjusting funding when circumstances change.
- *Performance framework* – the service standards required from the prison and the performance monitoring framework applied to the prison. Service standards set out the minimum standards that an organisation must meet in delivering its operations.

Service Level Agreements must have particular features to ensure that they are effective. Otherwise, Service Level Agreements will end up being another document, with good intentions, that is largely ignored.

The ERA considers that Service Level Agreements must:

- *Be based upon robust planning* – the Department needs to be clear about what needs to be delivered and what the role of each prison is within the broader prison system. The Department must engage in comprehensive forward planning and resource allocation to ensure that the combined objectives of individual prisons deliver the overall objectives of the prison system as a whole.
- *Be sufficiently flexible to cope with changing circumstances* – no matter how sound the planning of the Department, circumstances will change that will affect the size and demographics of the prison population. Service Level Agreements should establish clear, good-faith processes for adjusting funding levels for prisons when circumstances change.
- *Realistic and achievable* – Service Level Agreements must be informed by robust cost information to ensure that Superintendents are capable of delivering the expected services with the funding they have been allocated. The Department does not have robust information on how much it currently costs individual prisons to deliver specific prison services or the efficient cost of delivering those services. Developing this understanding is a foundation step in ensuring that Service Level Agreements are realistic and achievable.
- *Hold Superintendents accountable for aspects of prison operations they can influence* – Currently, Superintendents are not accountable for a range of activities that are undertaken within the prison, such as health and education services. These are managed centrally by the Department. The consequence is that Superintendents have weaker incentives to ensure these services are delivered efficiently. In part, this can be addressed by assessing the performance of Superintendents against benchmarks that measure aspects of these services that Superintendents can influence.
- *Include appropriate incentives and consequences* – It is important to establish clear incentives for good performance and there are ways to encourage high standards of performance in public prisons. This can include: fixed term contracts for Superintendents; allowing prisons to retain a portion of funding generated by industries; and publishing information on the performance of prisons.

## Performance benchmarks

The Terms of Reference for this Inquiry require the ERA to develop and calculate a set of benchmarks for prisons. It is intended that the Department would use the benchmarks to assess and compare the performance of individual prisons in Western Australia and identify areas for improvement.

In identifying a set of benchmarks, the ERA has considered the areas of prison performance that should be measured, the characteristics of good benchmarks and the benchmarks currently used in Western Australia and other jurisdictions (nationally and internationally).

The ERA considers that there are four areas of prison performance that should be measured.

- *Safety and security* – Prison operators are effective in preventing escapes that can pose a threat to community safety, and prison staff and prisoners are safe from harm.
- *Rehabilitation* – Prison operators make a positive contribution to the rehabilitation of prisoners in their care to decrease the likelihood that they reoffend upon release. Effective rehabilitation of prisoners leads to improved community safety, and

savings for the Government in providing prison and other public services (such as law and order, health and welfare).

- *Quality of life for prisoners* – Prison operators treat prisoners humanely and decently, reflecting that this leads to better outcomes in prisoner rehabilitation and safety and security, and recognising that prisoners are held against their will.
- *Prison management* – Prison operators deliver prison services as efficiently as possible to ensure that public funds are not wasted.

These areas of prison performance are consistent with the mission of the Department, which focusses on Security, Safety of Staff, Safety of Prisoners and Rehabilitation.

The ERA has identified a set of benchmarks for each of the four categories that meet the following principles of good benchmarking.

- The prison operator must be able to influence the metric used.
- It must be possible to accurately and reliably measure the benchmark.
- The metric must not encourage perverse behaviour.

The ERA has also identified some benchmarks for rehabilitation the Department should aspire to measure in time. These benchmarks relate to the physical and mental health of prisoners, the literacy and numeracy of prisoners, and prisoner parenting and family development. These benchmarks cannot currently be applied because the supporting information is not collected.

The ERA considers that it is not possible to *directly* compare the performance of different prisons because of fundamental differences in their characteristics and the role that they play in the prison system. However, it is possible to provide a *high-level* comparison by giving prisons a weighted grade or score for their performance. This approach is taken in other jurisdictions, most notably in New Zealand and the United Kingdom.

The ERA has also proposed that some benchmarks be developed to apply across the prison system, reflecting that some important outcomes can only be influenced by the Department, not individual prisons. Specifically, the ERA has proposed benchmarks to measure prison utilisation rates and rehabilitation outcomes across the prison system, in addition to the performance indicators that the Department currently reports on.

It is difficult for the public to assess changes in prison utilisation rates over time because the Department has used three different measures of prison capacity. In preparing the Final Report, the ERA may give further consideration to the development of a new capacity measure that factors in the ability of a prison to deliver services to prisoners and that does not include accommodation used for special purposes. The Department should ensure that, if it changes the method for measuring prison utilisation rates, it also continues to publish data using the former method, to enable trends to be assessed over time.

Rehabilitation is a key objective of the prison system. It is important that rehabilitation outcomes are measured across the prison system, reflecting that the Department has substantial influence through the design and delivery of rehabilitation programs and its role in ensuring prisoners reintegrate back into the community by contracting not-for-profit organisations to deliver post-release services.

In this Draft Report, the ERA has made suggestions for how targets could be set across prisons for each benchmark, but has not calculated the benchmarks or set targets. The ERA will make more detailed recommendations in the Final Report on how to measure benchmarks and set targets, after receiving feedback on the benchmarks from stakeholders.

## Effective planning, processes, and use of information

In order to perform well, the Western Australian prison system must be supported by good planning, processes, and use of information. These practices underpin sound evidence-based decision-making. They also determine the capacity of the Department to measure outcomes, and to be transparent about, and accountable for those outcomes.

However, the Department faces a number of longstanding issues with its planning and processes, and in the way in which it collects and uses information to make good decisions. These issues compromise the ability of the Department to perform efficiently and meet its objectives, both now and in the future.

- *Infrastructure planning* – Prison infrastructure is a substantial cost component of the prison system.<sup>4</sup> Well-defined plans and processes for infrastructure are necessary to ensure that money is well-spent and provides the best outcomes for the State. The ERA recommends that the Department: better forecast the prison population by using a population projection model built by the Department of Treasury in tandem with its present model; establish a long-term plan for prison infrastructure; and better prioritise infrastructure expenditure.
- *Planning and evaluating program delivery* – The Department is responsible for delivering a range of programs to prisoners. The ERA has identified opportunities for the Department to: better assess and evaluate the program needs of individual prisoners; and better assess, at a system wide level, how effective programs have been at addressing the needs of prisoners collectively.
- *Administrative information and financial management* – Inadequacies in the Department's management of expenditure and administrative systems reduces the availability of funds that could be used to improve the performance and efficiency of the prison system.
- *Information sharing and transparency* – Appropriate information sharing processes and policies can support the performance and transparency of the prison system. The ERA has identified two areas where there are opportunities for the prison system to benefit from better information sharing. These are the way in which the Department shares information with external service providers (particularly providers of post-release services), and the extent to which the Department makes non-personally identifiable data about its operations available to the broader public.

## Introducing greater competition to the prison system

The ERA considers that the overall performance of the prison system can be enhanced through greater competition for the right to manage prisons and deliver prison services. Greater competition will provide the Department with more choice in the number and type of providers that are able to deliver the services that best meet Western Australia's needs.

Greater competition in the delivery of services will encourage better overall performance of the prison system through a wider choice, better quality service offerings, higher levels of innovation and potentially lower cost.

Some limited competition currently exists for the right to manage prisons and deliver prison services. However, while contracting out the management of individual private prisons has introduced some competition, it does not create competitive pressure in the broader system.

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<sup>4</sup> For detail on prison infrastructure expenditure in Western Australia, see Department of Corrective Services, *Annual Report 2013-2014*, Perth, Government of Western Australia, 2013, p.113.



To be clear, by “competition”, the ERA does not mean “privatisation”. The ERA expects that prison management and prison services will continue to be delivered by a mix of public, private and not-for-profit service providers. It would be a decision for the Department, on a case-by-case basis, to determine which service provider is best able to deliver the services being sought.

The ERA has identified several options for extending competition in the Western Australian prison system.

- *Applying greater competitive tension to in-house service delivery* – Under this approach, the Department would have a greater focus on comparing the performance of individual prisons using Service Level Agreements and benchmarking. These comparisons, combined with the potential of not renewing the fixed term contracts of Superintendents, would increase competitive tension in the public system. However, competition would remain limited under this approach, because it does not introduce a wider range of providers to the market.
- *Direct procurement* – This approach involves the Department entering into a contract with a non-public provider to operate a prison or services within a prison. This would generally be achieved through a tender process that ideally involves multiple potential service providers. However, this does not require Superintendents of public prisons to adjust their approach to service delivery because competition is limited only to the prisons or services that are subject to tenders, in which the public sector may not participate.
- *Commissioning* – Under this approach, a commissioning division within the Department determines the outcomes that it wants from a specific prison or prison service and invites public, private and not-for-profit providers (or any combination of these groups) to tender for the right to provide these services. Under a commissioning approach, the public sector providers compile their own tender documents and compete directly with other providers.

The ERA considers commissioning to be the best approach because it:

- Creates the strongest competitive tension by increasing the choice of service providers available to the Department. This is achieved by removing the barriers to competition that prevent public prisons and alternative service providers (private and not-for-profit) from directly competing with each other.
- Requires Superintendents to take a more commercial approach to service delivery, generating system-wide improvements.

The ERA suggested that a commissioning approach be adopted for the prison system in its March 2015 Discussion Paper. Feedback from stakeholders was mixed. Some expressed concern that the ERA had arrived at a conclusion without sufficient analysis and understanding of the problems.

Others were supportive of the proposed approach, while others still were supportive in-principle, but were concerned that the structural reforms proposed by the ERA to address probity issues may be too cumbersome. (A commissioning approach may create real or perceived conflicts of interest because government agencies would have the role of both a procurer of services and a competitor to deliver these services.)

The ERA has sought to address the concerns of the latter group of stakeholders by reconsidering the structural reforms required to support a commissioning approach. The ERA considers that a high degree of probity can be achieved without structural separation of the Department into two entities. However, a ring-fence would need to be established between the commissioning and service delivery functions within the Department.

The decisions of the commissioning division would need to be overseen by a newly-established independent probity auditor. The probity auditor would participate as an independent observer of tender processes and publish a post-tender probity review assessing the fairness of the process. The review could include recommended modifications to processes or Departmental structure for future tender processes.

# 1. Introduction

## 1.1. Terms of Reference

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

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

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

In conducting this Inquiry, the ERA will:

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

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

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

## 1.2. Structure of this Draft Report

This Draft Report is structured as follows:

- *Chapter 2 – Overview and scope of the Inquiry:* A high-level description of interactions between the prison system and the broader justice and human services systems and an explanation of how the ERA has addressed the terms of reference for this Inquiry.



- *Chapter 3 – The prison system in Western Australia:* A description of the prison system, including the office bearers and organisations with key roles in the prison system, the prison facilities operating in Western Australia, operating revenues and expenditures of the prison system and the demographics of prisoners.
- *Chapter 4 – Assessment of the prison system:* A description of the key governance issues in the prison system and their effects.
- *Chapter 5 – Consistent standards across the prison system:* A discussion of the role of Service Level Agreements in incentivising better performance amongst public prisons and the reforms required to ensure that Service Level Agreements are effective.
- *Chapter 6 – Performance benchmarks:* A discussion of the aspects of prison performance that should be measured, a recommended set of benchmarks, and proposals for overcoming some of the complexities of comparing the performance of different prisons.
- *Chapter 7 – Effective planning, processes, and use of information:* An assessment of the key information management systems and processes of the Department and the reforms required to support better planning and decision-making.
- *Chapter 8 – Introducing greater competition to the prison system:* A discussion of the role of competition in incentivising better performance in the prison system and how it could be implemented in Western Australia.

### 1.3. How to make a submission

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

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

Submissions can be sent to:

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

The deadline for submissions 4:00pm (WST) on 21 August 2015.

### 1.4. Next steps

After reviewing the responses received to this Draft Report, the ERA will prepare a final report, which will be presented to the Treasurer by 8 October 2015. The Treasurer will have 28 days to table the Final Report in Parliament.

## 2. Overview and scope of the Inquiry

### 2.1. Introduction

The Terms of Reference for this Inquiry require the ERA to identify options to improve the efficiency and performance of the Western Australian prison system.

A challenge in conducting this Inquiry is that many of the drivers and decisions that affect the cost and performance of the prison system involve parties outside the prison system, and are beyond the Terms of Reference of this Inquiry.

In particular, the prison system is affected by decisions made by the broader justice and human services systems. These include, for example, decisions on justice policy, policing and sentencing, and decisions on the delivery of human services (including health and mental health, education, child protection and disability services). Combined, these decisions influence the size of the prison population, the type of prisoner in the system, and the complexity of prisoner needs.

In turn, the performance of the prison system affects the costs and performance of the justice and human services systems. Prisons have a role in ensuring prisoners are capable of functioning in the community upon release. Effective rehabilitation of prisoners will mean that they require less intensive assistance and management in the community and are less likely to come back into contact with the justice system.

Prisons that achieve good rehabilitation outcomes may alleviate broader costs to Government and taxpayers. The costs associated with preventing and responding to crime include the costs of maintaining the remaining areas of the criminal justice system (police, prosecution and courts) and the lost contribution to the economy of individuals due to their involvement in crime. The Australian Institute of Criminology estimated the cost of crime<sup>5</sup> in Australia totalled \$47.6 billion in 2011.<sup>6</sup>

Stakeholders have told the ERA that it is important to consider the interactions between the prison system and the justice and human services systems in conducting this Inquiry. The ERA has sought to do this by thinking about the broad costs to society of the prison system, rather than just the narrow costs of delivering the prison system. In particular, in its proposed approach the ERA has recognised the importance of prisons that focus on rehabilitation. There may be a trade-off between cost and performance, but in the long term, a more sophisticated approach to managing offenders is likely to represent the best value for money to the Government (and hence taxpayers).

Further than this, it is beyond the scope of this Inquiry to address of the external factors that affect the prison system (such as the high rate of indigenous incarceration and growth in the prison population).

Instead, the role of this Inquiry has been to conduct an independent examination of the prison system and to make some high-level, direction-setting recommendations. A particular focus of the Inquiry is to improve the efficiency and performance of the Western Australian prison system by recommending a robust framework to ensure that: the prison system is held to a high standard of performance; information is made publicly available so that the performance of the prison system can be assessed; and there are appropriate accountabilities if standards are not met.

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<sup>5</sup> Excluding the cost of prisons and community corrections.

<sup>6</sup> Australian Institute of Criminology, *Counting the costs of crime in Australia: A 2011 estimate*, report prepared by R. Smith, P. Jorna, J. Sweeney and G. Fuller, Canberra, Government of Australia, 2014, p. xiii.

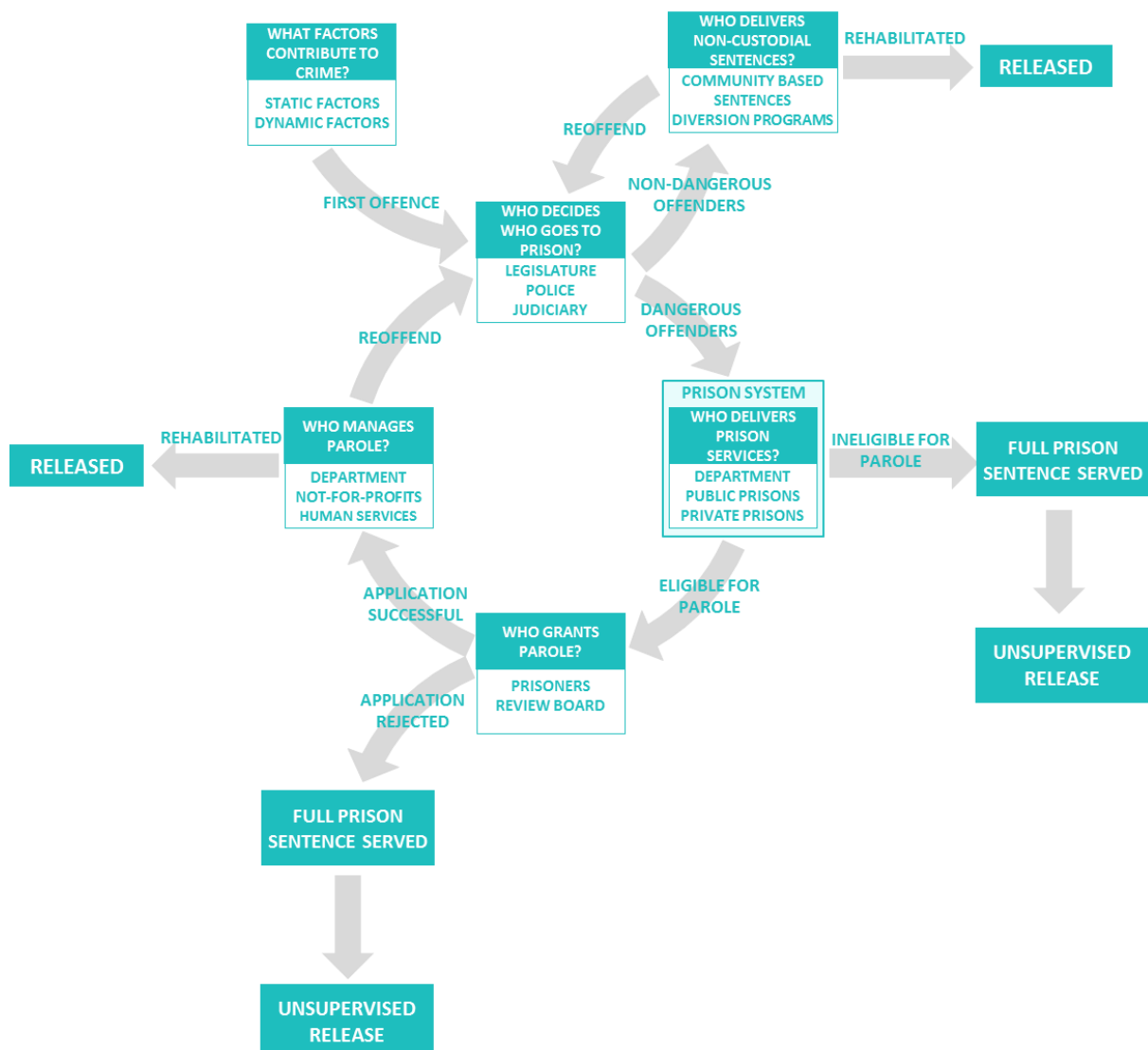
The remainder of this chapter is structured as follows:

- a high-level overview of the life-cycle of a prisoner through the human services and justice system, with a focus on the key decision points and decisions-makers that affect the size and composition of the prison population; and
- a discussion of some of the key interactions between the prison system and the human services and justice systems that affect the performance and costs of each.

## 2.2. Key decision points and decision makers affecting the prison system

Figure 1 illustrates the potential pathways of a notional offender through the justice and prison systems and the key drivers and decision points that influence that journey.

**Figure 1 Key decision points and decision makers affecting the prison system**



### 2.2.1. What factors contribute to crime?

An offender's journey often commences well before their first offence is ever committed.

The likelihood of an individual committing crime can be partially explained by criminogenic factors.<sup>7</sup> Criminogenic factors are broadly categorised as:

- Static factors, which remain unchanged over time. Neither the offender nor the justice system are able to modify these factors, as they are “historical” in nature. Examples of static criminogenic factors include age, criminal record and foetal alcohol syndrome.<sup>8</sup>
- Dynamic factors, which can change over time. Dynamic factors are also known as “criminogenic needs”. Examples of dynamic factors include employment status, substance abuse and education level. Intervention programs targeted at addressing these dynamic factors are key elements of effective rehabilitation.<sup>9</sup>

Human services (including health and mental health, education, child protection and disability services) have an important role in preventing or addressing criminogenic factors and diverting people away from the criminal justice system.

*The majority of prisoners worldwide come from economically and socially disadvantaged backgrounds. Most live in poverty, are illiterate or have limited education and will have experienced unemployment and lack of housing, which in turn may have contributed to the breaking up of their families, drug and alcohol abuse, among other destructive consequences of their socio-economic marginalization. Such circumstances and dependencies can contribute to individuals' confrontation with the criminal justice system, unless sufficient support systems are in place. These may include social welfare assistance, support for housing, employment and treatment for substance dependencies and mental healthcare needs, among others, to help people to overcome such challenges and live positive, self-supporting lives.<sup>10</sup>*

### 2.2.2. Who decides who goes to prison?

The Government and various public sector agencies make decisions that influence the size and composition of the prison population.

The Government and Parliament are responsible for setting justice policy. This includes enacting legislation that defines the crimes punishable by a custodial sentence, maximum sentences and mandatory sentencing for certain offences.

The resourcing and strategy of the Western Australia Police influences the number of people arrested and charged and therefore who may ultimately be imprisoned.

The Office of the Director of Public Prosecutions has a role in determining which cases appear before the judiciary (and thus who may be sentenced to prison) by prosecuting serious offences made against State criminal law.<sup>11</sup>

The judiciary (that is, judges and magistrates) have some discretion over sentence length. The judiciary determines whether a prisoner will be eligible for parole and the programs they are required to complete during a prison sentence. Prior to sentencing, a court may request

<sup>7</sup> E.J. Latessa and E Lowenkamp, 'What are Criminogenic Needs and Why are they Important?' *For the Record*, vol. 15, no. 5, 2005, pp. 15-16.

<sup>8</sup> A. M. Viens, J. Coggon and A. Kessel, *Criminal Law, Philosophy and Public Health Practice*, Cambridge, Cambridge University Press, 2013.

<sup>9</sup> D. A. Andrews, J. Bonta and J. s. Wormith, 'The recent past and near future of risk and/or need assessment', 2006 *Crime and Delinquency*, vol 52, no. 1, 2006, pp. 7–27.

<sup>10</sup> United Nations Office on Drugs and Crime, *Handbook on strategies to reduce overcrowding in prisons*, New York, United Nations, 2013, p. 20.

<sup>11</sup> Office of the Director of Public Prosecutions for Western Australia, 'About the ODPP', Perth, Government of Western Australia [Accessed May 2015]

a Pre-Sentence Report from the Department.<sup>12</sup> The report assists the judiciary to decide a sentence (and possibly, the programs the offender must complete in prison) that takes into account the offender's personal circumstances.

### 2.2.3. Who delivers non-custodial sentences?

The judiciary has a range of non-custodial options available to it, including community-based sentences and court diversion programs. These non-custodial sentences are generally only given to offenders who are not considered a danger to public safety.

The Department employs community corrections officers, who are responsible for ensuring that offenders meet the requirements imposed by the judiciary. An offender may access a range of human services provided by both the Department and the not-for-profit sector while on community corrections.

Non-custodial sentences come at a significantly lower cost to taxpayers than prison sentences. It costs approximately \$44 per offender per day to provide community corrections to an adult, while the cost of keeping a prisoner in custody is around \$352 per day (based on 2013-14 figures).<sup>13</sup>

### 2.2.4. Who delivers prison services?

The Department and individual prisons (both public and private) comprise the core prison system, which is the focus of this Inquiry. A more detailed overview of the Western Australian prison system is provided in Chapter 3 of this Draft Report.

The Department is responsible for designing and delivering rehabilitation programs in prisons. Prison officers have a role in encouraging prisoners to attend and complete these programs so prisoners have a better chance of being granted parole when they become eligible to apply.

Offenders deemed ineligible for parole during sentencing are released into the community unsupervised and only after having served their entire prison sentence.

### 2.2.5. Who grants parole?

The Prisoners Review Board is responsible for reviewing and subsequently, either granting or refusing parole applications. The Board does not determine who is eligible to apply for parole; this is the role of the judiciary.

The Board makes its decisions on a case-by-case basis by reviewing the prisoner's parole plan, which is a requirement of each application. The Board takes into account each prisoner's personal circumstances when making its decision. These include the efforts the prisoner has made towards rehabilitation while in prison, intended accommodation and plans for employment or training while on parole.

### 2.2.6. Who manages parole?

Former prisoners serve parole under supervision of Department staff and contractors, because parole is part of their sentence. While on parole, former prisoners have access to a range of human services as part their parole plan, including services related to

<sup>12</sup> Department of Corrective Services, *Fact Sheet: Pre-sentence Report Order*, Perth, Government of Western Australia, 2010, p. 1.

<sup>13</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7.

employment, education and training and housing. The Department has contracted with the not-for-profit sector to deliver post-release support to prisoners on parole.

## 2.3. Interactions between the prison system and the justice and human services systems

There are many complex interactions between the prison system and the broader justice and human services systems. The performance of one system affects the costs and performance of other systems, and hence overall cost to Government and taxpayers.

In the following sections, the ERA provides a high-level description of some of the key interactions between the prison system and the justice and human services systems that influence the cost and performance of these systems.

The ERA considers that it is within scope for this Inquiry to make recommendations for the prison system that will alleviate cost pressures on the justice and human services systems.

However, the ERA considers that it is out of the scope of this Inquiry to make recommendations for the justice and human services systems to alleviate cost pressures on the prison system. Nevertheless, an understanding of the effects of the justice and human services systems is useful to inform consideration of the efficiency and performance of the prison system.

### 2.3.1. Influence of the prison system on the justice and human services systems

Prisons that achieve good rehabilitation outcomes may alleviate broader social and economic costs to the Government and taxpayers. Effective rehabilitation of prisoners reduces the likelihood that they will reoffend, leading to improved community safety. Reducing reoffending can also result in cost savings in providing human services, justice services and prison services through:

- *Reduced reliance on the human services system* – Prisons have a role in teaching prisoners to be self-sufficient upon release, rather than imposing an ongoing cost on the human services system. For example:
  - Prisons can have a role in addressing the alcohol and other drug (AOD) issues of prisoners through rehabilitation programs. It is estimated that around 62 per cent of prisoners in Western Australia have AOD issues.<sup>14</sup> Addressing these issues may relieve cost pressures on human services, including health, mental health and child protection. For example, the Department of Child Protection estimates that around 57 per cent of clients have AOD problems.<sup>15</sup>
  - Prisons can increase the chance of former prisoners securing and maintaining employment, by providing education (particularly literacy and numeracy), training (including trade skills) and by instilling work ethics and attitudes (such as responsibility and reliability). This can reduce costs to

<sup>14</sup> Parliamentary Education and Health Standing Committee, *Alcohol: Reducing the Harm and Curbing the Culture of Excess*, Perth, Parliament of Western Australia, 2011, p. 235.

<sup>15</sup> Parliamentary Education and Health Standing Committee, *Inquiry into the Adequacy and Appropriateness of Prevention and Treatment Services for Alcohol and Illicit Drug Problems in Western Australia*, Transcript of Evidence by Mr Terry Murphy (Director General, Department of Child Protection), Perth, Parliament of Western Australia, 18 August 2010, p. 1.



society, because former prisoners that secure employment are less likely to reoffend<sup>16</sup> and will have less dependence on the welfare system.

- *Fewer interactions with the criminal justice system* – Effective rehabilitation in prison can lower the rate at which former prisoners come back into contact with the criminal justice system. There are significant costs associated with preventing and responding to crime, including the costs of police, prosecution and court services. In addition, there is the lost productivity of offenders due to their involvement in crime.
- *Lowering the overall prison population* – Currently, 39 per cent of prisoners in Western Australia return to prison within two years of release.<sup>17</sup> The cost of the prison system can be significantly reduced by lowering the rate at which prisoners return.

The ERA has sought to recognise the importance of prisons that focus on rehabilitation in its proposed approach outlined in this Draft Report. There may be a trade-off between cost and performance, but in the long term, a more sophisticated approach to managing offenders is likely to represent the best value for money to the Government (and hence taxpayers).

The priorities of the Department of Corrective Services are consistent with the ERA's proposed approach. That is, a focus on:

- the security of detainees and prisoners in correctional facilities and offenders in community based orders;
- the safety of its people;
- the safety of offenders, detainees and prisoners; and
- rehabilitation.

By effectively managing safety and security issues, prisons are able to provide an environment that allows prisoners to participate in rehabilitation, education and training with minimal disruptions.

### **2.3.2. Influence of the justice and human services systems on the prison system**

Decisions made by governments and various public sector agencies in the justice and human services systems influence the size and complexity of the task of the prison system, and hence its costs and performance.

Some stakeholders have told the ERA that governments and public sector agencies often do not apply a whole-of-government approach (that is, they do not consider the implications of decisions on broader costs to government and society), which may have significant consequences for the prison system.<sup>18</sup> These consequences may include significant growth

<sup>16</sup> Colorado Division of Criminal Justice and Colorado Department of Public Safety, *What Works: Effective Recidivism Reduction and Risk-Focused Prevention Programs: A Compendium of Evidence-Based Options for Preventing New and Persistent Criminal Behaviour*, report prepared by RKC Group (R. Pryzbyski), Colorado, Colorado State Government, 2008, p. 29.

<sup>17</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 9.

<sup>18</sup> This reflects comments made by some stakeholders that attended the Public Roundtable held by the ERA on 21 April 2015. Chatham House rules were applied at this roundtable.

in the prison population<sup>19</sup> and over-representation of Aboriginal people in the prison system.<sup>20</sup>

The State Government and Parliament (by enacting legislation) are responsible for justice policy decisions, including determining what crime is punishable by a custodial sentence and maximum sentences for people convicted. These decisions affect the prison system by influencing who is imprisoned and for how long. Justice policy decisions may also have a disproportionate effect on specific demographic groups, including women and Aboriginal Australians.

As a general observation, the policy decisions of governments (and opposition parties) may be a response to expectations of the electorate that governments will ensure a high degree of community safety. This expectation may result in governments and opposition parties advocating justice policies that are “tough on crime” (that is, policies that apply a strong punitive approach in order to discourage crime).

However, justice policies that are “tough on crime” may not be effective on crime.<sup>21</sup> That is, the policies may lead to an increase in the prison population (with the consequent increased cost), without delivering benefits in the form of deterrence to criminal behaviour<sup>22,23</sup> or preventing people from reoffending.<sup>24</sup>

The Prisoners Review Board has a degree of discretion in interpreting prisoner release considerations outlined in legislation. This can affect the rate at which prisoners are granted parole, and hence the overall population and cost of the prison system. Currently, only a relatively small proportion of eligible prisoners are being released on parole, meaning that more prisoners are serving longer sentences.<sup>25</sup>

Stricter parole decisions may also increase the rate at which former prisoners return to the prison system. Less support is available to prisoners who have completed their sentence

<sup>19</sup> The Western Australian prison population grew by 32.3 per cent between 2007-08 and 2013-14, compared to general population growth of 19.5 per cent over the same period. Source: Australian Bureau of Statistics, *3101.0 - Australian Demographic Statistics, Mar 2014*, Canberra, Government of Australia, 2014, Table 4. Calculated for the period December 2007 to December 2013.

<sup>20</sup> Aboriginal people account for 40 per cent of the prison population in Western Australia,<sup>20</sup> while only comprising 3.8 per cent of the total Western Australian population. Source: ERA analysis and Australian Bureau of Statistics, *3238.0.55.001 - Estimates of Aboriginal and Torres Strait Islander Australians, June 2011*, Canberra, Government of Australia, 2014.

<sup>21</sup> The Australia Institute, *Tough on crime: The rhetoric and reality of property crime and feeling safe in Australia*, report prepared by D. Barker, Canberra, The Australia Institute, 2013.

<sup>22</sup> D. Indermaur, “‘Tough on crime’ a waste of time – let’s be effective instead’, *The Conversation*, 31 March 2011, <http://theconversation.com/tough-on-crime-a-waste-of-time-lets-be-effective-instead-265>, (accessed 30 June 2015).

<sup>23</sup> The ERA is aware of studies that suggest imprisonment is an expensive and ineffective response to crime. Research shows that imprisonment does not effectively deter criminal behaviour. Source: Sentencing Advisory Council, *Sentencing Matters: Does Imprisonment Deter? A Review of the Evidence*, Melbourne, Government of Victoria, 2011, p. 14.

<sup>24</sup> Some studies suggest that imprisonment is not the most effective solution for preventing people from reoffending (that is, following release from prison). The Victorian Sentencing Advisory Council found that people who have been imprisoned are the most likely to offend and reoffend soonest. In contrast, people who have participated in criminal justice diversionary programs are the least likely to reoffend and will refrain from offending the longest. Source: Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates’ Court of Victoria*, Melbourne, Government of Victoria, 2013, p.14.

<sup>25</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: *Prisoners Review Board of Western Australia Annual Reports 2007-08 to 2013-14*.



(that is, not released on parole), because prisoners who have served their entire sentences in prison are released unsupervised and without conditions. Some studies show that prisoners released on parole, and under supervision are less likely to offend.<sup>26</sup> A higher proportion of prisoners released into the community may be conducive to high rates of rehabilitation and ultimately lowering the cost of the prison system.

Government has a positive role in diverting people away from the criminal justice and prison systems, using targeted interventions by human service agencies.<sup>27</sup> These interventions are generally aimed at addressing criminogenic factors. Human services agencies also have a role in assisting prisoners to reintegrate into the community upon release.<sup>28</sup>

However, challenges in the delivery of human services may result in people entering or returning to the criminal justice and prison systems at higher rates, and potentially imposing greater costs on society. These challenges may include: inadequate funding for services<sup>29</sup>; poorly targeted services<sup>30</sup>; complexities associated with Australia's federal system of government<sup>31</sup>; and delivering services to Western Australia's geographically dispersed population<sup>32</sup>.

The case study of the Djarindjin Women's Safe House demonstrates how challenges associated with Australia's federal system of government and Western Australia's large geographical area may affect the costs to the State Government of delivering prison and criminal justice services.

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<sup>26</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. 6.

<sup>27</sup> For example, all new parents in Western Australia receive a home visit from a community child health nurse. The community health nurse assesses the health of the newborn, the environment in which they are being brought up, and how well its parents are coping. This provides an opportunity for early intervention and assistance should it be required. Source: Department of Health, *Welcome to your new baby*, Perth, Government of Western Australia, 2013, p. 3.

<sup>28</sup> For example, access to secure housing is a key factor to helping to ensure that prisoners do not reoffend. The Department of Housing is responsible for providing some public housing in Western Australia.

<sup>29</sup> For example, there is a shortage of secure mental health beds outside of the prison system capable of housing prisoners with acute mental health conditions. Prisoners that cannot be accommodated are returned to the prison system. The prison environment may exacerbate unresolved problems.

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>30</sup> Funding for service delivery may be focussed on one issue to the exclusion of other issues. For example, concerns have been expressed that child neglect and emotional abuse cases are largely ignored, despite accounting for two-thirds of child protection reports. This may result in higher rates of imprisonment as abused children are nine times more likely to conduct criminal activity as adults. Source: J. Gold, M.W. Sullivan and M. Lewis, 'The relation between abuse and violent delinquency: The conversion of shame to blame in juvenile offenders', *Child abuse & neglect*, vol. 35, no. 7, 2011, pp. 459-467.

<sup>31</sup> Cuts to programs by one level of government (for example, the Federal Government) may increase demand for services provided by another level of government (for example, the State Government).

<sup>32</sup> Western Australia's population is spread over a large geographical area. Delivery services to small and remote communities is expensive and challenging. This may particularly disadvantage Aboriginal people who are more likely to live in remote communities and are more likely to be reliant on government services. The ABS estimates that 43 per cent of the Aboriginal Western Australians live in remote or very remote areas, 23 per cent in regional centres and the remaining 34 per cent in the metropolitan area.

Source: Australian Bureau of Statistics, *4713.0 – Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006*, Canberra, Government of Australia, 2010, Table 2.4.

### Box 1 - Djarindjin Women's Safe House

In the 2015-16 Budget, the Federal Government decided to withdraw funding for the Djarindjin Women's Safe House. This is likely to result in the closure of the facility at the end of the 2014-15 financial year.<sup>33</sup>

The Safe House is a domestic violence shelter servicing the women of 50 Aboriginal communities in Western Australia's far north. The nearest domestic violence shelter is 200 kilometres away in Broome. Many women are unable to make the two-and-a-half hour journey to the facility in Broome, because they do not own cars.

Ongoing cycles of family violence and the lack of a place of refuge will increase the risk of domestic abuse of women and children. The decision by the Federal Government to withdraw support from the shelter may also have implications for the costs imposed on the justice and prison system, which is funded by the State Government.

Evidence shows that exposure to domestic violence during childhood can perpetuate the cycle of crime. Children from violent homes may be more likely to display attitudes and behaviours that reflect their childhood experiences of witnessing domestic violence.<sup>34</sup> Intervention aimed at breaking the intergenerational cycle is targeted at influencing a child's perception of what constitutes acceptable behaviour and attitudes towards women.

The potential increase in a child's exposure to domestic violence resulting from the closure of this facility is therefore likely to lead to greater costs to the State. Withdrawal of Federal funding puts pressure on State Government services (for example, police and health services) to fill in the "gap" left behind to protect victims of domestic violence.

<sup>33</sup> E. Parke and L. Martin, 'Funding cut for remote Aboriginal domestic violence shelter will 'put lives at risk'', *ABC News*, 18 May 2015, <http://www.abc.net.au/news/2015-05-17/funding-withdrawal-puts-indigenous-womens-lives-at-risk/6476132>, (accessed 30 June 2015).

<sup>34</sup> Australian Institute of Criminology, *Trends & Issues in Crime and Criminal Justice no 419: Children's exposure to domestic violence in Australia*, report prepared by K. Richards, Canberra, Australian Government, 2011, p. 3.

## 3. The prison system in Western Australia

### 3.1. Introduction

The purpose of this chapter is to provide an overview of the Western Australian prison system. This chapter is set out as follows:

- an overview of the components of the core prison system and organisations with a significant influence on the prison system, including the powers of key officials and the role of the entities that influence the system;
- an overview of the prisons operating in Western Australia;
- the current allocation of roles and responsibilities for delivering prison services between the Department and individual prisons;
- details of the financing arrangement of the prison system; and
- an overview of the Western Australian prison population, its demographics and rates of reoffending.

### 3.2. Overview of the Prison System

The ERA has defined the core prison system (for the purposes of conducting this Inquiry) as being comprised of:

- the “head office” of the Department of Corrective Services;
- the 14 adult prisons operated by the Department of Corrective Services; and
- the two adult prisons (Acacia Prison (**Acacia**) and Wandoo Reintegration Facility (**Wandoo**)) that are currently operated by Serco Australia (**Serco**).

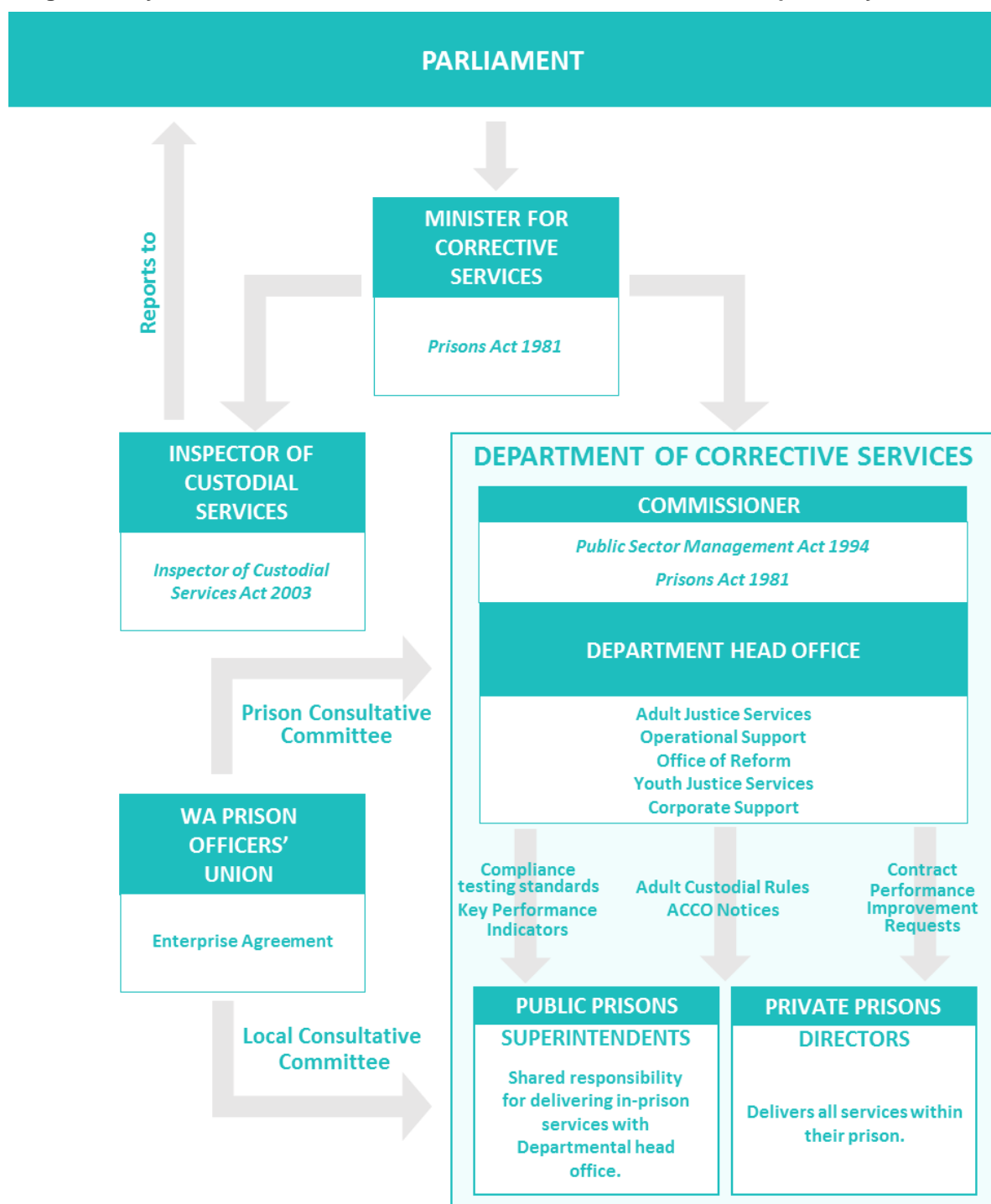
The Department retains responsibility for the entire prison system (as depicted in Figure 2 below). The Department’s responsibility for Acacia and Wandoo does not diminish because it has contracted out operations to the private sector.

Figure 2 also depicts the relationship between the prison system and other key officials and organisations that influence the operations of the prison system. These include the Minister for Corrective Services, the Inspector of Custodial Services, and the Western Australian Prison Officers’ Union.

In the remainder of this section, the ERA describes:

- the role of key officials and organisations that influence or are part of the prison system; and
- the legislation or other instruments that allow them to exert influence or authority over the prison system.

Figure 2 Key officials and entities with a role in the Western Australian prison system



### 3.2.1. Minister for Corrective Services

The Minister for Corrective Services (**the Minister**) has powers and responsibilities relating to the Department and the Inspector of Custodial Services.

The majority of the Minister's powers in relation to Western Australian prisons are set out in the *Prisons Act 1981*. The Act gives the Minister the power to:

- declare any building to be a prison, or alter the boundaries of a prison;

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

In relation to the Inspector of Custodial Services, the Minister may direct the Inspector to:

- inspect a prison, detention centre, court custody or lock-up; and
- review a custodial service in relation to a prison or detention centre or a custodial service, or an aspect of that service.

However, the Minister does not have absolute power to give direction to the Inspector. The Inspector may refuse to comply with these directions if, in the Inspector's opinion, there are exceptional circumstances for not complying.

### 3.2.2. *Inspector of Custodial Services*

The Office of the Inspector of Custodial Services is an independent statutory authority that focusses on performance standards in prisons and other custodial facilities and the rights of people in detention in Western Australia. The Inspector is given the powers to undertake these activities through the *Inspector of Custodial Services Act 2003*.

The role of the Inspector is one of independent investigation, review and reporting. The Inspector may perform reviews of prisons, detention centres, and custodial services at any time (including scheduled, short-notice, and unannounced inspections) and independently determine the content of inspection reports and reviews.

The Inspector does not have the power to implement, or force the implementation of, any recommendations made as a result of investigations or reviews. However, through reports to Parliament, the Inspector provides transparency and accountability around the activities of prisons in Western Australia.

### 3.2.3. *Department of Corrective Services*

#### 3.2.3.1. *Commissioner of Corrective Services*

The Commissioner<sup>35</sup> of Corrective Services (**the Commissioner**) holds overall responsibility for exercising the powers of the Department. The powers of the Department in relation to prisons are provided through the *Prisons Act 1981*, *Young Offenders Act 1994* and *Sentence Administration Act 2003*.<sup>36</sup> The Commissioner has a range of powers that relate to the management, control, and security of all prisons, and the welfare and safe custody of prisoners.

The Commissioner's powers include, but are not limited to:

- entering into contracts for the provision of prison services for the State;
- making rules for the management, control, and security of prisons, and appointing Superintendents to oversee individual facilities;

<sup>35</sup> The *Prisons Act 1981* uses the term 'Chief Executive Officer' to describe this position, but the Department of Corrective Services uses the term 'Commissioner'. The ERA has used 'Commissioner' in this Draft Report.

<sup>36</sup> Department of Corrective Services, 2014, Message from the Commissioner, accessed from <https://www.correctiveservices.wa.gov.au/about-us/commissioner-message.aspx>

- holding inquiries into charges of disciplinary offences against prison officers and imposing penalties for such offences; and
- ordering use of force against a prisoner, or prisoners, in the event that no other reasonable means of control are available at the prison.

Many decision-making powers relating to the day-to-day operation of prisons are delegated to the Superintendents of individual prisons.

The Commissioner, and the Department more broadly, exerts these powers through the use of instruments such as Policy Directives, Adult Custodial Rules, Assistant Commissioner Custodial Operations Notices and Compliance Testing Standards for public prisons. The Commissioner can also issue Performance Improvement Notices or Requests to private prisons, in accordance with contracts for those prisons.

### 3.2.3.2. *Head office of the Department*

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

The responsibilities of the Department are carried out by its five divisions:<sup>37</sup>

- *Adult Justice Services* – The main responsibility of Adult Justice Services is the management of adult prisoners and facilities. Adult Justice Services influences sentence management by setting the procedures, guidelines and governance framework for Individual Management Plans (IMP). The division is responsible for the design, delivery and evaluation of prison rehabilitation programs, education and vocational training, all of which form part of an IMP. The division is also involved in ensuring the appropriateness of prison industries (that is, they impart valuable and employable skill-sets), and that prisoners are able to continue training as they move through the system. It is also responsible for managing prisoners serving community sentences, and for the provision of post-release support.
- *Operational Support* – The division supports the operation of the Department through the provision of a range of services. The division manages health services delivered in prisons. The division's Emergency Support Group provide high-security support services to all prisons (such as prison escorts and responding to major incidents). The division also has an investigation function into issues such as staff misconduct and deaths in custody. The intelligence branch of this division supports Departmental decision-making through collection and analysis of raw data.
- *Office of Reform* – Established in 2013, the Office of Reform is responsible for managing the internal reform program of the Department. The program is designed to better align the Department's structure with its strategy through the provision of high-level and strategic policy advice. The Office has a role in risk management by providing the Department with expertise on risk identification and mitigation. The Office has a role in developing a proactive communication engagement strategy to inform both staff and the community of the Department's activities, key priorities, Vision, Mission and Values.
- *Corporate Support* – This division supports the Department through the provision of human resources, finance, infrastructure and contracting. The Knowledge and

<sup>37</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 9.



Information Technology Directorate provides expertise on business systems and knowledge management.

- *Youth Justice Services* – Youth Justice Services is responsible for the programs that provide support and rehabilitation to young offenders. This includes youth in detention facilities, under supervised community orders and various preventative and diversionary programs. Youth justice is outside the scope of this Inquiry.

Each of these divisions operates under the direction of either a Deputy Commissioner or an Executive Director, all of whom report directly to the Commissioner.

### 3.2.4. Western Australia Prison Officers' Union

The Western Australia Prison Officers' Union (**WAPOU**) is the trade union representing prison officers of both public and private prisons in Western Australia.

WAPOU has a *de facto* management role in relation to public prisons in Western Australia. WAPOU derives the majority of its power from the State industrial relations agreement that applies to the operation of public prisons – The Department of Corrective Services Prison Officers' Enterprise Agreement 2013 (**Enterprise Agreement**).<sup>38</sup> The Enterprise Agreement establishes that specific aspects of prison management must be agreed between the parties to the Agreement.<sup>39</sup>

For example, the Enterprise Agreement establishes that WAPOU has a role in agreeing the staffing levels of prisons.<sup>40</sup> The staffing levels of individual prisons in Western Australia reflect the outcomes of a 2010 baseline staffing review process, conducted by the Department, Superintendents and WAPOU. The outcome of the 2010 review is documented in a Memorandum of Understanding (MOU) between the Department and WAPOU.

The *de facto* management role of WAPOU is formalised under Part H of the Enterprise Agreement, which relates to change, consultation and dispute resolution for significant changes to operations affecting prison officers. Section 169 of the Enterprise Agreement provides for the establishment of:

- Local Consultative Committees (**LCC**), which are to be maintained at each prison to facilitate communication and consultation between the Superintendent and local union representatives regarding workplace issues<sup>41</sup> with a view to resolution at a local level; and
- A Prisons Consultative Committee (**PCC**), which is a Department wide committee, includes (among others) the Deputy Commissioner Adult Custodial and the WAPOU President. Representatives from a LCC may refer a matter to the PCC if genuine efforts to resolve an issue have been unsuccessful.

<sup>38</sup> WAPOU has less influence in the management of prisons operated by the private sector in Western Australia. Federal industrial relations provisions apply to the private prisons. As such, the Enterprise Agreement does not apply to privately operated prisons.

<sup>39</sup> The parties to the Enterprise Agreement are the Minister for Corrective Services and WAPOU. The Commissioner of Corrective Services is the delegate of the Minister. The Department engages employees on behalf of the Commissioner of Corrective Services and in this capacity, the Department is the employer for the purposes of the Enterprise Agreement.

<sup>40</sup> The Enterprise Agreement establishes that *agreed staffing levels* means the number of Officers agreed by the parties as required to fill all permanent positions within a prison.

<sup>41</sup> Workplace issues include workload management, working arrangements, training and development issues, Occupational Health and Safety; workplace policy and implementation; dispute management monitoring, turnover, accident rate, incidence of workers' compensation and Equal Employment Opportunity.

Section 173 of the Enterprise Agreement requires the Department to notify prison officers and their Union of changes in 'production, programme, organisation, structure or technology that are likely to have significant effects on officers'. 'Significant effects' include major changes in the composition, operation or size of the Department's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of officers to other work or locations and restructuring of jobs.<sup>42</sup>

Sections 174 to 177 of the Enterprise Agreement establish dispute resolution procedures between the Department and WAPOU. Under these provisions, a "Status Quo" may be invoked if prison officers object to an operational change that has a significant effect. When a Status Quo is invoked the working practices, procedures or conditions in place must remain until the dispute is resolved. This effectively means that the Superintendents must reach an agreement with WAPOU in order to make significant operational changes.

### 3.3. Western Australian Prisons

The Western Australian prison system comprises 16 prisons housing approximately 5,500 prisoners.<sup>43</sup> The Department owns all 16 prisons and operates 14 of them.

The remaining two prisons, Acacia<sup>44</sup> and Wandoo, are privately operated by Serco

Serco must operate both prisons in accordance with its respective contracts. Contracts are designed to ensure the security of prisons, while providing suitable prisoner programs that help to meet the Department's goals.<sup>45</sup> The Department also undertakes onsite monitoring of privately operated prisons to ensure that Serco is meeting its contractual requirements.

Despite this contractual arrangement, the Department retains responsibility for the entire prison system. The Department's responsibility for Acacia and Wandoo does not diminish because it has contracted out operation to the private sector.

The prison system is complex, with a range of prisons with different roles to cater to different types of prisoners. The different roles of individual prisons in the system reflect the different needs of prisoners and the way in which a typical prisoner serves their sentence.

Prisoners typically enter the prisons system at an assessment or remand prison, either waiting to be sentenced by the courts or to undergo a post-sentence assessment. In the metropolitan area, this occurs predominately at Hakea Prison (**Hakea**) for males and Bandyup Women's Prison (**Bandyup**) for females. After sentencing, prisoners are assessed at these prisons to determine their security classification and needs. This assessment informs the decision about where a prisoner will serve their sentence. For example, a male prisoner classified as maximum-security is likely to serve his sentence at Casuarina Prison (**Casuarina**).

Prisoners will often move prisons throughout their sentence, reflecting security classification changes or a need to attend certain programs. For example, an offender who entered the system at Casuarina as a maximum-security prisoner may subsequently transfer to a

<sup>42</sup> A change does not have a significant effect if the Enterprise Agreement makes provision for the alteration.

<sup>43</sup> This figure is correct as at 31 March 2015. Source: Department of Corrective Services, *Adult Prisoners in Custody Quick Reference Statistics*, Perth, Government of Western Australia, 2015, p. 3.

<sup>44</sup> Acacia became the first prison to be privately operated in Western Australia in 2001. Acacia was operated by Australasian Integrated Management Services from 2001 to 2006. Serco won the contract in 2006 through a re-tendering process.

<sup>45</sup> Department of Corrective Services, *Acacia Prison Contract*, Perth, Government of Western Australia.



medium-security facility (such as Acacia) and then on to a minimum-security facility (such as Wooroloo Prison Farm (**Wooroloo**)) prior to release.

The security rating of a prisoner is the strongest determinant of the prison at which a prisoner will serve a sentence. Other factors influencing this decision include gender, age, the location of family and friends, health needs and program availability<sup>46</sup> at the prisons.

Many prisons in the Perth metropolitan area house prisoners of just one security classification. The roles of metropolitan prisons are typically more clearly defined than those of regional prisons, reflecting the need for regional prisons to be more flexible (in terms of gender and security-classification) in the services they offer. The need for regional prisons to be more flexible arises from the high cost of moving prisoners, the need to attend court and the aim to keep prisoners close to their community.

Offenders between 10 and 17 years of age are separated from adult prisoners into Youth Detention Centres. The only such facility in Western Australia is the Banksia Hill Detention Centre. Banksia Hill houses male and female juvenile detainees and had an average daily population of 155 in 2013-14<sup>47</sup>. Banksia Hill has not been considered in this Inquiry as juvenile detention centres are not comparable to prisons.

Table 1 details the prisons operating in Western Australia and the role of each prison in the context of the prison system.

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<sup>46</sup> Prisoners may be located at a particular prison because a rehabilitation or education program is only available at that prison.

<sup>47</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013–14*, Perth, Government of Western Australia, 2014, p. 22.

**Table 1 Western Australian Prisons**

Prison	Operation	Total Capacity <sup>48</sup>	Prison population <sup>49</sup>	Role of prison in the prison system
<b>Remand and Assessment Prisons</b>				
Hakea Prison	Public	1,205	947	Hakea is the main remand and assessment centre for male prisoners in Western Australia. It manages metropolitan prisoners awaiting to appear in court for sentencing or those who have recently been sentenced. Hakea assesses newly sentenced prisoners to identify their needs and security classification. This informs where the prisoner serves his sentence.
Bandyup Women's Prison	Public	321	326	Bandyup is the main facility for female prisoners, housing prisoners of all security classifications. Bandyup holds women on remand, assesses newly sentenced prisoners and manages women who are serving sentences. However, some or all of Bandyup's remand responsibilities will move to a new women's facility at Hakea, which is expected to begin operations in October 2016. <sup>50</sup>
<b>Maximum and Medium Security</b>				
Casuarina Prison	Public	1,032	748	Casuarina is Western Australia's main maximum-security prison for male prisoners. Casuarina provides specialist state-wide services in housing prisoners who are extremely violent, pose a high risk of escape, require a high level of protection (convicted police officers or prison officers), prisoners who are too infirm for mainstream accommodation and those requiring a high level of supervision due to mental health crises.

<sup>48</sup> Figures from the Department of Corrective Services website. All figures are as at 23 January 2015. Accessed 24 June 2015.

<sup>49</sup> Population figures are as at 31 March 2015. Source: Department of Corrective Services, *Adult Prisoners in Custody Quick Reference Statistics*, Perth, Government of Western Australia, 2015, p. 2.

<sup>50</sup> Department of Corrective Services, *Invitation to Submit an Expression of Interest for the Management and Operation of the Women's Remand and Reintegration Facility*, Perth, Government of Western Australia, p. 22.

Prison	Operation	Total Capacity <sup>48</sup>	Prison population <sup>49</sup>	Role of prison in the prison system
Acacia Prison	Private	1,426	1,354	Acacia's population is composed almost entirely of sentenced medium-security male prisoners. Following a recent expansion, Acacia became the largest prison in Australia.
<b>Minimum security</b>				
Wooroloo Prison Farm	Public	365	311	Wooroloo is the largest minimum-security prison in the State. Wooroloo focusses on providing prisoners with skills and traineeships that can assist them into employment on release. Subject to approval, prisoners are able to work under supervision in the community. This can be in paid employment, training at local businesses and in community projects.
Karnet Prison Farm	Public	328	297	Karnet is a minimum-security facility that runs a working farm. The farm provides work to prisoners in producing food including milk, meat and eggs for the State's prisons. The focus of the Karnet is on preparing prisoners for successful re-entry into the community upon release.
Wandoo Reintegration Facility	Private	84	70	Wandoo is a minimum-security facility designed for young men, aged 18 to 24, who are nearing the end of their sentence. It is the first prison in Western Australia that caters to the unique needs of this age group. Wandoo focusses on preparing offenders for release into society.
Boronia Pre-release Centre for Women	Public	95	90	Boronia houses minimum-security female prisoners who are preparing for release. Prisoners undertake a range of rehabilitation activities, including working in the community for businesses and not-for-profit organisations.
<b>Regional Prisons</b>				
Albany Regional Prison	Public	500	232	Albany is the main maximum-security prison outside of Perth for male prisoners. It also holds some medium and minimum-security prisoners, and a significant number of prisoners serving long sentences.

Prison	Operation	Total Capacity <sup>48</sup>	Prison population <sup>49</sup>	Role of prison in the prison system
Broome Regional Prison	Public	N/A	N/A	Broome manages male and female prisoners of all security classifications. It is the remand and assessment centre for prisoners in the Kimberley region. As of 2015, it is an annex to West Kimberley Regional Prison and not a prison in its own right. Capacity and population figures are included in those for West Kimberley.
Bunbury Regional Prison	Public	384	285	Bunbury houses mainly medium and minimum-security male prisoners, but also has a short-term maximum-security capacity for people remanded in the south west. Bunbury also has a minimum-security self-care unit separate from the main prison.
Greenough Regional Prison	Public	332	293	Greenough predominately houses male and female prisoners of medium and minimum-security. It also houses maximum-security prisoners who are on remand.
Roebourne Regional Prison	Public	189	168	Roebourne houses both male and female prisoners, predominately of medium and minimum-security from the Pilbara and Kimberley. It also holds maximum-security prisoners for short periods.
Eastern Goldfields Regional Prison	Public	123	82	Eastern Goldfields is predominantly a minimum-security facility for male and female prisoners. The facility does have the capacity to house both medium and maximum-security prisoners for a short period to allow for court appearances or visits in the Goldfields. Eastern Goldfields is currently being redeveloped into a modern, 350 bed facility. The redevelopment is due for completion in late 2015. <sup>51</sup>
West Kimberley Regional Prison	Public	275	202	West Kimberley is a new facility (opened in late 2012) that houses male and female prisoners of medium and minimum-security. West Kimberley is designed and operated in accordance with a philosophy premised upon Aboriginal culture and values and houses mostly Aboriginal prisoners (typically 90 to 95 per cent of prisoners). Capacity and population figures include those of Broome, which is now an annex to this facility.

<sup>51</sup> Department of Treasury, *Eastern Goldfields Regional Prison Redevelopment Project: Project Summary*, Perth, Government of Western Australia, 2013.

Prison	Operation	Total Capacity <sup>48</sup>	Prison population <sup>49</sup>	Role of prison in the prison system
Pardelup Prison Farm	Public	85	81	Pardelup is a prison farm for minimum-security males, focussed on breeding cattle and sheep for consumption throughout the system. Pardelup's primary role is the provision of work, training and re-entry support for prisoners.

### 3.4. Role of the Department and individual prisons in delivering services

A number of services and processes are provided or conducted in prisons for prisoners. This includes health, education and training, rehabilitation programs, prison industries and employment, and post-release support.

Some decision-making responsibilities for these services are centralised within the head office of the Department. An understanding of the relative responsibilities between the Department and Superintendents is necessary for the development of performance benchmarks for prisons.

Table 2 below provides an overview of the responsibilities of the Department and those of individual prison Superintendents in delivering core services within prisons. The table is not applicable to private prisons, who are responsible for delivering all of the services provided in their prisons.

**Table 2 Relative responsibilities of head office and Superintendents for prison services**

Service area	Role of Head office	Role of Superintendents
Budgets	<p>The Adult Justice Services division is responsible for setting the budget for each prison. This is done in consultation with Superintendents.</p> <p>Adult Justice Services is given a budget appropriation for all of the services that it provides (that is, community corrections and prison services) and from this allocates a budget to each prison.</p> <p>Superintendents make bids for the amount they consider they require to operate their prison for the year. However, the total amount of these bids typically exceeds the appropriation available.</p> <p>The ERA understands that the proportion of the total prisons budget allocated to each prison is based on an estimate of the amount each prison needs and historical shares.</p>	<p>After being allocated a total budget, each line item, and actual expenditure, is the responsibility of the Superintendent.</p> <p>Around 85 per cent of a prison's budget allocation is composed of fixed costs over which Superintendents have no control. For example, the number of full-time employees at the prison is fixed in the short-term.<sup>52</sup></p> <p>The remainder of the budget is variable costs, which are within the control of the prison Superintendent. The variable components of the budget comprise approximately 15 per cent of the total budget. For example, the Superintendent can control their food budget (that is, they can determine the menu that the prisoners receive within guidelines).<sup>53</sup></p>

<sup>52</sup> In the longer-term, Superintendents can prepare a business case for consideration by the Department to adjust the number and type of employees in their prison.

<sup>53</sup> Delivering some variable costs, including food, to budget may not be possible in the event that the prison population increases markedly. That is, if a prison is budgeted to house 300 prisoners and actually houses 400 prisoners it will not be possible to stay on budget for many variable costs, such as food.

Staffing levels	<p>The staffing levels of individual prisons in Western Australia reflect the outcomes of a 2010 baseline staffing review process, conducted by the Department, Superintendents and WAPOU.</p> <p>Staffing levels may have been varied subsequently to meet changes to prison populations, infrastructure changes or changes to service delivery.</p> <p>The aim of the staffing review was to achieve consistent and equitable staffing decisions across the Western Australian prison system and the centralisation of prison officer staffing decisions.</p> <p>The outcome of the 2010 review is documented in a Memorandum of Understanding (<b>MOU</b>) between the Department and WAPOU. The MOU was negotiated under the provisions of the Enterprise Agreement.</p> <p>The MOU established the agreed state wide prison officer staffing levels required for the available accommodation units, service delivery requirements and appropriate supervision of each prison at the baseline date of 15 December 2010.</p> <p>The staffing agreement for each prison reflects the staffing levels for specific services and functions and the population of each prison using a series of state wide benchmarks as a guide.</p> <p>The parties to the MOU agreed that prison officer staffing levels are contingent upon a number of variable factors. These factors include: prison populations; changes in design or delivery of services; changes in prison demand for services; changes to infrastructure; assessed risk of the prisoner demographic; and changing financial circumstances of the Department.</p> <p>The MOU indicates that all staffing levels will be reviewed in 2013. To date Albany Regional Prison, Greenough Regional Prison and Hakea Prison do not have replacement agreements.</p>	<p>Under the <i>Prisons Act 1981</i>, the Superintendent has the overarching responsibility for the good governance, good order and security of the prison.</p> <p>Superintendents are responsible for determining the best placement of available staff and the appropriate changes to be made to routine prison functions in the event of daily staffing shortfalls within a prison because full staffing levels are not available.</p> <p>The Superintendent is required to consult the local branch of WAPOU about modifications to staff placement and routine prison functions in the event of staffing shortfalls.</p> <p>Superintendents must prepare a business case for the Department to consider if they require additional staff or wish to change the composition of their staffing (for example, to increase the number of public servants).</p> <p>However, under the Enterprise Agreement and the MOU, any changes to the workforce that have a significant effect on prison officers would need to be negotiated with WAPOU representatives.</p> <p>The ERA observes that there are some limitations on the ability of Superintendents to influence decisions that relate to individual staff in their prison.</p> <p>In particular, the outcomes of a prison officer's Performance Appraisal and Development System discussion may not be taken into account in promotion decisions.</p> <p>Superintendents may only refuse a prison officer being transferred to their prison if a documented sub-standard performance issue remains unresolved in accordance with Clause 136.10 of the Enterprise Agreement.</p>
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Service area	Role of Head office	Role of Superintendents
	<p>After 2013, staffing levels may be reviewed in all or any prison if the parties to the MOU agree that an appropriate trigger point has been reached.</p> <p>The MOU establishes that the Department will engage in constructive and genuine consultation with WAPOU in the development of an appropriate staffing review process.</p> <p>The dispute resolution process in the Enterprise Agreement may be used by either party if an agreement on variations to staffing levels cannot be reached.</p>	
Health services	<p>Health services (prison based medical centres) operate as a separate unit within a prison, controlled by head office. Health services reports to head office through the Operational Support division. Health services' budget is separate from that of the prison, and Superintendents do not have any direct control of health services staff.</p>	<p>Superintendents work in collaboration with health services in daily operations. Superintendents ensure prisoners are able to attend health appointments, are treated in accordance with medical advice and provide guards and supervision when required.</p> <p>If a Superintendent is unsatisfied with the health services in their prison they would be expected to first try to resolve the issue locally with their health services and then, if required with head office.</p>
Education and Vocational Training	<p>Education and vocational training operate as a separate unit within a prison, controlled by head office and reports through to Adult Justice Services in the Department.</p>	<p>Superintendents work in collaboration with education and vocational training units to ensure prisoner attendance and provides guards and supervision.</p>
Rehabilitation programs	<p>Rehabilitation programs are designed and delivered by head office, again through Adult Justice Services.</p> <p>The Department is also responsible for the evaluation of program effectiveness.</p>	<p>The prison's role in rehabilitation programs is to work in collaboration to ensure prisoner attendance and provide guards and supervision.</p> <p>Additionally, prison Superintendents consult with head office in planning to ensure the rehabilitation needs of their population are met.</p>

Service area	Role of Head office	Role of Superintendents
Industries and employment	<p>Head office has less involvement in the management of industries and employment, than it does for other prison services.</p> <p>Adult Justice Services ensures that the industries run in prisons are appropriate and provide potential for career opportunities on release.</p> <p>Additionally, Adult Justice Services ensures that a prisoner is able to continue training as they progress through the system. For example, a prisoner can start a carpentry apprenticeship at Casuarina (maximum-security), continue the apprenticeship at Acacia (medium) and finish at Wooroloo (minimum).</p>	<p>Superintendents are wholly responsible for the industries and employment that run in their prisons, given that the industries are approved by head office. Industries and employment come out of the prison's budget.</p> <p>If a Superintendent wants to commence another industry or area of employment, they must present a business case to the Department for assessment and approval.</p>
Sentence management and Individual Management Plans <sup>54</sup>	<p>Adult Justice Services, is responsible for setting the procedures, guidelines and governance framework for sentence management.</p>	<p>Prison Superintendents are collectively responsible for the development of IMPs for prisoners and progressing a prisoner through their sentence. Components of a prisoner's IMP will be completed at different prisons as they progress through the system. No one prison can be responsible for the whole of a prisoner's IMP. An IMP is the responsibility of all prisons that house the prisoner through their sentence.</p>
Post-release support	<p>Head office is responsible for engaging entities within the community to provide support to prisoners on release. This is often achieved through contracts with the not-for-profit sector.</p> <p>Head office is responsible for the management of those contracts and the assessment of their effectiveness.</p>	<p>Prisons have Transitional Managers on their staff that manage a prisoner's transition into the community. Transitional managers are under the direction of prison Superintendents.</p> <p>Transitional managers ensure all required paperwork is completed (applications for Centrelink, housing etc.) and facilitates prisoner contact with community service providers, such as Outcare.</p> <p>Prisons are not able to require a prisoner to engage with service providers.</p>

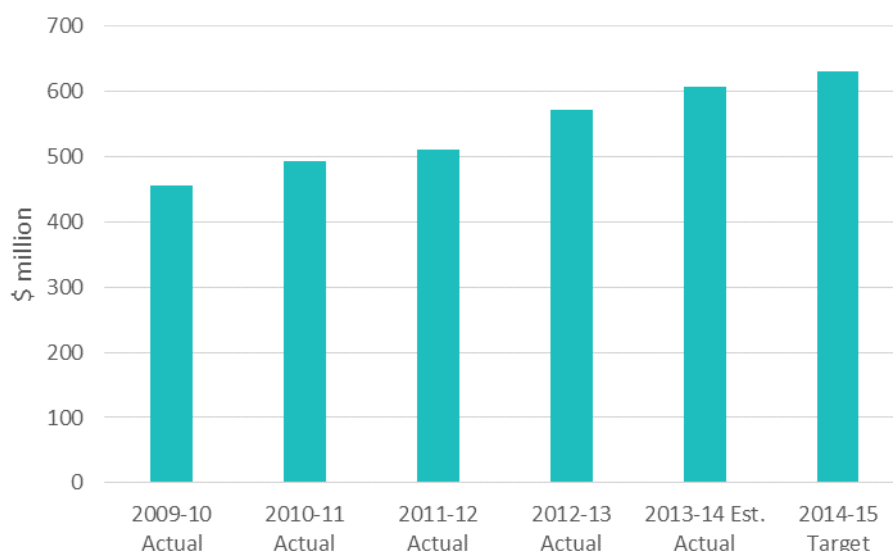
Source: Discussions with the Department of Corrective Services.

<sup>54</sup> Individual Management Plans are developed when a prisoner begins their sentence and set out the needs of the prisoner and the programs that they will complete throughout their sentence.

### 3.5. Financial Performance of the Prison System

In 2013-14, the total net cost to the State Government for providing prisons was \$608 million.<sup>55</sup> This was an increase of 6 per cent on the 2012-13 figure. Figure 3 shows the progression of this cost from 2009-10 to the 2014-15 target.

**Figure 3 Cost of keeping prisoners in custody**



Source: Department of Corrective Services

The Department sought additional funding from Government in 2013-14, citing significant cost pressures caused by increased prisoner numbers and increased insurance costs. The Government provided the Department with supplementary funding of \$3.5 million to meet the cost of increased prisoner numbers and \$13.3 million to meet increased insurance costs.<sup>56</sup>

The Department made progress in achieving the Government's fiscal savings targets, including the efficiency dividend and reduction to procurement expenditure. The Department achieved \$28.4 million in savings through rationalisation of costs and spending restrictions.<sup>57</sup>

#### 3.5.1. Costs of Operating the Prison System

The Western Australian prison system is more expensive to operate than the average of prison systems in Australian States and Territories. In 2013-14, Western Australia had an average cost per prisoner per day of \$352, compared to \$292 per prisoner per day nationally.<sup>58</sup> States and Territories.

<sup>55</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.

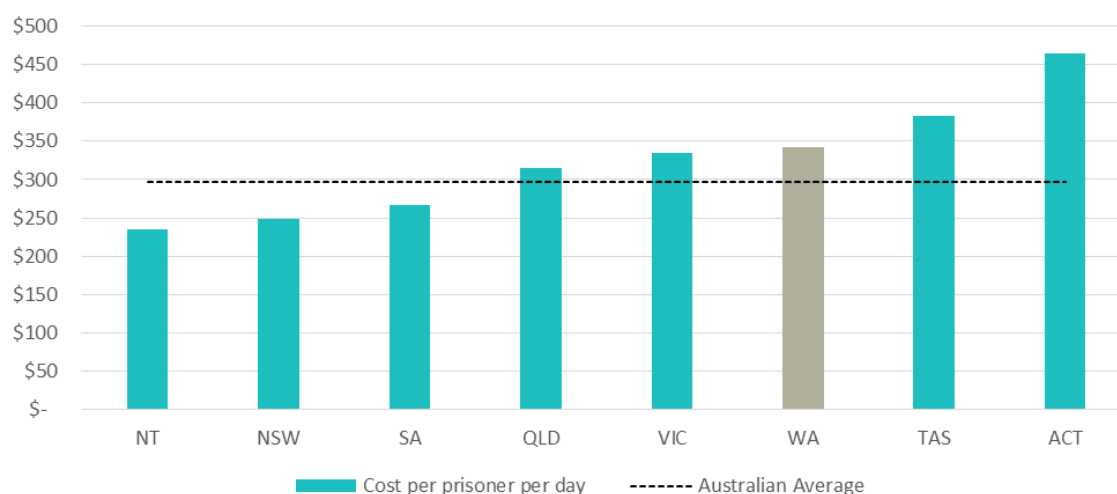
<sup>56</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 18.

<sup>57</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 18.

<sup>58</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7. This figure includes total net operating expenditure and capital costs per prisoner per day.

Figure 4 shows the cost per prisoner per day for Australian States and Territories.

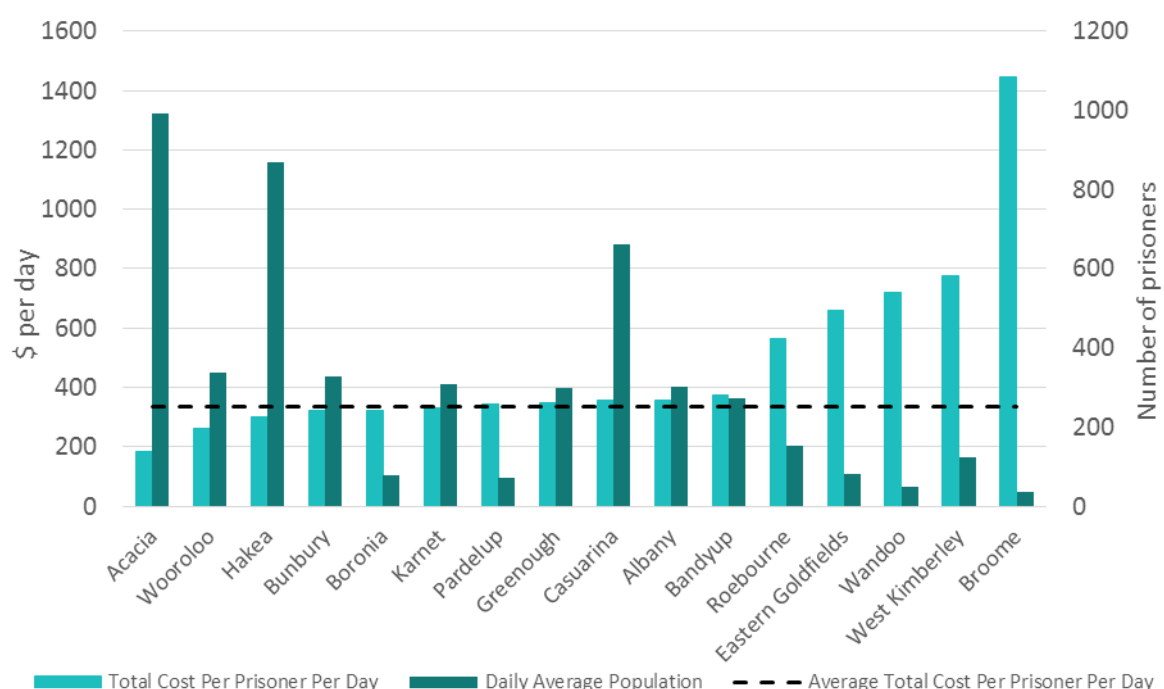
**Figure 4 Cost per prisoner per day in 2013-14**



Source: Productivity Commission, *Report on Government Services 2015*, Government of Australia, Table 8A.7.

Figure 5 shows the cost per prisoner per day for individual prisons in Western Australia. The cost of operating the 16 prisons varies greatly depending on the type of prisoners held within the prisons, the location of the prison and the number of prisoners detained. In 2013-14, the average cost per day for keeping a prisoner in custody varied significantly across prisons. The least expensive prison cost \$183 per prisoner per day, while the most expensive was nearly eight times that amount at \$1,446 per prisoner per day.

**Figure 5 Cost per day to detain a prisoner by prison 2013-14**

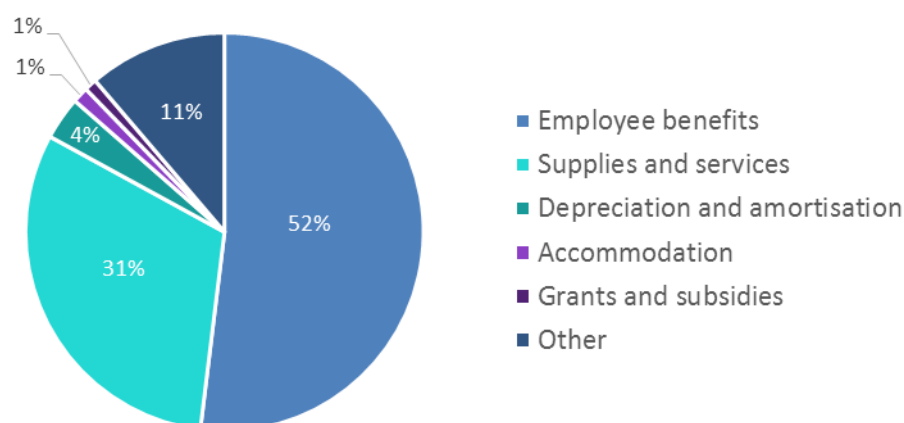


Source: Data provided by Department of Corrective Services on request.

In 2013-14, the largest cost of the Department was employee benefits, which includes wages and salaries, superannuation and leave entitlements. Supplies and services (including costs such as communications, electricity and water, goods and supplies and

services and contracts) was the second largest cost. The 'other' category accounted for 11 per cent of total costs and included insurance, staff accommodation and building repairs and maintenance. A breakdown of the total costs incurred by the Department is provided in Figure 6.

**Figure 6 Department of Corrective Services costs 2013-2014**



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

The ERA sought to present more detailed information on the components of employee benefits (that is, the proportions made up of salaries, personal leave, overtime, and workers' compensation). The ERA requested data from the Department around two months prior to the publication of this Draft Report, but the Department was unable to provide the information in time.

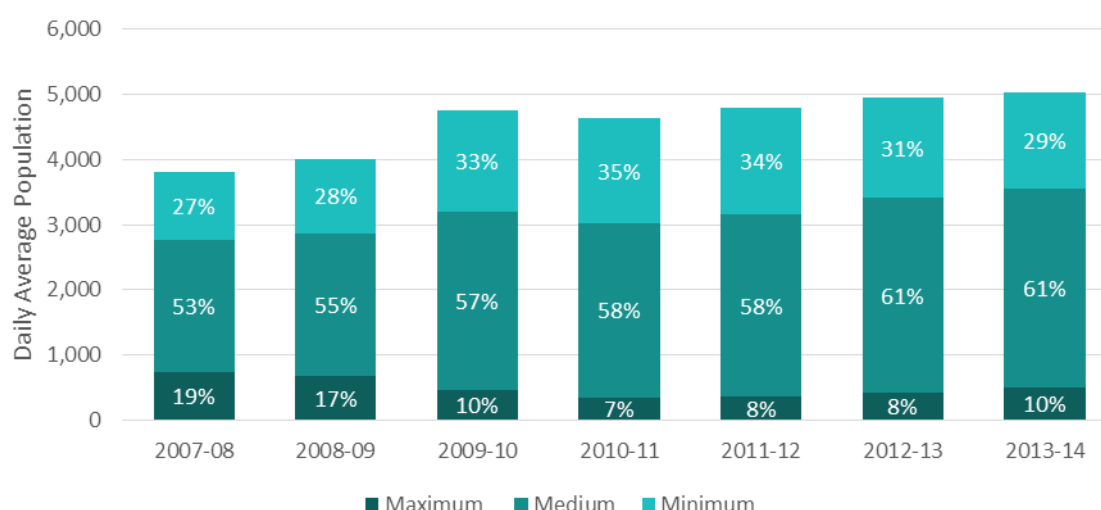
### 3.6. Prison Population

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

The average daily prison population<sup>59</sup> increased by 32.3 per cent between 2007-08 and 2013-14. This is higher than the general population growth for Western Australia of 19.5 per cent over the same period.<sup>60</sup> Figure 7 shows the increase in the prison population.

<sup>59</sup> The daily prison population is the average number of people in prison per day.

<sup>60</sup> Calculated for the period December 2007 to December 2013. Source: Australian Bureau of Statistics, 3101.0 - *Australian Demographic Statistics*, Dec 2014, Canberra, Government of Australia, 2014, Table 4.

**Figure 7 Daily average prison population**

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

Figure 7 also shows the prison population broken down into security classifications. There was a marked increase in prisoners in 2009-10. This year saw material changes in the number of prisoners in each security classification. In 2009-10, the number of maximum-security prisoners fell, while the numbers of medium and minimum-security prisoners increased. Since 2009-10, the composition of the daily prison population has been reasonably consistent with a slight increase in medium security prisoners.

The Office of the Inspector of Custodial Services considers that there is poor alignment between the security rating of prisoners and the available accommodation.<sup>61</sup> For example, there are over 2,500 maximum-security beds for fewer than 1,000 prisoners, while there is an under provision of beds for medium and minimum-security prisoners.<sup>62</sup>

### 3.6.1. Demographics of prisoners

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

In Western Australia in 2013-14, 91 per cent of prisoners were male and 9 per cent were female.<sup>63</sup> The incarceration rate for males (477.6 per 100,000) and females (47.9 per 100,000) is higher than the average incarceration rate for males (347.4 per 100,000) and females (28.1 per 100,000) across Australia.<sup>64</sup>

Furthermore, there is a higher level of indigenous imprisonment in Western Australia compared to Australia as a whole. In 2014, Aboriginal prisoners accounted for 40 per cent of the prison population in Western Australia, compared to a national average of 27 per

<sup>61</sup> The Inspector of Custodial Services, *2013-14 Annual Report*, Perth, Government of Western Australia, 2014, p. 11.

<sup>62</sup> The Inspector of Custodial Services, *2013-14 Annual Report*, Perth, Government of Western Australia, 2014, p. 11.

<sup>63</sup> ERA analysis and Department of Corrective Services, *Department of Corrective Services Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 20.

<sup>64</sup> Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia 2014*, Canberra, Government of Australia, 2014, Table 16.

cent.<sup>65</sup> Aboriginal people account for around 3.8 per cent of the total Western Australian population and around 3 per cent of the national population.<sup>66</sup> The only other state or territory with a higher representation of indigenous prisoners is the Northern Territory.

The majority of adult prisoners in Western Australia are aged between 20 and 39; the average age of a prisoner is 35.<sup>67</sup> The distribution of prisoners' ages is provided in Figure 8. Health and educational services in prisons in particular are affected by the ages of prisoners. For instance, older prisoners generally require higher levels of health care services than younger prisoners.

**Figure 8 Age distribution of Western Australian prisoners and general population, 2014**



Source: ERA analysis and Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia, 2014*, Canberra, Government of Australia, 2014, Table 20 and Australian Bureau of Statistics, 3101.0 - *Australian Demographic Statistics, Dec 2014*, Canberra, Government of Australia, 2014, Table 55.

### 3.6.2. Reoffending rates

Rehabilitation of prisoners is a primary objective of the prison system. It is desirable from a social justice perspective. It is also important from a financial perspective. When a prisoner is not rehabilitated and returns to prison, it costs up to \$352 per day. The ERA estimates that the prison system as a whole may be spending as much as \$1 million per day on prisoners who have previously served prison sentences and have returned to the system.<sup>68</sup>

<sup>65</sup> Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia 2014*, Canberra, Government of Australia, 2014, Table 14.

<sup>66</sup> ERA analysis and Australian Bureau of Statistics, 3238.0 - *Estimates of Aboriginal and Torres Strait Islander Australians, June 2011*, Canberra, Government of Australia, 2014.

<sup>67</sup> ERA analysis and Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia, 2014*, Canberra, Government of Australia, 2014, Table 20.

<sup>68</sup> In 2013-14, on average, 3,220 prisoners had served a prior prison sentence. With a cost per prisoner per day of \$352, this equates to a daily cost of \$1,133,440. This figure is a reflection of total cost. While the ERA acknowledges that a figure based on marginal cost would be more accurate, it has been unable to calculate this cost because the Department has been unable to provide the requisite data prior to the publication of this Draft Report.

Source: Australian Bureau of Statistics, 4517.0 - *Prisoners in Australia 2014*, Canberra, Government of Australia, 2014, Table 27.



The rehabilitation of prisoners is generally measured in rates of recidivism.<sup>69</sup> The Department 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>70</sup> Thirty nine per cent of prisoners who are released return to prison within two years.<sup>71</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>72</sup> In total, 61 per cent of the people in prison in Western Australia in 2014 had been in prison previously.<sup>73</sup>

**Figure 9 Recidivism rates by prisoner release year 2008-09 to 2012-13**



Source: Productivity Commission, *Report on Government Services 2014*.

Figure 9 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. This in itself does not 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.

International comparisons of rates of recidivism suggest that Western Australia's performance is broadly consistent with other States and Territories, although there is potential for improvement. Jurisdictions that report on the same recidivism measure as

<sup>69</sup> 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.

<sup>70</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 6.

<sup>71</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparison to national trends*, Perth, Government of Western Australia, 2014, p. 6.

<sup>72</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>73</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia 2014*, Canberra, Government of Australia, 2014, Table 13.

Western Australia (and hence can be used as a comparison)<sup>74</sup> include New Zealand (recidivism rate of 37 per cent)<sup>75</sup>, Ireland (40 per cent)<sup>76</sup> and Norway (20 per cent).<sup>77</sup>

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

In order to decrease reoffending rates, the corrective system provides services and programs that assist prisoners to learn new skills that will help them gain employment upon release. These programs include education and vocational training through working in prison industries.<sup>78</sup>

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

Figure 10 provides the percentage of prisoners in Western Australia and Australia released from custody after serving a sentence and subsequently returning to corrective services (both custodial and community corrections) within two years of their release.

**Figure 10 Percentage of prisoners returning to corrective services within two years of release<sup>79</sup>**



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

<sup>74</sup> Providing an international comparison of recidivism rates is difficult, given differences in the way recidivism is reported in different jurisdictions. Other jurisdictions may report on a different period (for example, one year following release instead of two years), or jurisdictions may report on the number of prisoners committing any offence, not an offence that results in a prison sentence.

<sup>75</sup> Controller and Auditor General of New Zealand, *Department of Corrections: Managing offenders to reduce reoffending*, Wellington, Government of New Zealand, 2013, Appendix 3.

<sup>76</sup> The Scottish Centre for Crime and Justice Research, *Reducing Reoffending: Review of Selected Countries Final Report for Audit Scotland*, Glasgow, University of Glasgow, 2012, p. 19.

<sup>77</sup> *ibid.*

<sup>78</sup> Prison industries include farming, manufacturing timber, concrete products, steel fabrication and printing.

<sup>79</sup> Data for Australia is only available to 2012-13.

## 4. Assessment of the prison system

### 4.1. Introduction

The purpose of this chapter is to provide a high-level description of the key issues affecting the efficiency and performance of the prison system.

The ERA's observations are largely based on consultations with a range of stakeholders working in, and in contact with, the Western Australian prison system. Some consistent themes arose from these consultations. However, the ERA has needed to reconcile some alternative perspectives and has sought additional evidence and clarification where this has occurred.

The ERA drew some early conclusions about the issues confronting the prison system, which were presented in a Discussion Paper published in March 2015. Stakeholders provided feedback on these early conclusions, which has been taken into account in preparing this Draft Report.

The ERA has observed that the governance arrangements applying to public prisons in Western Australia are not robust. In particular, the ERA has observed:

- *A lack of clarity about roles and responsibilities* – There is a significant level of uncertainty in the public prison system about roles and responsibilities between the head office of the Department and prison Superintendents. The ERA has observed a degree of informality in decision-making that permits changes without appropriate analysis and reallocation of resources.
- *A lack of accountability* – The uncertainty around roles and responsibilities makes it difficult to establish accountability for specific outcomes because it is not clear who is responsible for the outcome. This lack of clarity serves to diminish accountability between various parties in the prison system.
- *A lack of transparency* – The Department does not publish data that allows all stakeholders to make a robust, independent assessment of the performance of public prisons. In addition, the Department does not publish information that would allow service providers working with the prison system to assess how well they are performing and improve their service offering.
- *General inadequacies in information system, planning and controls* – The Department and individual prisons lack robust and reliable information systems and have limited capacity to analyse information and plan appropriately for the future.

In addition, the ERA has observed that there are some issues with the culture of segments of the workforce in the Department and individual public prisons (as discussed in more detail in this chapter). In particular, the ERA has observed that there is some resistance to change and a reliance on entitlements among some staff. This creates a barrier to reform and the introduction of more effective working arrangements.

The ERA considers that deficiencies in the governance arrangements of the prison system necessarily have an adverse effect on its performance, including in terms of rehabilitation outcomes for prisoners, the cost of providing prison services and utilisation rates of prisons.<sup>80</sup>

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<sup>80</sup> The ERA notes that it is usually desirable for infrastructure to be used at, or close to, its full capacity (that is, a high utilisation rate). However, when prison infrastructure has a very high utilisation rate it can result in occupational health and safety issues for prison officers and prisoners and limit the access of prisoners to

The remainder of this chapter comprises discussions on:

- the importance of good governance;
- the shortcomings in the governance arrangements in the Western Australian prison system;
- the consequences of shortcomings in the governance arrangements for the performance of the Western Australian prison system;
- the current reform program of the Department; and
- the findings of past inquiries into the Western Australian prison system.

## 4.2. Importance of good governance

Governance refers to the processes followed when making and implementing decisions, in addition to the broader organisational structure within which these decisions are made. Governance provides the link between establishing performance frameworks, and actually using those performance frameworks to help an organisation achieve its objectives.

Good governance should establish processes that lead to optimal decisions and outcomes for the wider community, including efficient and responsible use of Government resources. These arrangements support an organisation in achieving its objectives, and limit its exposure to a variety of risks (for instance, financial risks, the consequences of failing to meet objectives, or the risk of corruption within the organisation).

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

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

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

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

A well-governed prison system identifies the critical issues and objectives at hand, and acts to address them as directly as possible. The means to do this vary from jurisdiction to

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programs and services. This reduces prisoner rehabilitation opportunities and is therefore likely to increase recidivism rates. Ideally, prison utilisation rates will be around 85 to 95 per cent of prison capacity to allow for prisoner movements and the needs of discrete prisoner cohorts.

jurisdiction based on many factors, including the cultural, social, and economic contexts in which the system operates.

### 4.3. Issues in Western Australian prison system

#### 4.3.1. Lack of role clarity

The power to make decisions critical to the performance of individual prisons are divided between the Department, the Superintendent and WAPOU.<sup>81</sup> The ERA has observed a significant level of uncertainty and overlap in the public prison system about the respective roles and responsibilities of the head office of the Department, prison Superintendents and WAPOU.

In particular, the ERA observes a degree of informality in decision-making that permits changes without appropriate analysis and reallocation of resources. It is difficult to hold Superintendents to account for the management of prisons, when their performance is measured against decisions that are effectively made by head office.

The ERA is not suggesting that Superintendents should be accountable for all aspects of prison performance. However, there needs to be a clear understanding between the Department and Superintendents about aspects of prison performance that Superintendents have the ability to influence and the expected performance standards.

Similarly, there is a lack of definition around the responsibilities and decision-making powers of Superintendents as they relate to the powers of prison officer representatives and advocates, in the form of WAPOU. The ERA observes that WAPOU has substantial influence over managerial aspects of prisons that would fall outside the scope of union involvement in other sectors.

This role is formalised in the Enterprise Agreement. Section 173 of the Enterprise Agreement requires the Department to notify prison officers and their Union of any changes that are likely to have “significant effects” on officers, including changes to: the size and composition of the workforce; skill requirements; job or promotion opportunities; tenure; hours of work; transfers of officers; and restructuring of jobs.

WAPOU can invoke a “Status Quo” if prison officers object to a change that has a significant effect, which means that the working practices, procedures or conditions cannot change until the dispute is resolved. This creates a situation where Superintendents have to share their management role with WAPOU and negotiate operational changes.

Ideally (albeit simplistically), the Commissioner of the Department and individual Superintendents would reach an agreement on:

- the type, quality and amount of services that the prison is expected to deliver;
- the funding and staffing required to efficiently deliver those services; and
- a process for varying funding and staffing should service level requirements change.

It would then be the responsibility of the Superintendent to manage funding and staffing to achieve the agreed service levels. The Superintendent would be accountable if they were unable to meet the agreed service levels on budget. Superintendents would consult with local representatives of WAPOU on matters affecting the rights and safety of prison officers, but WAPOU would not have a decision-making role.

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<sup>81</sup> This is not the case for private prisons. Private prisons largely operate as an integrated unit, taking responsibility for most aspects of prison services (with the key exceptions of maintenance contract and some services provided by the not-for-profit sector within prisons).

However, the ERA has observed that this ideal does not occur in practice, for the following reasons:

- *Prison budgets* – The Department does not have detailed information on the current cost of delivering specific services in individual prisons or the efficient cost of delivering those services. Consequently, funding to prisons is not allocated based on an assessment of the quantity and standard of services that each prison is expected to deliver in the coming year. Further, budgets are not revised when the size or scope of the task changes. The ERA recognises that demand for funding will always exceed what is available. However, there has been little attempt by the Department to develop a rigorous understanding of the efficient cost of delivering prison services and to fund prisons accordingly.
- *Staffing* – The ERA observes that Superintendents have somewhat limited influence on the composition of staffing in their prisons (that is, the ratio of public sector staff to prison officers) or on the appointment of specific individuals. Superintendents may prepare a business case for the Department to consider if they require an additional staff member or wish to change the composition of their staffing. However, Superintendents must also negotiate any changes to the workforce that will have a significant effect on prison officers with WAPOU.
- *Prison population* – The Department is responsible for forecasting the prison population and allocating prisoners to individual prisons. Superintendents are required to accept any prisoners they are allocated. The ERA considers this to be reasonable. However, there should be a process in place for adjusting the budgets of prisons when the actual population of a prison (upon which funding was based) varies substantially from the forecast population.
- *Policies and protocols* – Decisions made by the Department to change policies and protocols can have a significant influence on the cost and number of staff required to deliver prison services. An example is the Department’s decision that all prisoners would need to be “shackled” to two prison officers when leaving a prison for official reasons (discussed in more detail in Box 2). The ERA observes that Superintendents are not always consulted on these changes (despite their expertise on prison management) and that the Department does not make compensating adjustments to prison resourcing. It is the responsibility of Superintendents to make a business case to the Department for any adjustment to prison resources.

#### Box 2 - “Double shackling” of prisoners

The Department decided that all prisoners would need to be “shackled” to two prison officers when leaving a prison for official reasons (for example, to attend a hospital appointment). This has added significant additional costs to prisons, which has not been funded.

It has also resulted in some perverse outcomes. For example, some minimum-security prisoners have permission to leave prisons to work in the community during the day. They are allowed to drive their own car and must return to prison upon completion of their workday. However, these same individuals must be shackled to two prison officers if they leave prison to attend a medical appointment.

### 4.3.2. Lack of accountability

Accountability ensures that an agency is answerable for meeting its objectives, making efficient and effective use of its resources, and making ethical decisions. Accountability establishes the standards to which agencies are expected to perform and the consequences if standards are not met.



The uncertainty around roles and responsibilities between the Department and Superintendents makes it difficult to establish accountability for specific outcomes because it is not clear who is responsible for the outcome. This lack of clarity serves to diminish accountability between various parties in the prison system.

There do not appear to be significant consequences for Superintendents of public prisons if they do not meet performance targets. For example, the ERA understands that, historically, there have been few consequences when Superintendents exceeded the budgets for their prisons. The ERA understands that currently only one prison is operating on budget. However, the ERA has not been able to confirm this because it has not been provided with the budget and actual outcomes for prisons (which it requested).

The ERA notes that Superintendents are permanent appointees. Superintendents are generally Level 9 or Class 1 public sector employees. The ERA understands that there is discretion to appoint employees at these levels to either permanent or fixed term contracts. Placing Superintendents on fixed term contracts will allow for more effective performance management of any Superintendents that are not performing to the required standard.

The ERA notes that limited accountability is imposed on the Department. The Department is able to make decisions that affect the delivery of prison services without appropriate analysis and reallocation of resources. The ERA's recommendation to introduce Service Level Agreements would seek to address this issue by formalising decision-making processes (refer to Chapter 5 for more detail).

The ERA also notes that there is no accountability placed on WAPOU for its influence on the prison system. WAPOU has a *de facto* management role in the prison system, allowing it to have a significant influence on the cost of the public prison system. However, WAPOU is only accountable to its members, not to the Minister or the Commissioner. Reflecting this, the role of WAPOU would ideally be limited to representing the interests of its members and not extend to making decisions on the management of the prison system.

In contrast, private prisons are held to higher standards of accountability and transparency than public prisons. The contract between the Department and Serco for the management of Acacia and Wandoo establishes clear expectations on the standard of services to be delivered by Serco.

The contract also establishes a range of financial incentives. Both the Acacia and Wandoo contracts contain performance-linked fees for the achievement of Key Performance Indicators. Serco receives its full fixed fee if it meets specified indicators, while its fee is reduced if it fails to meet any of its indicators. Most importantly, poor performance by a private provider can result in a loss of the contract and reputational damage in other jurisdictions.

### 4.3.3. Lack of transparency

Prison systems are not easily observable by the broader public, making it difficult for stakeholders outside the system to draw conclusions about a prison's standards and performance.

Greater transparency and regular reporting allows for a more informed public debate about the performance of individual prisons, and the system as a whole. It also serves to foster greater accountability for performance, both for the Department and other prison operators.

Improved transparency can serve to complement the work of independent oversight bodies such as the Office of the Inspector of Custodial Services. The ERA considers that this is important, as it ensures that holding the system to account does not rely on trust in, and the effectiveness of, a single organisation. As such, transparency can function as a secondary, 'backup' mechanism to ensure ongoing accountability.



The ERA has observed that there is a particular lack of transparency in relation to the performance and operations of Western Australia's public prisons, in comparison to the information and documents released about private prisons.

Information about the performance of private prisons in Western Australia is relatively transparent. The contracts between the Department and private prison providers are required to be publicly available and the Department is required to report on the performance of each private prison operator against their contract. However, the equivalent requirements are not imposed on public prisons.

The ERA has experienced difficulties acquiring robust information about the performance of public prisons in conducting this Inquiry. If the ERA, which has the authority to compel organisations to provide requested information, has had difficulty gathering the necessary information, the prospect that other stakeholders will be able to access information is remote.

More generally, the type, format, and frequency of data published by the Department is broadly similar to that released in other States and Territories. While this may initially appear to be positive, the ERA notes that no Australian corrective services agency approaches best practice in this field, and that all operate at a standard significantly lower than that seen in comparable corrective services agencies internationally.

This is a missed opportunity for the Western Australian prison system. Greater transparency can also serve to encourage innovation, new service delivery options, and investment. For example, community organisations and businesses are more likely to enter the market and develop service offerings when a sector is transparent, and there is sufficient information available to assess opportunities. Lack of good data and information acts as a barrier, as in its absence, it is difficult to assess whether new ideas may be viable.

#### **4.3.4. General inadequacies in planning, processes, and information systems**

In order to perform well, the Western Australian prison system must be supported by good planning, processes, and use of information. These practices underpin sound evidence-based decision-making. They also determine the capacity of the Department to measure outcomes and to be transparent and accountable for those outcomes.

However, the Department faces a number of longstanding issues with its planning and processes, and in the way in which it collects and uses information. These issues compromise the ability of the Department to perform efficiently and meet its objectives, both now and in the future.

Some of these issues are evident across all areas of the Department's activities. These include problems with transparency and appropriate access to information; and difficulties in collaborating effectively with key stakeholders.

Further, the ERA considers that the Department does not currently have a robust capacity to quantify the likely effects of proposed policy changes, making it difficult to provide high quality advice to the Minister and Cabinet (as discussed in further detail in Chapter 7). This capacity is very important in establishing a prison system that is resilient to policy change, and one that can provide strong, evidence-based advice to Government. These process issues result in many of the Department's decisions – across all levels of operations, from assigning an offender to a program right up to building a new prison – not being based on sound evidence.

The Department is aware of these problems, and is in the early stages of developing and implementing a reform program to address them. The ERA is supportive of the aims of the reform program.

### 4.3.5. *Cultural issues in the Department of Corrective Services and prisons*

The ERA considers that the Department faces some workplace culture issues. This concern is supported by the ERA's own observations, information received in discussions with stakeholders, and quantitative sources such as overtime and workers' compensation statistics.

In particular, the ERA has observed that there is a resistance to change and a reliance on entitlements among some staff. This creates a barrier to reform and the introduction of more effective working arrangements.

The ERA has not been able to assess how widespread the issues of workplace culture are within the Department. The ERA presents some indications of cultural problems in the following sections.

Issues of culture are of relevance to this Inquiry because workplace culture does have a direct impact on performance.<sup>82,83</sup>

#### 4.3.5.1. *General indicators of poor agency culture*

The Department exhibits some common indicators of poor workplace culture. The Australian Public Service Commission has developed a comprehensive list of indicators associated with agencies at risk of poor performance, a range of which focus specifically on workplace culture.<sup>84</sup>

The ERA has observed several of these indicators in the Department, including conflicting internal cultures and directions (for instance, between head office staff and prison staff), low levels of staff empowerment and trust (again, observed between head office staff and prison staff), and perceptions by stakeholders that the agency's culture is insular and inwardly-focused.

Similarly, the Department does not display some indicators of effective workplace culture, such as information sharing and emphasis on collaboration and engagement with other agencies and relevant stakeholders (as discussed in Chapter 7).<sup>85</sup>

#### 4.3.5.2. *Use of employment arrangements*

The current use of employee entitlements (such as overtime, personal leave, and workers' compensation) in prisons appears to be high.

The Enterprise Agreement establishes that prison officers may be required to work overtime. The ERA acknowledges that overtime has a role in the good management of the prison system, and that overtime payments compensate staff for their time and effort outside their normal course of work.

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<sup>82</sup> Australian Public Service Commission, *Agency health-Monitoring agency health and improving performance*, Canberra, Government of Australia, 2012.

<sup>83</sup> Gotwon, G. G., & Ditomasso, N., 'Predicting corporate performance from organizational culture', *Journal of Management Studies*, vol. 29, 1992, p. 783.

<sup>84</sup> Australian Public Service Commission, *Agency health-Monitoring agency health and improving performance*, Canberra, Government of Australia, 2012.

<sup>85</sup> Australian Public Service Commission, *Agency health-Monitoring agency health and improving performance*, Canberra, Government of Australia, 2012.

Information provided to the ERA by the Department suggests that there is a high volume of overtime paid to prison officers. In 2013-14, overtime accounted for around \$28 million (or 14 per cent) of the total salary expense for the prison system of \$200 million.<sup>86</sup>

In 2013-14, the main reason for overtime was to cover prison officers on personal leave, accounting for 30 per cent of overtime expense.<sup>87</sup> Covering prison officers on workers' compensation claims accounted for 10 per cent of overtime expense.<sup>88</sup>

In addition to its effect on cost, high use of staff personal leave and workers' compensation may be an indicator of poor workplace culture<sup>89</sup> and so can affect the operations of prisons. High numbers of prison officers on leave has been shown to cause problems in prisons in the past. For example, on 2 January 2015, Casuarina prison had to operate with a shortfall of more than 35 prison officers after all available off duty officers were called in to cover vacant positions.<sup>90</sup>

High levels of workers' compensation claims may also be an indicator (as well as a cost) of poor workplace culture.<sup>91</sup> Claim numbers, for both Western Australia's adult and youth justice systems, are high. In March 2015, the Minister for Corrective Services stated that the percentage of prison officers in public prisons on current workers' compensation claims in the public system were 'down to 16 per cent'.<sup>92</sup> He noted that the rate of prison officers on current workers' compensation claims in Western Australia's private prisons was one per cent.

Similarly, in 2013, the Assistant Commissioner for Youth Justice gave evidence that, of 199 staff in the juvenile justice system, 60 were on workers' compensation – a figure he noted as 'ten times the national average'.<sup>93</sup>

Given the link between workplace culture and workplace productivity, these indicators raise some concerns about the performance of Western Australia's prison system.

#### 4.3.5.3. *Resistance to change*

Some resistance to change is apparent amongst staff working in the Department, both centrally, and in prison facilities. Staff display some reluctance to move away from practices that have been long applied, even when it is clearly demonstrated that existing practices are ineffective, and more appropriate alternatives are available.

For example, an officer in the Department advised the ERA that the Department had sought to make better use of prison infrastructure (for example, industrial kitchens) to accommodate growth in prisoner numbers. One option identified by the Department was

<sup>86</sup> Data provided by the Department of Corrective Services on request.

<sup>87</sup> Data provided by the Department of Corrective Services on request.

<sup>88</sup> There are 23 other categories that account for the remaining 60 per cent of reasons why overtime is used. The most significant of these remaining reasons is to address peaks in the prison population, which accounts for 16 per cent of the use of overtime.

<sup>89</sup> Victorian Public Sector Commission, *Sick Leave in the Victorian Public Sector Research Report*, Melbourne, Government of Victoria, 2015, p. 32, and Victorian Public Sector Commission, 'Organisational Culture', Melbourne, Government of Victoria, 2015, p. 11.

<sup>90</sup> Western Australia Prison Officers' Union submission to the Inquiry into the Efficiency and Performance of Western Australian Prisons Issues Paper. p. 8.

<sup>91</sup> Royal Australasian College of Physicians, *Submission to the Safety, Rehabilitation and Compensation Review Act*, 2012, Attachment A p. 11; and Royal Australasian College of Physicians, *Improving workforce health and workplace productivity: a virtuous circle*, 2013, p. 10.

<sup>92</sup> He further stated the same figure was 'down to 22 per cent' for youth custodial workers. (Parliament of Western Australia, Legislative Assembly, *Debates*, 26 March 2015, p. 2332.)

<sup>93</sup> R. Spooner, 'WA juvenile criminals 'violent', 'hard to manage'', *WA Today*, 18 April 2013, quoting court statements from Brian Laurence, Assistant Commissioner for Youth Justice, made on 17 April 2013.

to operate kitchen infrastructure on two separate shifts. However, the officer advised that this was prevented by prison officers who objected to changes in rosters.

Similarly, resistance to change makes it difficult to implement reforms in the Department's head office. For example, the ERA understands that a small number of staff in the Department are currently only working strictly to rules and hours expected of them to reduce output and efficiency.

Another example is the reluctance by some staff in the Department to adopt the projection model for the prison population that has been developed by the Department of Treasury. As explained in Chapter 7 of this Draft Report, the ERA's assessment is that the Department of Treasury projection model is better able to inform strategic decisions and policy than the model used by the Department of Corrective Services and the two models should be used in combination.

#### 4.3.6. *Effect of governance issues on the performance of the prison system*

The ERA considers that the governance problems identified in the previous sections necessarily flow into performance measures of the prison system, such as rates of recidivism, cost of prison services, and prison utilisation rates.

##### 4.3.6.1. *Rates of recidivism*

Addressing issues in the Department's management of rehabilitation may yield significant improvements in rehabilitation outcomes. The Department's approach to allocating prisoners to rehabilitation programs is poor and unsophisticated. Also, the Department does not adequately review the effectiveness of its rehabilitation programs, either for individual prisoners or at a whole-of-system level. The Department is aware of these issues and is progressing reforms.

The Department maintains a multi-year spreadsheet of rehabilitation programs scheduled in prisons over the coming five years. Prisoners are allocated to the programs they are required to complete on a "first come, first served" basis. Little regard is given to when a prisoner is scheduled to be released or whether they reside in the prison in which the program is being run. This means that a prisoner may reach their parole period or the end of their sentence without having their rehabilitation needs met.

Compounding this issue, the Department does not prioritise the allocation of prisoners to programs according to the severity of their needs. The Department acknowledges that it has a tendency to "over assess" the rehabilitation needs of prisoners (that is, it identifies a rehabilitation need in a prisoner even if the need is marginal).

This is a problem because, to use its resources efficiently, the Department should be ensuring that programs are received by those who need them most, and will benefit to the greatest degree. For example, incorrectly assessing a non-violent offender and allocating them to a program for high risk, violent offenders will not only be of little use to that offender, but will also delay or prevent a more suitable prisoner from taking a place in the program.

Finally, the Department currently does not have adequate information, processes and analysis to assess the effectiveness of its rehabilitation programs. This is a problem that has been acknowledged by the Commissioner of the Department

*Recidivism rates in Western Australia have bucked national trends and dropped significantly over the last five years. I would like to think that this is because of the hard work that the Department of Corrective Services has undertaken to rehabilitate the men and women, and young people, who have come under its responsibility. In truth, however, I am not sure that this is the case. 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>94</sup>*

#### 4.3.6.2. 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 \$352 per day to house a prisoner in a Western Australian prison, 20 per cent higher than the Australian average.<sup>95</sup>

This does not conclusively demonstrate that prison services are delivered less efficiently in Western Australia than in other States. Cost per prisoner per day is a relatively simple metric and does not account for a number of factors relevant to a debate about the cost of prisons. These factors include:

- *Cost drivers in Western Australia* – There are factors unique to Western Australia that affect the cost of providing prison services. For example, Western Australia has more prisons in regional and remote locations than any other jurisdiction. Regional prisons are likely to be somewhat more expensive to operate 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>96</sup>, and the high proportion of Aboriginal prisoners.<sup>97</sup>
- *Quality* – There is a trade-off between cost and quality in the delivery of prison services (as there is with all goods and services). The high cost per prison per day in Western Australia may reflect higher quality services.

The ERA was unable to undertake a robust analysis of the costs of prison services in Western Australia to determine the extent of any inefficiencies, because the Department has not provided sufficiently detailed cost data. There are two reasons for this. The Department has not provided the information that it does have and that the ERA has requested, and in some cases, the Department simply does not have the information that would be required to undertake a robust analysis.

The ERA acknowledges that the Finance Directorate has limited staff resources and that the ERA's requests for information (around two months prior to the publication of this Draft Report) coincided with a peak budget workload. Nevertheless, if good data management systems were in place, providing the ERA with the information and data it requested should have been a relatively simple matter.

Notwithstanding the above caveats, the ERA considers that the costs of providing prison services could be substantially reduced (or the quality of prison services substantially

<sup>94</sup> Department of Corrective Services, *Recidivism trends in Western Australia with comparisons to national trends*, Perth, Government of Western Australia, 2014, p. 2.

<sup>95</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.7.

<sup>96</sup> Western Australians who work full-time earn, on average, 16 per cent more than the Australian average. Source: Australian Bureau of Statistics, *6302.0 - Average Weekly Earnings, Nov 2014*, Canberra, Government of Australia, 2014.

<sup>97</sup> WAPOU submitted that housing Aboriginal 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.



improved), by addressing issues with the governance arrangements, systems and workforce issues of the prison system. Specific issues that affect the cost (and quality) of prison services in Western Australia include:

- *A lack of information* – Good information is critical to measuring and improving performance. However, the Department does not have detailed information on the current cost delivering specific services in individual prisons or the efficient cost of delivering those services. The ERA considers that understanding costs is a foundation step towards reducing costs.
- *A lack of accountability for expenditure* – The ERA understands that, historically, there have been few consequences when Superintendents exceeded the budgets for their prisons. The ERA understands that currently only one prison is on budget and managing overtime expense. However, the ERA has not been able to confirm this because it has not been provided with the budget and actual outcomes for prisons (which it requested).
- *Poor planning and allocation of resources* – The Department does not plan and allocate services efficiently, with the consequence that service delivery is “highly reactive” to changes in circumstances. A key example of this has been the delivery of health services within prisons, which does not appear to be based on an understanding of the aggregate health needs of the prison population.
- *Poor financial management systems and controls* – The Office of the Auditor General has raised significant concerns about the manner in which the Department manages its financial and physical resources. For example, the Department’s system have resulted in significant overpayments of salaries to staff because it has not provided the Department of the Attorney General (which provides it with payroll services) with timely documentation when employees left the organisation. In the most recent audit, the Office of the Auditor General noted that over \$550,000 of historical overpayments have not yet been collected.<sup>98</sup>

It will be necessary for the Department to address these issues in order to reduce the cost of providing public prisons to more efficient levels.

#### 4.3.6.3. *Prison utilisation rates*

Throughout this Inquiry, stakeholders have expressed concern that the Western Australian prison system is crowded. Additionally, the Inspector of Custodial Services has consistently identified crowding as an issue in most prisons in Western Australia.<sup>99</sup>

The ERA notes that it is usually desirable for infrastructure to be used at, or close to, its full capacity (that is, a high utilisation rate). However, when prison infrastructure has a very high utilisation rate it can result in occupational health and safety issues for prison officers and prisoners and limit the access of prisoners to programs and services.<sup>100</sup> This reduces prisoner rehabilitation opportunities and is therefore likely to increase recidivism rates.

<sup>98</sup> Correspondence between the Office of the Auditor General and the Department of Corrective Services, ‘Findings identified during the interim audit’, and ‘Findings identified during the final audit’ for the periods of audit ending 30 June 2009, 2010, 2011, 2012, 2013, and 2014.

<sup>99</sup> Office of the Inspector of Custodial Services, *2013-2014 Annual Report*, Perth, Government of Western Australia, 2014, p. 8.

<sup>100</sup> New South Wales Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, Sydney, Government of New South Wales, 2015, p. 28.

Ideally, prison utilisation rates will be around 85 to 95 per cent of prison capacity to allow for prisoner movements and the needs of discrete prisoner cohorts.<sup>101</sup>

The extent of crowding in prisons can be assessed through analysis of utilisation rates. The utilisation rate of a prison is the prison population divided by the capacity of the prison.

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<sup>102</sup>, operational capacity<sup>103</sup> and total capacity<sup>104</sup>.

The Department has changed the measure that it reports in recent times. The Department originally reported against design capacity, before changing to operational capacity, and then more recently to reporting total capacity.

The Department has provided the ERA with data on prison utilisation rates for each prison using measures of total capacity and operational capacity. An assessment of prison utilisation rates using the total capacity measure suggests that only one prison (Bandyup) had a utilisation rate of over 100 per cent as at 31 March 2015.<sup>105</sup> However, the ERA considers the total capacity measure to be flawed (for reasons explained in Chapter 6) and is likely to underestimate levels of crowding.

An assessment of prison utilisation rates using the operational capacity measure indicates that five prisons were being utilised in excess of 100 per cent of operational capacity as at 31 December 2014.<sup>106</sup> The ERA considers operational capacity is a more accurate measure of prison capacity than total capacity. However, the definition of operational capacity is confidential.

In any event, the ERA considers that it is likely that the prison system is more crowded than it would be, but for issues with governance arrangements, systems and processes in the Western Australian prison system. Primarily these issues relate to poor planning and prioritisation of infrastructure to reduce capacity constraints.

- *Limitations of the model for forecasting the prison population* – The Department's current population forecasting model is limited in its ability to provide well-evidenced advice to the Government. This is because the model does not attempt to understand and explain the *reasons* for changes in the prison population.<sup>107</sup> This limits the ability of the Department to plan and prioritise the infrastructure requirements of the prison estate.
- *Lack of a long-term plan* – The Department does not have an approved long-term plan for the prison estate (although it does have detailed masterplans for individual prisons). The result is that decision-making on prison infrastructure tends to be ad

<sup>101</sup> New South Wales Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, Sydney, Government of New South Wales, 2015, p. 28.

<sup>102</sup> 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. Source: Productivity Commission, *Report on Government Services 2015: Corrective Services Data Quality Information*, Government of Australia, 2015, p. 21.

<sup>103</sup> There is no publicly available definition of operating capacity.

<sup>104</sup> Total capacity refers to the total number of beds, including design capacity and temporary beds. Total capacity includes accommodation used for special purposes. The definition for total capacity was provided by the Department of Corrective Services on request.

<sup>105</sup> This is based on ERA analysis of data provided by the Department of Corrective Services.

<sup>106</sup> This is based on ERA analysis of data provided by the Department of Corrective Services.

<sup>107</sup> Department of Treasury, *An Experimental Prisoner Projection Model for Western Australia*, report prepared by N. Riste and K. Sibma, Perth, Government of Western Australia, 2014, p. 12.



hoc and reactive, rather than contributing towards achievement of an agreed long-term plan.

- *Inadequate focus on the women's estate* – In recent years, there has been substantial investment in male prison accommodation, but relatively little investment in female prisons, in spite of the rapid growth rate in the number of female prisoners.<sup>108</sup> Consequently, conditions in the State's women's prisons are of a lower standard than those seen in men's prisons. Low prioritisation of the women's estate has contributed to high levels of crowding, particularly at Bandyup.
- *Poor prioritisation of capital expenditure* – The ERA considers that there is scope to improve the Department's prioritisation of investment for capital projects. For example, Bandyup's new, modern gatehouse sits alongside older infrastructure that has been described as "deteriorated, out-dated, and inadequate" by the Office of the Inspector of Custodial Services.<sup>109</sup> Funds used to construct the gatehouse may have been better prioritised to provide accommodation and supporting infrastructure for prisoners.
- *Lack of resources for infrastructure planning* – A lack of staff resources for infrastructure planning hinders the ability of the Department to undertake quality analysis and make informed long-term decisions about what infrastructure needs to be developed, and when.
- *Lack of transparency about prison utilisation rates* – The Department is not transparent in publishing data on prison utilisation rates. The Department has recently recommenced publishing data on the total capacity and populations of prisons. However, this information is not presented in a way that facilitates external scrutiny of prison utilisation rates, as the information is not presented in a single table or location. This reduces pressure on the Department to provide infrastructure to reduce crowding.

#### 4.4. Current reform efforts

The Department is currently undertaking a substantial reform process, aimed at addressing many of the issues raised in the previous sections. Recommendations made by the ERA in this Draft Report overlap with the reform efforts of the Department.

A new Office of Reform was established within the Department in 2013-14, along with major structural changes in the Department. The new structure involved the introduction of two new operational divisions: Adult Justice Services and Youth Justice Services, each headed by a Deputy Commissioner.

The Office of Reform was created to deliver a comprehensive change program within the Department, which has involved revisiting many of the issues raised in the 2005 Mahoney Inquiry into the Management of Offenders in Custody and in the Community in an effort to improve the Department's service delivery (as described in Section 4.5.1).

The Department has outlined its proposed reforms in a general manner in its Strategic Plan 2015-2018 document.<sup>110</sup> During the course of this Inquiry, the ERA has been provided with

<sup>108</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>109</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. 9.

<sup>110</sup> Department of Corrective Services, *Strategic plan 2015–2018: Creating Value Through Performance*, Perth, Government of Western Australia, 2015.

more detailed explanations of some of these reforms, and has discussed them in the relevant sections of this report.

However, the Department has advised that some of the reforms are still in a draft or Cabinet in Confidence stage, and so the ERA has not been able to access further information.

Many of the reforms discussed in the strategic plan related directly to issues covered by the ERA in this report. In particular, the plan highlights the following areas:

- Separating the Department's administrative and financial systems from those of the Department of the Attorney General.
- Improving the Department's approach to managing Human Resources.
- Improving the way the Department manages changes in the prison population.
- Improving the way prison programs are evaluated.
- Seeking new ways to delivery services, and developing benchmarks to measure their success.
- Improving the way the Department's data and records are managed and used in the decision-making process.
- Re-establishing the Department's risk management and auditing processes.
- Developing better working relationships with stakeholders.

The Department has advised the ERA that it has a three to four year timeframe for undertaking these reforms.

## 4.5. Outcomes of previous Inquiries

The Western Australian prison system has been the subject of several inquiries in recent years. Significant inquiries include the Mahoney Inquiry (2005), "Making our Prisons Work" (2005) and the Financial Management of Prisons (2000).

A review of these past inquiries indicates that many of the issues identified then are still present for a range of reasons. In some cases, problems continue because they are complex, intractable and require a whole-of-government approach to address (for example, high rates of indigenous incarceration).

In other cases, the Department has elected to adopt alternative reforms to those recommended (for example, the Department implemented Trimester Performance Reports instead of the Service Level Agreements recommended in the 2000 Inquiry).

Finally, the way in which the recommendations were implemented have created significant problems in their own right (for example, the split of the Ministry of Justice into the present day Departments of the Attorney-General and Corrective Services arising from the Mahoney Inquiry as discussed in Box 3 below).

In the following sections, the ERA outlines some of the findings from these major inquiries that are relevant to this Inquiry.

### 4.5.1. The Mahoney Inquiry

In 2005, in the wake of a number of well-publicised escapes and other incidents, the Government commissioned Hon. Dennis Mahoney AO QC to undertake an independent and extensive review of the prison system, and to make recommendations as to how it could be improved.

The Mahoney Inquiry (full title, *the Inquiry into the Management of Offenders in Custody and in the Community*) was completed in November 2005, and made 148 recommendations. A major outcome stemming from recommendations made in the Report was the splitting in 2006 of the then-Ministry of Justice into the present day Departments of the Attorney-General and Corrective Services.

The recommendations relating to the prison system largely focused on improving planning and resourcing decisions. (For instance, implementation of a periodic assessment of infrastructure needs based on projections of prisoners and other relevant information).

A number of other recommendations focused on ways to produce a stable, competent and effective prison workforce, including through more targeted training for prison staff.

The report also outlined a number of recommendations relating to specific demographic groups of the prison population. To deal with the crisis of high indigenous incarceration, recommendations called for a more culturally-competent approach to justice which is sensitive to the unique aspects and needs of Aboriginal societies. Similar conclusions are drawn regarding the women's estate. The Inquiry acknowledged that female offenders present complex problems. The Inquiry recommended enhancement of women's facilities.

A range of recommendations from the Mahoney report have been implemented in the interim years. However, given the circumstances under which these reforms were undertaken (as outlined in Box 3 below) many of the underlying problems highlighted remain a concern today.

#### Box 3 - Challenges in implementing the Mahoney Inquiry's recommendations

The prison system, and hence the then Government, was under intense public scrutiny at the time of the Mahoney Inquiry, due in part to media coverage of escapes. Consequently, a number of recommendations –in particular the splitting of the Department of Justice – were undertaken hastily and, in retrospect, with insufficient preparation.

In February 2006, staff were given 33 working days to establish the new Department of Corrective Services. At the time of the split, there was no executive team in place to take on the running the Department and no program management office to direct the handover.

These difficulties were compounded by a number of other problems, including delays in funding for the split, a whole-of-Government ban on using external consultants, and a lack of the systems and skilled staff needed to operate the Department independently.<sup>111</sup>

During the same period, the Government required the Department staff to scope and submit a plan to implement each of the 148 recommendations, along with funding submissions for each.

The Government considered the reform program arising from the Mahoney report to be a decade-long project, but ultimately only provided funding for 22 of the 148 reforms over a period of four years. Further recommendations were to be funded out of the Department's general budget. The Government's newly introduced efficiency dividend was also applied to the Department from the time of its establishment, requiring it to achieve savings.

The ERA considers that the haste, lack of planning, and lack of skilled resourcing around the split of the Department of Justice in 2006 has been a direct contributor to many of the Department's current problems.<sup>112</sup>

<sup>111</sup> This period also coincided with substantial changes in Government unrelated to the restructuring of the Department of Justice, with the establishment of the first Carpenter Ministry two days prior to the split, and the unanticipated appointment of a new Minister for Justice (subsequently Minister for Corrective Services) in 8 May 2006.

<sup>112</sup> Further, the political instability and budgetary climate at the time of the split did not create an environment that was ideal for the pursuit of major reforms.

For example, the rapid transition resulted in no systems being in place to handle the newly formed Department of Corrective Services' financial and administrative processes. This led to the Department of the Attorney General retaining these functions on behalf of the Department. This arrangement has been unsuitable and has hindered the Department's ability to manage its financial position – a situation that is only now being addressed.

#### ***4.5.2. Making our Prisons Work: Community Development and Justice Standing Committee***

In 2010, the Community Development and Justice Standing Committee undertook a Parliamentary Inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies.

The terms of reference for the inquiry instructed the Committee to examine and report on in-prison work and education programs, post-release outcomes, the scope for program improvement, and to examine alternative strategies to reducing recidivism in other States and Territories. Findings of the Inquiry were released in two reports.

The interim report, released in June 2010, focussed on the role of prison industries and employment in prison management, and its effect on reintegrating prisoners back into society. The report called for an extension of industrial activity in the prisons through the establishment of commercially viable business-like entities.

The second and final report for this Inquiry discusses prison education programs, post-release support and reintegration strategies. Having identified a number of structural, systemic and community issues negatively affecting rehabilitation, the Committee's recommendations are generally associated with a more effective approach to rehabilitation programs; many of these relate specifically to Aboriginal offenders.

#### ***4.5.3. Financial management of prisons: Standing Committee on Estimates and Financial Operations***

A report on the Financial Management of Prisons was released in 2000 by the Standing Committee on Estimates and Financial Operations. The Committee, initially appointed in 1989, is required to consider and report on any matter relating to the financial administration of the State.

The terms of reference directed the Committee to conduct a general inquiry into expenditure in the prison system and to consider alternative sanctions to prison sentences, the role of an external auditor and/or independent inspectorate, strategies aimed at reducing the recidivism rates of prisoners, and strategies to deal with drug dependent prisoners.

The Committee supported the increased use of alternatives to imprisonment and recommended several changes to legislation such that only dangerous criminals are incarcerated.

The Committee also recommended the introduction of Service Level Agreements to underpin the relationship between the Department and the prisons. The Committee believed that a prison stands to benefit from a Service Level Agreement's clear and unambiguous statement of roles and responsibilities. Service Level Agreements are discussed in more detail in Chapter 5 of this Draft Report.

## 5. Consistent standards across the prison system

### 5.1. Introduction

Private prisons in Western Australia are subject to robust governance arrangements. Contracts between the Department and Serco for the management of Acacia and Wandoo establish clear roles and responsibilities, performance targets and consequences for non-performance. The contracts between the Department and Serco establish high levels of accountability and transparency.

There is no such document formalising the relationship between the Department and public prisons. The consequence is that there is less clarity about respective roles and responsibilities and less accountability and transparency about the performance of public prisons.

Furthermore, the objective of each prison in the prison system is not clearly defined. This can lead to ad hoc changes, rather than robust planning to ensure that the combined objectives of individual prisons meet the overall objectives of the prison system, allowing the use of prison resources and infrastructure to be optimised.

To address these issues, the ERA recommends that every prison in the public system be subject to Service Level Agreements that are similar to the terms and conditions of commercial contracts.

A Service Level Agreement would set out:

- *Expectations* – the manner in which both parties to the Agreement will behave and interact with each other, how each party will respond to unexpected events and the specifications of the prison.
- *Financial agreement* – the level of funding available to the Superintendent for operating the prison and arrangements for adjusting funding when circumstances change.
- *Performance framework* – the service standards required from the prison and the performance monitoring framework applied to the prison. Service standards set out the minimum standards that an organisation must meet in delivering its operations.

Service Level Agreements must have particular features to ensure that they are effective. Otherwise, Service Level Agreements will end up being another document, with good intentions, that is largely ignored.

The ERA considers that Service Level Agreements must:

- *Be based upon robust planning* - the Department needs to be clear about what needs to be delivered and what the role of each prison is within the broader prison system. The Department must engage in comprehensive forward planning and resource allocation to ensure that the combined objectives of individual prisons deliver the overall objectives of the prison system as a whole.
- *Be sufficiently flexible to cope with changing circumstances* – no matter how sound the planning of the Department, circumstances will change that will affect the size and demographics of the prison population. Service Level Agreements should establish clear, good-faith processes for adjusting funding levels for prisons when circumstances change.
- *Realistic and achievable* – Service Level Agreements must be informed by robust cost information to ensure that Superintendents are capable of delivering the expected services with the funding they have been allocated. The Department does

not have robust information on how much it currently costs individual prisons to deliver specific prison services or the efficient cost of delivering those services. Developing this understanding is a foundation step in ensuring that Service Level Agreements are realistic and achievable.

- *Hold Superintendents accountable for aspects of prison operations they can influence* – Currently, Superintendents are not accountable for a range of activities that are undertaken within the prison, such as health and education services. These are managed centrally by the Department. The consequence is that Superintendents have weaker incentives to ensure these services are delivered efficiently. In part, this can be addressed by assessing the performance of Superintendents against benchmarks that measure aspects of these services that Superintendents can influence.
- *Include appropriate incentives and consequences* – It is important to establish clear incentives for good performance and there are ways to encourage high standards of performance in public prisons. This can include: fixed term contracts for Superintendents; allowing prisons to retain a portion of funding generated by industries; and publishing information on the performance of prisons.

The remainder of this chapter is structured as follows:

- an overview of the content of a Service Level Agreement;
- a discussion of why Service Level Agreements should be introduced;
- a short history of Service Level Agreements in the Western Australian prison system; and
- a discussion of the key measures and reforms required to ensure that Service Level Agreements achieve their intended purpose.

## 5.2. Overview of Service Level Agreements

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

### 5.2.1. Expectations

A Service Level Agreement would describe the expectations placed on both parties to the Agreement. Broadly, this covers 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 prison's operating philosophy and objectives.
- The operating capacity of the prison and the category of prisoners to be housed (for example, security classification, gender, sentenced or unsentenced, age).
- 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.



### 5.2.2. Financial Arrangements

The Service Level Agreement would detail the financial agreement between the Department and Superintendents. In particular, Service Level Agreements outline the level of funding available to the Superintendent for operating the prison and any financial penalties for poor performance or financial incentives for good performance.

The Service Level Agreement can be used to establish the expected operating capacity of the prison and mix of prisoners. The aggregate funding available to the Superintendent would be based on this population and the mix of prisoners being housed. As a prison's population increases beyond the specified population, funding would increase accordingly. Similarly, changes in the prisoner mix may result in funding changes if the mix results in a higher (or lower) proportion of high needs prisoners.

### 5.2.3. 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 set out the minimum standards that an organisation must meet in delivering its operations. These can be considered 'core' prison 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;
- 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. The 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.

Performance targets are used to establish the objectives of the prison and the outcomes expected of the prison. Performance targets 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 penalised for not achieving the expected performance targets.

Performance targets can generally be classified into one of four categories: Safety and Security, Rehabilitation, Prisoner Quality of Life and Prison Management. Each is discussed below:

- *Safety and security* – targets relating to safety and security focus on ensuring the safety of the community, prisoners and prison officers. This includes measures such as escapes, occurrences of assault within prison (either on prisoners or staff), unnatural deaths and prisoner self-harm or attempted suicide.



- *Rehabilitation* – Rehabilitation targets can vary widely depending on the contracting that has taken place. Rehabilitation performance of individual prisons should be measured in terms of their contribution to rehabilitation outcomes. This can include prisoner participation in programs, education or employment and the prevalence of drug use in the prison. Targets rely on the extent to which prisons are able to influence outcomes in this area. This is discussed further in Chapter 6.
- *Prisoner quality of life* – targets in this area reflect the need to treat prisoners humanely in order to achieve positive outcomes. Measures may include time prisoners are out of cell, time spent in purposeful activity or a survey of the prisoner population.
- *Prison management* – targets relate to the need for a prison to achieve outcomes in the preceding areas in the most efficient way possible. This could include whether the prison is operating on budget, staff use of overtime and cost per prisoner per day.

The manner in which the performance targets 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 targets that are expected. Well-constructed benchmarks also offer the opportunity to compare the performance of similar or competing prison operators. This allows the Department to identify and remedy poor performance.

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

Benchmarks are discussed in detail in Chapter 6.

### 5.3. Role of Service Level Agreements

The ERA considers that Service Level Agreements between the Department and Superintendents of public prisons would:

- establish greater role clarity between the head office of the Department and prison Superintendents;
- establish higher standards of accountability for both prisons and the Department as a whole;
- allow for greater transparency around prison operations, and how prison performance is measured (an outcome that further supports accountability).

These outcomes are discussed in more detail below.

#### 5.3.1. Role clarity

As outlined in Chapter 3, there is a significant level of uncertainty in the public prison system about roles and responsibilities, particularly between the head office of the Department and prison Superintendents. The ERA has observed a degree of informality within the prison system that allows for roles, responsibilities, and authority to change without a reallocation of resourcing requirements, or robust assessment of the costs and benefits of the change.

This is a problem, as organisations and individuals cannot reasonably be held accountable for decisions over which they have little control. In particular, it is difficult to make

Superintendents accountable for the management of prisons when their performance is significantly influenced by decisions that are effectively made by other parties.

The ERA considers that Service Level Agreements would provide a mechanism to formalise the relationship between the Department and its Superintendents. These agreements would serve to prevent roles and responsibilities changing without due consideration and consultation, ensure that resourcing can be directly tied to performance requirements, and provide clarity as to what activities and decisions fall within, and outside, the authority of Superintendents.

More specifically, the ERA considers that Service Level Agreements should define the services that are to be provided by prisons, and the outputs and outcomes that should be achieved by the Department and by prison Superintendents. In doing so, they should provide a clear explanation of the responsibilities of both the Department (for example, providing adequate resourcing and administrative support) and Superintendents (for instance, making specific managerial decisions).

This will serve to provide both Superintendents and the Department with clear guidelines as to their authority and autonomy to make decisions affecting prisons, and outline the circumstances under which each party must consult with the other before making a decision.

Providing Superintendents with a clearer understanding of their role and responsibilities will allow them to more effectively negotiate the outcomes that can be expected by the Department, given the resources provided.

### 5.3.2. Accountability

The uncertainty around roles and responsibilities between the Department and Superintendents makes it difficult to establish accountability for specific outcomes because it is not clear who is responsible for the outcome. This lack of clarity serves to diminish accountability between various parties in the prison system.

Similarly, it affects accountability to external parties, both in reporting outcomes and the reasons for those outcomes to Government, and more generally, articulating the Department's performance to stakeholders and the broader public.

Service Level Agreements establish a framework for holding the parties to the agreement to account, by clarifying roles and responsibilities, establishing performance targets, and the processes that should take place when standards are not met. They also establish how performance should be measured, allowing this to be both agreed by the parties to the agreement, and communicated effectively to external stakeholders.

The current agreements between the Department and Serco provides a good example of what can be expected from a Service Level Agreement. The outcomes and performance targets that the Department expects from Serco in its operation of Acacia and Wandoo are clearly set out in contracts between the two parties. These contracts also establish a range of financial incentives and penalties that can be applied to Serco depending upon its performance. Having the outcomes clearly articulated in contracts, and subject to specific financial incentives and penalties, makes Serco accountable for achieving the outcomes expected by the Department.

In addition, Serco is subject to fixed term contracts and knows that if it does not meet the required standards, its contract will not be renewed. This would not only result in the immediate loss of business, but also affect its reputation and potentially its chances of winning business in other jurisdictions.

The ERA proposes that a fixed term should also apply to Service Level Agreements between the Department and Superintendents. This would allow the Department to modify

Service Level Agreements periodically to accommodate any changes in its long-term plans for the prison system.

Fixed term agreements would also provide an opportunity for the Department to assess the overall performance of the Superintendent and determine whether they are best placed to operate the prison over the next term of the Service Level Agreement. This provides a strong incentive to perform well, and ensures that those operating prisons are focused on achieving the outcomes specified in their Service Level Agreements.

### 5.3.3. Transparency

The ERA has observed that there is a particular lack of transparency when it comes to the performance and operations of Western Australia's public prisons, especially when compared to the information and documents released in relation to private prisons.

Information about the performance of private prisons in Western Australia is relatively transparent. The contracts between the Department and private prison operators are required to be publicly available and the Department is required to report annually on the performance of each private prison operator against their contracted terms.

However, the same requirements are not imposed on public prisons. The ERA considers that Service Level Agreements agreed with Superintendents should be publicly available and that the Department should report annually to Parliament on the performance of each prison against the standards outlined in the agreements (in effect, mirroring the processes that currently apply to private prisons).

This level of transparency, coupled with periodic inspections by the Office of the Inspector of Custodial Services, will help to ensure that:

- The Department is accountable for establishing effective contracts and agreements, and for ensuring that they are consistently applied.
- Superintendents are publicly accountable for their performance against Service Level Agreements.
- The methods and metrics used to assess performance are clearly articulated and widely understood.
- External stakeholders have sufficient information to assess the performance of both prisons and the wider Department, better understand the drivers of both successes and failures, and to comment on and provide input into the service delivery process.

## 5.4. History of Service Level Agreements in Western Australia

Previous inquiries into the Western Australian prison system have recommended the introduction of Service Level Agreements and attempts have been made to introduce Service Level Agreements in the past.

It is important to understand the reasons past Inquiries recommended the introduction of Service Level Agreements and most importantly, why past introductions of Service Level Agreements have not been successful.

### 5.4.1. Past Inquiries

The *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998* recommended Service Level Agreements as part of a business and strategic plan with short, medium, and long-term objectives.<sup>113</sup>

This recommendation was reiterated in a Legislative Council Standing Committee Report on the Financial Management of Prisons published in 2000. The report also recommended the establishment of a working group with broad representation to draft appropriate Service Level Agreements.<sup>114</sup>

The Committee highlighted certain aspects of the system in the United Kingdom in making the case for the introduction of Service Level Agreement in Western Australia:

- Service Level Agreements clearly outline the roles and responsibilities of service providers by providing unambiguous and comprehensive statements of requirements, standards and expected outcomes. Staff are told precisely what is expected of them and the resources they are provided.
- The budget for prisons under a Service Level Agreement should be “ring-fenced” and not subject to efficiency gains. Efforts should be made to ensure funding levels and obligations of the prison under the Service Level Agreement are commensurate.
- Service Level Agreements were considered to represent the most effective tool for estimating the true cost of not just a prison, but of all activities conducted within it. This is of value to the budgeting process.

The Mahoney Inquiry although comprehensive in its recommendations, makes no mention of Service Level Agreements.

### 5.4.2. Previous efforts to introduce Service Level Agreements

Service Level Agreements were introduced in the Western Australian Prison System in 2007-08 to a select number of prisons (Hakea, Casuarina, and Roebourne). The introduction of Service Level Agreements was initiated by the Deputy Commissioner Adult Custodial Services at the time.

Shortly after the introduction of the Service Level Agreements, the Department appointed a new Deputy Commissioner of Adult Custodial Services, who subsequently replaced the Service Level Agreements with system-wide Trimester Performance Reporting.

The Department was still in its infancy following its creation as part of the reforms recommended by the Mahoney Inquiry.

The ERA was advised by the Department that Trimester Performance Reports were prioritised because the prison system was in need of immediate performance management and accountability. The Department took the view that Trimester Performance Reports could be introduced across the system more expeditiously than Service Level Agreements. Attempting to implement Service Level Agreements would impede the sense of urgency in introducing performance management and developing a performance culture.

<sup>113</sup> Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998, March 19 1999, p. 144-146 (as cited in the Report of the Standing Committee on Estimates and Financial Operations in Relation to the Financial Management of Prisons 2000).

<sup>114</sup> Western Australia Legislative Council, *Report of the Standing Committee on Estimates and Financial Operations in Relation to the Financial Management of Prisons*, 2000, p.99.

## 5.5. Ensuring Service Level Agreements are effective

Service Level Agreements must have particular features to ensure that they are effective.

The ERA considers that Service Level Agreements must be based on robust planning and be sufficiently flexible to cope with changing circumstances.

The Department needs to be clear about what needs to be delivered and what the role of each prison is within the broader prison system. The Department must engage in comprehensive forward planning and resource allocation to ensure that the combined objectives of individual prisons are designed to deliver the objectives of the prison system as a whole.

Even with robust planning, unforeseen circumstances may arise that will affect the size and demographics of the prison population. Service Level Agreements should establish clear processes for adjusting the funding levels for prisons when circumstances change and these processes must be conducted in good faith.

### 5.5.1. Robust planning

For the prison system to operate efficiently, resources must be directed to the areas of greatest benefit. To achieve this, the Department must understand what it is trying to accomplish and identify how it will use the resources at its disposal to achieve its desired outcomes.

However, as noted in Chapter 7, the Department faces a number of longstanding issues with its planning and processes, and in the way in which it collects and uses information to make good decisions. These issues compromise the ability of the Department to perform efficiently and meet its objectives, both now and in the future.

The Department has stated that at a high level it aims to ensure a safer community by focusing on:

- the security of detainees and prisoners in correctional facilities and offenders in community based orders;
- the safety of its people;
- the safety of offenders, detainees and prisoners; and
- rehabilitation.

The manner in which these objectives are achieved depends on the number and mix of prisoners that the Department is responsible for accommodating. The security standards required for maximum security prisoners are different to those of minimum security prisoners. Similarly, the rehabilitation services provided will depend on the needs of the prisoner cohort being housed.

Risks arising from inaccurately forecasting the future number and mix of prisoners can be mitigated through the development of flexible facilities that can be configured to accommodate a range of prisoner security classifications. The ERA understands that the Department is considering ways in which this can be achieved.

As prisons take years to build<sup>115</sup>, the Department must be able to identify capacity constraints years before they occur. The Department can identify future capacity constraints by engaging in a comprehensive forward planning program. Comprehensive

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<sup>115</sup> The recently opened PPP prison in South Auckland, New Zealand, took almost five years to build, from the beginning of the tender process to its opening.

and robust forward planning will ensure that the Department is aware of the current and future prisoner needs in Western Australia and can plan capital expenditure with sufficient lead time to ensure all prisoner needs can be met.

Having engaged in a comprehensive forward planning process, the Department will be in a position to not only ensure that the prison estate has sufficient capacity, but also identify and define the specific role that each prison in the estate plays in delivering the planned services. Considering the role of each prison in the context of the objectives of the entire prison system will ensure that the combined objectives of individual prisons are designed to deliver the overall objectives.

The Department should define the role that each prison plays in the Western Australian prison system by establishing the operating philosophy and objectives of each prison.

An operating philosophy should set out the objectives of the prison system as a whole, provide guidance to staff in individual prisons in their daily decision-making and provide a base upon which the operations of the prison are built.<sup>116</sup> Operating philosophies inform the operating model of a prison and its security strategies.

Few prisons in Western Australia have a clear operating philosophy and objectives. Serco produces an operating philosophy and objectives in responding to the tender processes to operate private prisons. As such, both Acacia and the Wandoo have operating philosophies that are publicly available.

A clear operating philosophy and objectives for individual prisons is 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>117</sup> These functions in turn have implications for the number and types of prisoners held within an individual prison.

### 5.5.2. Flexibility

The establishment of Service Level Agreements between the Department and each prison should impose greater discipline on the Department in the planning and allocation of its resources.

The ERA understands that Superintendents of public prisons are currently obliged to accept any additional prisoners at the direction of the Department without any associated increase in funding.

In contrast, the contract for Acacia sets out the funding due to Serco for different levels of prisoner populations. This approach acknowledges that there is a marginal cost to increasing a prison's population. The ERA recommends that Service Level Agreements with public prisons contain similar funding tables. This would require the Department to consider the cost implications of different prison populations.

However, robust planning activities and well-designed Service Level Agreements will not be able to appropriately account for all possible eventualities.

Variation clauses are standard components of many long-term contracts. However, Service Level Agreements differ from commercial contracts in that there is a power imbalance between the Department and the Superintendents responsible for delivering the terms of their Service Level Agreements.

<sup>116</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>117</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.



The strength of the private contracts between the Department and Serco is that both parties to the contract must agree to any variations of their contract. If the proposed variation is commercially unattractive, Serco will not agree to the variation.

Unlike private providers, Superintendents do not have this authority if the Department proposes a variation that is considered unattainable or unreasonable because Superintendents ultimately take direction from the Department. These conditions also hold for negotiations establishing a Service Level Agreement.

The risks associated with the absence of Superintendent negotiating power can be mitigated by imposing greater transparency and robust variation processes on Service Level Agreements. Publishing Service Level Agreements will allow for additional public scrutiny of the performance expectations placed on the public prison system.

Similarly, variations to a Service Level Agreement could be published in a public register with a description of the amendment and justification for the change. This process can be used to prevent the Department from simply overriding a Service Level Agreement or materially modifying a Service Level Agreement without good reason, without limiting the Department's ability to respond to unforeseen circumstances.

### **5.5.3. *Realistic and achievable expectations***

Service Level Agreements must be realistic and achievable if they are to be effective. This requires:

- the Department to have robust information on the services that need to be delivered and the cost of those services across the prison system (which can be achieved through a specification, costing and benchmarking program); and
- a process for negotiating the terms of Service Level Agreements with individual Superintendents, that reflect the specific circumstances of each prison.

Service Level Agreements should be informed by robust cost information to ensure that Superintendents are capable of delivering the expected services with the funding they have been allocated.

The Department does not have robust information on how much it currently costs individual prisons to deliver specific prison services or the efficient cost of delivering those services. Developing this understanding is a foundation step in ensuring that Service Level Agreements are realistic and achievable. Reflecting this, the ERA recommends that the Department engage in a specification, costing and benchmarking program (as detailed in Box 4).



#### Box 4 - Specification, costing and benchmarking program

The National Offender Management Service in the United Kingdom addressed this problem when it introduced its specification, benchmarking and costing program.

The purpose of the program was to:<sup>118</sup>

- define what should be delivered (the outcomes and outputs for services) – so consistent services could be delivered across all areas of the business;
- to know exactly what it costs to deliver each service; and
- understand how a service can be delivered efficiently and the cost of delivering that service.

The services relating to secure and decent custody cover 61 categories, ranging from mandatory drug testing and managing prisoner finances to physical education and services for visitors. Each category of service is broken down into service elements. Each service element has a defined output, prisoner types that the service element applies to and the manner in which the service element is measured.

For example, 'services for visitors' is broken down into fourteen service elements, the first of which states that there must be decent, indoor facilities with toilets, seating and baby changing facilities that visitors may access when visiting. This is applicable to all prisoner types and is measured through the Measuring Quality of Prison Life assessment (**MQPL**).<sup>119</sup>

Having specified each service (and their associated service elements) the program then embarked on a comprehensive costing exercise to determine the efficient cost of delivering each service element (and thus each category of service).

The benefits of undertaking these activities are fourfold:

1. By defining each service, it is possible to ensure that there is consistency in the way that services are delivered. This guarantees that prisoners are provided uniform services regardless of their location or who is responsible for operating the prison.
2. The collection of cost information provides greater clarity and certainty about the services that a prison can deliver for a specified level of funding. The better understanding of costs also helped support public sector commissioning efforts.
3. The collection of underlying cost information provides choice about the services that may be delivered, which offenders the services should be delivered to, the minimum levels of each service and whether there is flexibility to commission options above the minimum.
4. Access to robust cost information allows the Department to compare the cost of individual prisons and better compare the cost of operating the more expensive (and presumably older) prisons with the cost of replacing them with new facilities that have lower operating costs.

This information improves the development of Service Level Agreements and commercial negotiations with alternate prison providers.

Robust cost information allows for open discussion about the services that can be delivered for the funding that is provided. In the event of budgetary changes it allows the Department to pinpoint the exact services that will be affected by the change and identify the risks (or benefits) of doing so.

Access to this information also enables the public sector to make informed decisions about the services it can offer and the cost of providing those services when competing with private sector providers in open tenders.

Costs and service requirements will vary from prison to prison, reflecting the specific circumstances of each prison. Service Level Agreements for individual prisons will need to reflect this variation to ensure an appropriate level of funding. This will require some negotiation between Superintendents of individual prisons and the Commissioner of the Department.

There are a number of ways that the terms of a Service Level Agreement can be established. For example, in the commissioning model recommended by the ERA in Chapter 8, the Department would provide a draft tender brief, describing the services that it wants the prison in question to deliver. The Superintendent, with assistance from a specialist tender team, would submit a proposal to the Department detailing how they would deliver those services for the term of the Service Level Agreement. The terms of the Service Level Agreement would be based on the content of the tender document.

In the absence of a commissioning model, Service Level Agreements can be developed through formal discussions between the head office of the Department and Superintendents. These discussions will be informed by factors such as Departmental planning, developments in custodial practices, the available prison infrastructure and the objectives of the prison in question.

Neither of these two approaches will entirely replicate the tension of private negotiations. However, they will replicate aspects of private negotiations that will deliver benefits to the prison system.

#### **5.5.4. Superintendents need to be empowered to achieve the expected outcomes**

Service Level Agreements clearly delineate the roles and responsibilities of Superintendents from those in the Department.

Currently, Superintendents are not responsible for everything that happens within the confines of a prison. For example, Superintendents are not responsible for procuring or ensuring the efficient delivery of education or health services.

This may not lead to optimal education and health service outcomes because Superintendents are in control of resources (that is, prison officers) required for the efficient delivery of health and education services. In circumstances where there are insufficient prison officers to deliver all activities normally provided in a prison, Superintendents could potentially favour delivering the activities for which they are held accountable.

For example, if staffing levels fall below a set point (specified by WAPOU) Superintendents have a choice between shutting down a unit (that is, locking everyone housed in that unit in their cell) to free up staff for activities (such as visits to the medical centre or education programs), or shutting down the other activities and keeping the unit open.

Superintendents have weaker incentives to ensure that services are delivered when they are not accountable for the delivery of those services.

Introducing Service Level Agreements that make the Superintendent responsible for the efficient operation of all activities within the prison will remedy this and will provide Superintendents with the incentives to ensure all services are provided efficiently within their prison.

In part, this can be addressed by assessing the performance of Superintendents against benchmarks that measure aspects of these services that Superintendents can influence. This issue is discussed in detail in Chapter 6.

#### **5.5.5. Incentives for good performance**

Private prisons in Western Australia are subject to clear incentives to perform to a high standard. These incentives arise from the contracting process and the contracts themselves. Refer to Box 5 below.

### Box 5 - Performance incentives for private prisons

The commercial environment in which private providers operate creates incentives for good performance. Providers that fail to perform to a sufficient standard have the potential to cost a private provider renewed contracts. This occurred in Western Australia when the Australian Integration Management Services Corporation (**AIMS**), the original operator of Acacia Prison, lost the right to operate the prison after it was re-tendered. AIMS' "chequered performance"<sup>120</sup> was a significant contributing factor in the decision to re-tender Acacia at the end of the original five-year contract period.

Additionally, poor performance has the potential to cost private providers other 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 receives the full fixed fee. If it fails to meet its indicators, it receives a reduced fee.<sup>121,122</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>123,124</sup>

Performance incentives are capable of improving performance across the public system provided the desired performance standards can be adequately observed and measured, and the benefit of any improved performance exceeds the cost of the performance incentive.

Superintendents of public prisons are not subject to the same clear incentives. However, this can be addressed through the introduction of Service Level Agreements, complemented by benchmarks. The ERA recommends that contracts with Superintendents (and potentially other senior prison managers) contain a clause that provides them with a financial bonus based on the successful delivery of the terms of their Service Level Agreement under the specified budget.

In complement to financial incentives, there are alternative ways to encourage public prisons to perform to a high standard.

The ERA is of the view that Superintendents should be placed on fixed term contracts that align with the term of the Service Level Agreement of the prison for which they are responsible. Currently, Superintendents are permanent employees. Superintendents are generally Level 9 or Class 1 public sector employees. The ERA understands that there is discretion to appoint employees at these levels to either permanent or fixed term contracts. Placing Superintendents on fixed term contracts will allow for more effective performance management of any Superintendents that are not performing to the required standard.

<sup>120</sup> Department of Justice, *Acacia Prison Services Agreement: Annual Report 2004/2005*, Perth, Government of Western Australia, 2005, p.

<sup>121</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Perth, Government of Western Australia, 2006, p. 276.

<sup>122</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Perth, Government of Western Australia, 2012, p. 144.

<sup>123</sup> Department of Corrective Services, *Acacia Prison Services Agreement Schedules and Annexures*, Perth, Government of Western Australia, 2006, p. 117.

<sup>124</sup> Department of Corrective Services, *Wandoo Reintegration Facility Contract*, Perth, Government of Western Australia, 2012, p. 142.

One area in which the ERA has observed that there is scope for considerable performance improvement is in prison industries. Prison industries are areas in which prisoners are employed to produce goods and services for consumption inside and outside of the prison. Industry types include laundries, textile and clothing production, timber and joinery, metal fabrication, baking, horticulture, and farming. Many, but not all, of these industries are developed for the purposes of internal self-sufficiency.

There are significant differences in the manner that industries are managed in the private sector and the public sector. Acacia prison has a well-developed industries program and has incentives to ensure that it is efficient<sup>125</sup> because Serco is allowed to retain 90 per cent of all Gross Prison Industry Revenue. By contrast, profits generated by industries in the public prison system are retained centrally by the Department.

The ERA observes that there may be scope for greater return from industries operated in the public prison system. However, Superintendents lack incentives to undertake the additional requisite work to achieve these efficiencies, because it does not support the budget position of their prison. The introduction of a revenue sharing arrangement in which a proportion of additional revenues are retained by the prison (which can only be used for specified activities<sup>126</sup>) would create incentives for Superintendents to operate its industries areas with greater efficiency.

Prison industries have not been considered to be significant business activities for the purposes of National Competition Policy, because the primary aim of prison industries is rehabilitation.<sup>127</sup> Therefore, prison industries have not been subject to competitive neutrality obligations specified as part of the National Competition Policy.<sup>128</sup> The Department uses its Prison Industries policy to impose competitive neutrality principles on prison industries.<sup>129</sup>

The introduction of Service Level Agreements (with system-wide benchmarking) and a commissioning model will introduce additional incentives for the public prison system to adopt a mindset of continual performance improvement.

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<sup>125</sup> While complying with its obligations to remain competitively neutral.

<sup>126</sup> For example, expenditure could be limited to improving the functioning of the prison such as the installation of prisoner kiosks, upgrading recreation areas or delivering additional programs for prisoners.

<sup>127</sup> Council of Australian Governments, *Competition Principles Agreement*, Canberra, 2007, section 3.(1).

<sup>128</sup> Competitive neutrality ensures that the significant business activities of publicly owned entities compete fairly in the market. It is about transparent cost identification and pricing in a way that removes advantages arising from public ownership.

<sup>129</sup> Department of Corrective Services, *Policy Directive 56: Production and Sales of Goods, Products, and Services from Prison Industries*, Perth, Government of Western Australia, 2010.

## 5.6. Recommendations

The ERA recommends that:

1. The Department of Corrective Services introduce Service Level Agreements to all public prisons and make these agreements publicly available through its website.
2. The Department of Corrective Services be required to report annually to Parliament on the performance of each prison in Western Australia against the standards set out in the relevant Service Level Agreement.
3. The Department of Corrective Services undertake a program of service specification and costing for the prison system.
4. The Department of Corrective Services introduce financial performance incentives for Superintendents of public sector prisons.
5. The Department of Corrective Services introduce fixed term contracts for Superintendents that align with the term of the Service Level Agreement applied to the prison they are responsible for managing.
6. The Department of Corrective Services introduce a revenue sharing arrangement to allow each Superintendent to retain a proportion of revenues generated by their prison through industries for use on specified activities within their prison.

## 6. Performance benchmarks

### 6.1. Introduction

The Terms of Reference for this Inquiry require the ERA to develop and calculate a set of benchmarks for prisons. It is intended that the Department would use the benchmarks to assess and compare the performance of individual prisons in Western Australia and identify areas for improvement.

In identifying a set of benchmarks, the ERA has considered the areas of prison performance that should be measured, the characteristics of good benchmarks and the benchmarks currently used in Western Australia and other jurisdictions (nationally and internationally).

The ERA considers that there are four areas of prison performance that should be measured.

- *Safety and security* – Prison operators are effective in preventing escapes that can pose a threat to community safety, and prison staff and prisoners are safe from harm.
- *Rehabilitation* – Prison operators make a positive contribution to the rehabilitation of prisoners in their care to decrease the likelihood that they reoffend upon release. Effective rehabilitation of prisoners leads to improved community safety, and savings for the Government in providing prison and other public services (such as law and order, health and welfare).
- *Quality of life for prisoners* – Prison operators treat prisoners humanely and decently, reflecting that this leads to better outcomes in prisoner rehabilitation and safety and security, and recognising that prisoners are held against their will.
- *Prison management* – Prison operators deliver prison services as efficiently as possible to ensure that public funds are not wasted.

These areas of prison performance are consistent with the mission of the Department, which focusses on Security, Safety of Staff, Safety of Prisoners and Rehabilitation.

The ERA has identified a set of benchmarks for each of the four categories that meet the following principles of good benchmarking.

- The prison operator must be able to influence the metric used.
- It must be possible to accurately and reliably measure the benchmark.
- The metric must not encourage perverse behaviour.

The ERA has also identified some benchmarks for rehabilitation the Department should aspire to measure in time. These benchmarks relate to the physical and mental health of prisoners, the literacy and numeracy of prisoners, and prisoner parenting and family development. These benchmarks cannot currently be applied because the supporting information is not collected.

The ERA considers that it is not possible to *directly* compare the performance of different prisons because of fundamental differences in their characteristics and the role that they play in the prison system. However, it is possible to provide a *high-level* comparison by giving prisons a weighted grade or score for their performance. This approach is taken in other jurisdictions, most notably in New Zealand and the United Kingdom.

The ERA has also proposed that some benchmarks be developed to apply across the prison system, reflecting that some important outcomes can only be influenced by the Department, not individual prisons. Specifically, the ERA has proposed benchmarks to measure prison

utilisation rates and rehabilitation outcomes across the prison system, in addition to the performance indicators that the Department currently reports on.

In this Draft Report, the ERA has made suggestions for how targets could be set across prisons for each benchmark, but has not calculated the benchmarks or set targets. The ERA will make more detailed recommendations in the Final Report on how to measure benchmarks and set targets, after receiving feedback on the benchmarks from stakeholders.

The remainder of this chapter discusses:

- Which areas of prison performance should be measured;
- How to compare the performance of disparate prisons;
- The justification behind the recommended benchmark metrics; and
- Whole of Department performance indicators.

## 6.2. Identification of measures of prison performance

The ERA has identified four categories of prison performance that should be measured in benchmarking. These categories are safety and security, rehabilitation, prisoner quality of life and management. Each category represents an outcome that a good prison should deliver.

The specific measures contained in the safety and security category should reflect the need for:

- Prisoners and staff to be safe, with assaults and work accidents minimised.
- Community safety to be maintained (that is, prisons need to be secure, preventing escapes).
- Disorder to be minimised, allowing prisoners to attend education, work and programs and staff to continue with their work.

The second category, rehabilitation, reflects the need for prisons to make every effort to rehabilitate prisoners in their care to decrease the likelihood that they offend upon release. If prisons are able to effectively rehabilitate prisoners, it leads to improved community safety, and savings for the Government in providing prison services, as well as other public services such as law and order, health and welfare.

Prisoner quality of life reflects that decent prison conditions can lead to better outcomes in prisoner rehabilitation and safety and security.<sup>130</sup> Ensuring prisoners are treated decently also recognises that prisoners, who have been denied their liberty, should be treated as humanely as possible.

The final category, prison management, is designed to assess whether prisons are offering value for money to taxpayers. That is, prisons should be delivering outcomes in safety and security, rehabilitation and quality of prisoner life as efficiently as possible to ensure that public funds are not wasted.

Categories have been selected to align with the Department's objectives and the commonly cited objectives of prisons more broadly. These objectives have previously been discussed in Chapter 3.

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<sup>130</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs*, Perth, Government of Western Australia, 2014, p. ii.



The ERA has sought to select specific benchmark metrics in each category that meet principles of good performance benchmarking. These key principles are:

1. The prison operator (that is, the Superintendent) must be able to influence the prison's performance against each metric.
2. It must be possible to accurately and reliably measure the benchmark.
3. The metrics must not encourage perverse behaviour by prison operators.

The ERA has adapted metrics that are in place either in Western Australia or in other jurisdictions, or developed metrics that are specific to Western Australia.

The following sections outline the ERA's reasoning behind selecting benchmark metrics in each of the four categories.

### 6.2.1. Safety and security

The benchmark metrics included for safety and security are linked to the objectives of the Department, which focus on ensuring the safety of the community, prisoners and prison officers. Community safety is measured through metrics for the security of the prison, such as prisoner escapes or unlawful releases and absconds. Prisoner safety is reflected in measures of assaults, self-harm and incidents of loss of control. Assault measures are extended to include prisoner on staff assaults reflecting the importance of prison officer safety.

Superintendents are almost solely responsible for the security and safety of their prisons. Therefore, metrics can focus on the issues that are the most evident measures of prison safety and security. The metrics recommended in this category are consistent with the measures currently used, and those used in other jurisdictions.

### 6.2.2. Rehabilitation

The performance of individual prisons in rehabilitating prisoners is difficult to measure. Ideally, a prison's performance in this area would be measured in the recidivism rate of the prisoners that it releases. However, prison Superintendents have little control over many of the factors that contribute to a prisoner reoffending. As a result, prisons should not be held accountable for the rate of recidivism amongst their former prisoners.

Reflecting this, the ERA has recommended metrics that focus on measuring how a prison has assisted in increasing prisoners' skills or capacity in areas that may contribute to them not reoffending when they are released. There are seven factors that are identified to contribute to the likelihood that a prisoner will reoffend on release. These factors are accommodation; education, employment and training; budgeting and debt management; drug and alcohol dependence; physical and mental health; family connection; and attitudes, thinking and behaviour.<sup>131</sup>

Superintendents are able to exert influence over a prisoner's drug use while in prison. Superintendents are responsible for keeping their facility secure, which includes minimising the amount of contraband (including drugs) that enters the prison. However, Superintendents have limited control over the other factors that influence the likelihood of a prisoner reoffending.

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<sup>131</sup> See for example: United Kingdom Ministry of Justice, *Transforming Rehabilitation: a summary of evidence on reducing reoffending*, London, United Kingdom, 2013; and Tasmania Department of Justice, *Breaking the Cycle – Tasmanian Corrections Plan (2010-2020) Background Paper: Pathways to Offending*, Hobart, Government of Tasmania, 2010.

Prisons offer prisoners programs that are designed to address their needs in many of these areas. However, these programs are designed and delivered by Adult Justice Services within the Department's head office, not by individual prisons (see Table 2 in Chapter 3 for a description of their relative responsibilities). Therefore, individual prisons cannot be held accountable for the outcomes of these programs and services. However, individual prisons can have some influence over prisoner participation in, and completion of, programs. Prisons can exert this influence by taking opportunities to encourage prisoners to attend and persist with programs, by ensuring prisoners are able to get to programs on time and ensuring that education and programs go ahead as scheduled (for example, by avoiding lock downs that prevent prisoners from attending programs).

Therefore, the performance measures the ERA has recommended in this area are largely limited to a prison's ability to maximise prisoner participation in, and completion of, programs, education and employment.

### 6.2.3. Quality of prisoner life

Prison quality of life is addressed in a few ways. The majority of the requirements for prison performance in this area are set out in service standards or operational requirements that prisons must satisfy. These standards and requirements set out the minimum standards for a number of areas such as prisoner accommodation, food and hygiene. However, areas not included in these standards can provide another means of assessment for the quality of life that a prison is providing to its prisoners.

There are very few measures currently used to assess this aspect of prison performance. The main measures used are the number of hours that prisoners are out of cells and hours spent in purposeful activity. Prisoner quality of life can also be measured through prisoner and stakeholder surveys. The ERA has identified two surveys: the Measuring Quality of Prison Life (**MQPL**) survey and the Customer Satisfaction Survey for Wandoo reintegration facility as potential measures.

The MQPL survey, developed by Professor Alison Liebling, is intended to overcome inadequacies of narrow and selective performance indicators that are often used to measure the quality of a prison.<sup>132</sup> The survey has been developed based on what staff and prisoners consider to matter in prisons.<sup>133</sup> Stakeholders have expressed positive views of the survey during consultations on this Inquiry. However, completing the survey and corresponding assessment is time consuming and resource intensive. It involves a team of researchers entering the prison for a period and then developing a report with synthesized quantitative and qualitative data.<sup>134</sup>

The Customer Satisfaction Survey has been developed as a KPI for Wandoo. The survey was developed in consultation with the Department and Serco, drawing on the work completed by Alison Liebling. Concerns over statistical viability given the low population at Wandoo resulted in the survey only being completed for one quarter since the opening of Wandoo in November 2012. The survey is currently under review measure as part of the regular review of performance measures.<sup>135</sup>

<sup>132</sup> A. Liebling, S. Hulley, and B. Crewe, 'Conceptualising and Measuring the Quality of Prison Life', in D. Gadd, S. Karstedt, and S. Messner (ed.), *The SAGE Handbook of Criminological Research Methods*, London, SAGE Publications, 2012, pp. 358-373.

<sup>133</sup> A. Liebling, 'What is MQPL? Solving puzzles about the prison', *Prison Service Journal*, vol. 202, no. 1, 2012, p. 3.

<sup>134</sup> B. Schmidt, 'MQPL+ Doing Prisons Research Differently', *Proceedings of the Prisons Research Centre Annual Conference*, October 23 2014, University of Cambridge.

<sup>135</sup> Information provided by the Department of Corrective Services on request.

Stakeholders have indicated a preference for the MQPL survey given that it is a better measure of outcomes than the Customer Satisfaction Survey, which measures prisoner perceptions. Given the broader support for the MQPL survey, both academically and from stakeholders, the ERA considers that the MQPL would be the preferred measure. However, due to its resource intensive nature, it is unlikely to be feasible to apply the measure in every reporting period.

#### 6.2.4. Management

Superintendents should be responsible for the efficient management of their prison. Outcomes in the above categories should be achieved as efficiently as possible to ensure that taxpayers are receiving value for money.

The most obvious indicators in this area are measures of a prison's cost, such as cost per prisoner per day, or whether the prison is operating on budget. Such measures provide an indication of how efficiently the prison is achieving its outcomes.

Benchmarks can be extended to reflect issues with management of the workforce through measures of personal leave, workers' compensation and overtime costs. High levels of personal leave, workers' compensation and overtime can result in staff morale issues that affect the performance and productivity of a prison.<sup>136</sup> These issues can also be evidence of a poor staff culture, where leave entitlements and overtime are overused. All of these factors can reflect inefficiencies in the operation of the prison.

In assessing prison performance in these areas, consideration must be given to whether the prison is achieving the outcomes that the Department wants. It is inefficient to perform well in management performance measures (such as cost per prisoner per day or staff use of overtime) if prison outcomes (rehabilitation, safety and security and prisoner quality of life) are not being achieved. It is important that undue emphasis is not placed on management targets that leads to Superintendents putting more effort into cutting costs than in operating an effective prison.

### 6.3. Comparing prison performance

In addition to identifying appropriate performance metrics, there must be a method for ensuring that prisons can be compared in a fair manner. As discussed in Chapter 3, there are a number of different prisons in the Western Australian prison system. These prisons play a variety of roles that will affect their ability to perform against certain criteria. For example:

- A prison's population (including security level, age and size, among other factors) is likely to affect the safety and security of the prison and the extent to which the prisoners can be rehabilitated. For example, Casuarina Prison contains the highest security prisoners in the State and therefore may be less able to offer education and rehabilitation programs to its prisoners.
- Prison design and age affects the cost of delivering services in that prison. For example, an old prison will have greater maintenance requirements, which may increase cost and cause disruptions. A prison that is better designed may also require less prison officers to supervise prisoners safely.

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<sup>136</sup> MTC Institute, *Measuring Success: Improving the Effectiveness of Correctional Facilities*, Washington D.C., MTC Institute, 2006.

- A prison's location (whether it is located regionally or in the metropolitan area) is likely to affect costs and the ability of the prison to attract quality staff.

There are a number of other characteristics and factors that may affect a prison's performance relative to other prisons. As a result, it is not possible to directly compare prison performance without adjusting for these factors. However, it is possible to provide a high-level means of comparison by giving prisons a weighted grade or score for their performance. This approach is taken in other jurisdictions, most notably in New Zealand and the United Kingdom. These two approaches are described in more detail below.

### 6.3.1. New Zealand Prison Performance Table

The Prison Performance Table<sup>137</sup> assesses prison performance according to core security, internal security procedures and rehabilitation performance. Each prison is ranked in categories of Needs Improvement, Effective, Exceeding or Exceptional based on its performance in each area.

Prisons are initially assessed through a core security gateway that considers major failings in prison safety or security. Prisons fail the core security gateway if there have been any incidents that are considered unacceptable in any form. These incidents include escapes, riots and unnatural deaths. If a prison fails the core security gateway, it is immediately given a grade of Needs Improvement. If a prison passes the gateway (that is, it has had none of the specified incidents during the period) it proceeds to the internal procedures gateway.

The internal procedures gateway is a test of whether a prison is meeting minimum requirements for safety and security. This gateway includes measures such as assaults, justified complaints from prisoners and incidents of self-harm. Prisons are given a baseline score that reflects its characteristics including population size and composition and population turnover. The baseline score reflects the maximum level of safety and security problems that could be considered acceptable. The prison then accumulates a score that reflects the extent of safety and security incidents occurring during the period. If the prison's score is more than its baseline score, then it fails the internal procedures gateway and receives a grade of Needs Improvement. Prisons that pass the internal procedures gateway proceed to an assessment of rehabilitation performance.

Rehabilitation performance is assessed by the prison's performance against seven performance indicators. Performance indicators are based on how the prison contributes to a prisoner's rehabilitation through program, education and employment participation. Performance against each performance indicator is weighted to give the prison a rehabilitation score out of 100. Prisons are then given their final grade according to their rehabilitation score. A score above 90 per cent results in a grade of exceptional, 80 to 90 per cent a grade of exceeding, 65 to 80 per cent a grade of effective and less than 65 per cent a grade of needs improvement.

### 6.3.2. United Kingdom Prison Rating System

The Prison Rating System<sup>138</sup> is a 'weighted scorecard' approach that assigns prisons a grade of one to four. The grade reflects the prison's performance as:

1. Overall performance is of serious concern.

<sup>137</sup> New Zealand Department of Corrections, *Prison Performance Tables Methodology*, Government of New Zealand, 2015.

<sup>138</sup> Ministry of Justice, *PRS: Prison Rating System Specification Document*, Government of the United Kingdom, 2014.

2. Overall performance is of concern.
3. Prison is meeting the majority of targets.
4. Prison performance is exceptional.

Grades are awarded based on prison performance in domains of Public Protection, Reducing Re-offending, Decency, and Resource Management and Organisational Effectiveness.

The performance of prisons in each domain is determined by the achievement of various related drivers and their corresponding measures. For example, a prison's score in the Reducing Reoffending domain is partly determined by the driver Resettlement, which is measured by indicators such as the number of prisoners in settled accommodation, employment and education and training on release.<sup>139</sup>

Depending on the prisons performance against its targets it is awarded a score of one to four for each measure. Measures are then weighted based on their relative importance to the driver, and in turn domain, to calculate a score of one to four for each performance category and a score for the prison's performance overall.

This score is then adjusted if there has been certain negative outcomes in the period. If there has been an escape, or the prison was assessed as poor by Her Majesty's Inspector of Prisons (HMIP)<sup>140</sup> its final score is downgraded by one grade.

### 6.3.3. ERA assessment

The ERA considers that giving a prison a grade or score provides for a fair high-level comparison of prison performance. The ERA prefers a weighted scorecard approach, such as that used in the United Kingdom, rather than the New Zealand model.

The key difference in the two approaches is the emphasis that the New Zealand model places on security. Through the inclusion of two security gateways, the New Zealand model places greater emphasis on security incidents that can result in an automatic failure for prisons. Grading prisons in this manner may mean that a prison's performance in rehabilitation, a key objective of prisons, is not assessed at all. This would be of particular concern for minimum-security facilities whose main role is to assist in transitioning prisoners into society upon release.

In contrast, the United Kingdom model assesses all areas of performance when assigning a grade. One incident does not in itself result in the prison being given a poor grade. However, prisons are judged harshly for incidents that pose a threat to community safety or represent serious breaches in prisoner safety (grade is decreased by one).

Additionally, a model where weights are applied to metric categories allows the Department to set priority areas of performance for prisons in accordance with their role in the prison system. For example, a minimum-security facility may be given a greater weighting for prisoner rehabilitation than a maximum-security facility. This can also be achieved in the weighting of individual metrics within categories.

Within such a model, the progress of individual prisons against specific metrics can also be monitored to facilitate improvements.

<sup>139</sup> Ministry of Justice, *PRS: Prison Rating System Specification Document*, Government of the United Kingdom, 2014, p. 6.

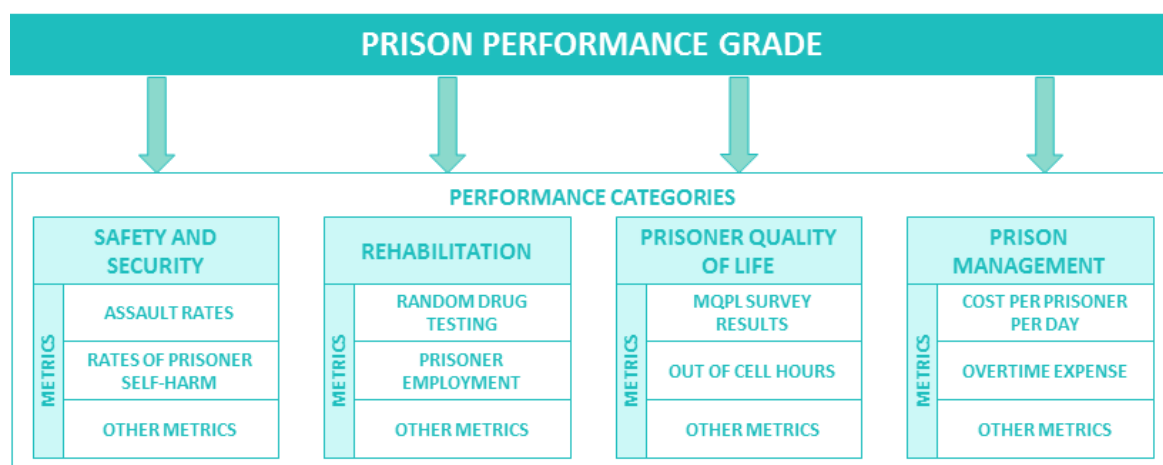
<sup>140</sup> Her Majesty's Inspector of Prisons has a similar role to the Inspector of Custodial Services in Western Australia.

### 6.3.4. Practical considerations

The ERA considers a model where prisons are given a weighted grade for performance to be the best means of providing a high-level comparison of prison performance.

Under such a model, a prison's performance against benchmark metrics would be weighted to provide a grade for performance in safety and security, rehabilitation, prisoner quality of life and management. Scores under each category would then be weighted to provide an overall performance grade for the prison. This relationship is illustrated in Figure 11.

**Figure 11 Summary of benchmarking process**



To implement this approach, calculations will need to be made to determine:

- a weight for each category reflecting its importance to the prison's overall performance;
- a weight for each metric reflecting its importance to its category; and
- each prison's target level of performance for each metric.

The following sections provides some information on how these values could be assigned.

### 6.3.5. Assigning weights

Weights are used to reflect the relative importance of individual metrics and performance categories to a prison's overall performance grade. Weights are assigned at two levels in this approach:

- For metrics in performance categories, to reflect the relative importance of each metric to its performance category.
- For performance categories in the overall performance grade to reflect the relative importance of each performance category to overall performance grade.

Metrics and categories are weighted for two reasons:

- Prisons have different roles in the system and these roles mean that expectations and priorities for prisons differ. For example, a minimum-security prison may be given a higher weighting to rehabilitation performance relative to safety and security reflecting its priority in reintegrating prisoners into society.
- Metrics and categories have different levels of importance. Some metrics may be more important to the performance of their category than others and are therefore given a higher weight. Likewise, the Department may place more importance on



certain areas of performance and therefore assign them a higher weight in determining the overall performance grade.

These weights may largely be determined by the Department given that they are a reflection of their priorities. This could form part of the process of agreeing to Service Level Agreements with prison Superintendents. The determination of weights will be given more consideration in the Final Report, following feedback from stakeholders.

### 6.3.6. Setting benchmark targets

In order to implement such a model, consideration needs to be given to how to set the target and weights applied to each metric for each prison. This can be achieved in a few ways.

Currently, performance targets for each prison are set in two ways<sup>141</sup>:

- Some performance indicators are based on a target that is acceptable to the Department's executive. For example, the acceptable target for escapes or unlawful releases is zero.
- Other performance targets are based on the performance of individual prisons over time. The average result over 18 months is determined for each indicator and an improvement factor of 10 per cent is applied. That is, the prison's target is to be 10 per cent better than their performance over the past 18 months.

Performance targets are recalculated every 12 months to adjust for changes in the prison's performance and the requirements of the Department's executive.

Prisons could be grouped together with other, similar prisons to work out a benchmark score for those prisons for each metric. This provides for a simple means of calculating benchmark targets. However, in order to group prisons the prison system must have a sufficient quantity of prisons that are similar enough in characteristics to be compared fairly. The United Kingdom, where comparator groups are used as part of the Prison Rating System, has approximately 150 prisons. It is therefore reasonably easy to find enough prisons of a comparable nature to group together. In Western Australia there is 16 prisons and very few, if any, are directly comparable. This option is therefore likely to be ineffective in the Western Australia prison system.

The second option is determining a benchmark target for each performance metric and then scaling that target to adjust for the different characteristics of individual prisons.

In the event that the performance of a prison is, at least partly, the result of factors outside the control of Superintendents, it is advisable to make statistical adjustments to reflect these factors.<sup>142</sup> Statistical adjustments are made based on the relationship between the performance indicator and selected external factors. For example, Casuarina may have a higher allowance for assaults because assaults are more common in maximum-security prisoners.

Scaling the targets for each prison, if it can be completed accurately, controls for the many factors that affect the performance of different prisons, allowing for a fair comparison of performance. There are a number of difficulties in attempting to perform a statistical analysis to scale benchmark targets. The most significant is the requirement for a large enough data set to conduct the analysis. Given the small prison population in Western Australia, the dataset is likely to be insufficient to conduct such an analysis.

<sup>141</sup> Information provided by the Department of Corrective Services on request.

<sup>142</sup> T. Molleman, and P. van der Heijden, 'A Method to Deal with Dissimilar Circumstances of Public Organisations in Performance Comparisons: Evidence from Dutch Prisons', *Public Administration Research*, vol. 2, no. 2, 2013, p. 1.



The ERA considers that it is possible to set targets for different prisons to inform a *high-level* comparison of prison performance, notwithstanding the challenges outlined in this section. The ERA will make a determination on targets for each benchmark in the Final Report, following further consultation with stakeholders.

## 6.4. Recommended benchmarks

Table 3 contains the list of performance benchmarks recommended by the ERA and some more detail on the ERA's rationale behind selecting each metric.

Metrics have been selected with the view of measuring a prison's performance in the above areas with measures that are relevant to the Department's objectives and can be influenced by Superintendents. Benchmarking should be a dynamic process, with metrics and measurements regularly reviewed and altered to reflect changes in the objectives of the Department or the way in which it works.

If Superintendents are given more (or less) responsibility for outcomes in certain areas, the metrics that they are assessed against should change to reflect the change in their responsibilities.

The ERA has indicated it is 'unsure' as to whether the required data is available for some of the recommended benchmark metrics in Table 3. In these instances, the Department has not advised whether it collects the required data in response to requests from the ERA for this information.

**Table 3 Recommended benchmark metrics**

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Safety and Security</b>						
<b>Unnatural deaths</b>	The number of unnatural deaths.	Unnatural deaths are those other than death by natural causes. This includes events such as: accident, homicide, misadventure and suicide.	Unnatural deaths are the extreme outcome of unsafe prison conditions.	Yes.	Unnatural deaths are abatement events in the contracts for Acacia and Wandoo.	Unnatural deaths are clearly unacceptable in any volume. As such, presumably, the benchmark would be zero.
<b>Occurrences of serious self-harm or attempted suicide</b>	Number of incidents of serious self-harm or attempted suicide divided by a prison's Daily Average Population ( <b>DAP</b> )	Daily Average Population is the average population for the prison over the period.	Prison operators should be aware of prisoners who are at risk of self-harm and make appropriate arrangements to ensure their safety.	Yes	Measures of self-harm and attempted suicide are KPIs for all public and private prisons and are commonly used in other jurisdictions.	There needs to be a clear definition of what constitutes serious self-harm or attempted suicide.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Escapes or unlawful releases</b>	The number of escapes or incidents of unlawful release divided by a prison's Daily Average Population	<p>An unlawful release occurs when the prison releases a prisoner prior to their release date.</p> <p>Prisoner absconds are different to both escapes and unlawful releases and are treated separately below.</p>	Prisoners are incarcerated as a means of ensuring community safety. The number of escapes or unlawful releases from custody is a measure of how secure the prison is and how well it is protecting the community.	Yes.	Escapes and unlawful releases are used as abatement events in the contracts for Acacia and Wandoo.	<p>Benchmark targets should differ depending on whether the prison is minimum, medium or maximum security.</p> <p>For minimum-security prisons, prison farms and work camps, increasing focus on escapes may affect the rehabilitation activities that are offered. Clearly, escapes occurring in minimum security prisons are not as damaging to community safety as escapes from maximum-security prisons and should be treated as such.</p>

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>An abscond</b>	Number of incidents of a prisoner absconding divided by a prison's Daily Average Population.	An abscond occurs when a prisoner is outside of prison (for example, for work in the community) and does not return to prison when he or she is expected to.	<p>A prisoner abscond can be the result of insufficient monitoring or assessment of prisoner risk. Prisons assess whether a prisoner can be trusted to leave the prison for work or other activities.</p> <p>An abscond poses some threat to the community, but is likely to be relatively low, given prisoners on work release are likely to be of low risk.</p>	Yes.	Absconds are used as abatement events in the contracts for Acacia and Wandoo.	<p>An abscond can only occur when a prisoner is allowed to be outside of the prison and is thus limited to minimum-security prisons.</p> <p>Consideration also needs to be given as to whether including such a benchmark will limit a prison's use of day release, which assists with prisoner rehabilitation.</p>
<b>Incidents of loss of control</b>	The number of times throughout the period that the prison experienced a loss of control.	A loss of control refers to incidents where prison officers are unable to control prisoners (for example, in the event of a riot).	Losing control of the prison population is obviously a major security concern. It also has potential implications for staff and prisoner safety.	Yes.	Incidents of loss of control are used as abatement events in the contracts for Acacia and Wandoo.	This metric would require a clear definition as to what constitutes a loss of control.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner on staff assaults</b>	Number of incidents of staff assaulted by prisoners divided by total number of staff.		Provides a measure of how safe staff are in prisons. This is a key objective in the Department's mission statement.	Yes.	Staff assault rates are KPIs for all public prisons. Private prisons have a single KPI covering assaults on prisoners, staff and others.	There needs to be definition of what constitutes an assault. Some jurisdictions limit this measure to serious assaults only.
<b>Prisoner on prisoner assaults</b>	Number of incidents of prisoners assaulted by prisoners divided by total number of prisoners.		Provides a measure of how safe prisoners are in prisons. This is a key objective in the Department's mission statement.	Yes.	Prisoner assault rates are KPIs for all public prisons.	As above.
<b>Staff on prisoner assaults</b>	Number of incidents of prisoners assaulted by staff divided by total number of prisoners.		Provides another measure of the safety of prisoners. The ERA has been told that staff on prisoner assaults have occurred and have not been adequately addressed.	Unsure.	No. Prisons do not currently have staff assaults on prisoners as a KPI.	It could be difficult to get true reporting numbers on this given the likelihood that staff underreport such activity.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Use of solitary confinement</b>	Total hours of solitary confinement used divided by a prison's Daily Average Population.	Solitary confinement is used to seclude prisoners for disciplinary reasons.	<p>The ERA is aware of concern that individual prisons do not follow good process when using solitary confinement as punishment.</p> <p>High levels of solitary confinement are either an indication of it being used inappropriately or of poor behaviour of prisoners. Either way, it can be used to assess prison performance.</p>	Unsure.	No prisons in Western Australia currently have information on the use of solitary confinement as KPIs. It is not used in New Zealand or the United Kingdom either.	At times, solitary confinement is a necessary disciplinary and safety tool for Superintendents. Therefore, it is important to appreciate that the use of solitary confinement will not, and possibly should not, be zero. Inclusion of this metric must be done with consideration that prison Superintendents must not be overly discouraged from using solitary confinement when necessary.



Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Rehabilitation</b>						
<b>Random drug testing</b>	Number of prisoners testing positive to illicit drugs on a random test divided by total number of random tests conducted.		Drug and alcohol use is a major factor in an individual's likelihood of offending. Random testing provides a measure of the level of drug use in prisons. Decreasing drug use is likely to have a positive effect on reducing reoffending.	Yes.	The percentage of positive random drug tests is commonly used in prison benchmarking. It is a KPI for all prisons in the State.	There would need to be appropriate controls to ensure that testing is truly random. Testing may need to be completed by the Department to ensure randomness and prevent prisoners being tipped off.
<b>Offering support to prisoners who test positive to an illicit drug</b>	Number of prisoners who tested positive for illicit drugs who were offered support within one week divided by total number of prisoners who tested positive.		In discovering that an individual prisoner has been using drugs, prisons should provide support to attempt to address that prisoner's substance use.	This data is not reported for public prisons. However, it is available for Acacia Prison, so presumably it can be measured.	This is a current KPI at Acacia prison.	There would need to be a clear definition of what constitutes support. There should be an existing definition, as this metric is currently used at Acacia. This has been requested from the Department.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner compliance with Individual Management Plans (IMPs)</b>	The percentage of prisoners serving a sentence of greater than six months with an IMP completed within 28 days of sentencing.	An IMP is an Individual Management Plan that sets out the needs of the prisoner and plans their sentence.	Prison Superintendents are collectively responsible for administering IMPs for prisoners. Ensuring that prisoners receive IMPs in a timely manner maximises the time that can be spent in rehabilitation activities.	Yes.	This is currently a KPI in public prisons in Western Australia.	
<b>Prisoner participation in education and training</b>	The percentage of prisoners <b>participating</b> in accredited education and training programs in accordance with an assessed need		Education and training are identified as key pathways to reducing reoffending. Individual prisons are not able to design programs. Therefore all they can be held responsible for is maximising prisoner participation and completion.	Yes.	Participation in education and training is a KPI in all prisons, but does not take into account the programs being in accordance with an assessed need.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner completion of education and training</b>	The percentage of prisoners <b>completing</b> accredited education and training programs in accordance with an assessed need.		As above	Yes.	Program completions are not currently used as KPIs.	
<b>Prisoner basic education participation</b>	The percentage of prisoners who have engaged in a Department of Corrective Services Adult Basic Education (ABE) course after receiving a C or D score on their literacy assessment following their sentencing.	Prisons offer basic education programs to prisoners when their assessment dictates a need.	The absence of basic literacy and numeracy skills can be a major barrier to prisoners gaining employment.	Unsure. This is a KPI for Acacia, but it is unclear whether the same information is collected for public prisons.	This is used as a KPI at Acacia.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner employment</b>	The percentage of eligible and capable prisoners involved in employment in prison.		Prisoner involvement in work increases a number of skills relevant to gaining employment in society. Prisons should be seeking to maximise the number of prisoners who are involved in employment inside prison.	Yes.	Prisoner involvement in education is a KPI for all prisons in the State.	Some prisoners are not eligible to work due to security reasons, or are not able to work due to mental or physical health issues.
<b>Prisoner hours in employment</b>	The total hours of prisoner employment divided by the total number of prisoners eligible for employment.		In addition to measuring the percentage of prisoners in employment, measuring the hours that they work ensures prisons maximise time as well as just raw participation.	Unsure.	No.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner participation in clinical intervention programs</b>	The percentage of prisoners <b>participating</b> in accredited clinical intervention programs in accordance with an assessed need.	Clinical intervention programs are programs specific to treating offender behaviour and alcohol and drug use. These include cognitive skills courses, violent and sex offender courses and drug and alcohol rehabilitation.	Clinical programs help to address a number of areas that may have contributed to the prisoners offending behaviour. Again prisons do not have control over the programs offered, but may be able to influence the number of prisoners who participate in, and complete, programs.	Yes.	Participation in clinical intervention programs is a KPI in all prisons, but does not take into account the programs being in accordance with an assessed need.	
<b>Prisoner completion of clinical intervention programs</b>	The percentage of prisoners <b>completing</b> accredited clinical intervention programs in accordance with an assessed need.	As above	As above	Yes.	Program completions are not currently used as KPIs.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner health management on release.</b>	Percentage of prisoners identified with chronic disease, substance dependency or mental health issues who are provided with a relevant medical discharge plan prior to release.		Physical and mental health issues are major contributors to the likelihood that a prisoner reoffends. Providing prisoners with a discharge plan can help to reduce this impact.	Unsure. It is a KPI at Acacia, but it is unclear whether it is also common practice at public prisons.	This is used as a KPI at Acacia.	This would only be appropriate for those prisons that release prisoners into society. Not all prisons release prisoners directly. For example, the majority of maximum-security prisoners will progress to a minimum-security prison prior to release.



Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner Quality of Life</b>						
<b>Measuring Quality of Prison Life Survey</b>	The rating obtained in the Measuring Quality of Prison Life survey.	The MQPL survey is designed to measure prisoner quality of life. The measure could be the use of the entire survey, or the use of a subset of the survey specifically related to decency (as is utilised in the United Kingdom).	The survey is an explicit measure of the treatment of prisoners.	No.	Subsets of the MQPL survey are used in the United Kingdom Prison Rating System.	<p>The survey is time consuming and resource intensive, requiring a team of researchers to enter a prison and then assess their findings. Thus, if it is included, it may not be reasonable to conduct it for every period.</p> <p>Due to the resource intensive nature of the survey, this would likely be a periodic indicator (that is, it would not be measured every period).</p>

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Time spent in structured activity</b>	Total hours prisoners spend in structured activity divided by a prison's Daily Average Population.	Structured activity includes hours spent in employment, education, training or other prison programs.	Increasing the time that a prisoner is in structured activity increases their skills in a number of areas and minimises the time that prisoners are idle.	Yes.	This is a KPI for Acacia and Wandoo.	
<b>Out of cell hours</b>	Total hours that prisoners are out of their cells divided by a prison's Daily Average Population.		Increased time outside of their cell increases the quality of life for the prisoner allowing greater freedom and interaction with other prisoners.	Yes.	Out of cell hours are used as a KPI in public prisons.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prison Management</b>						
<b>Prison operating on budget</b>	Actual expenditure for the period divided by budgeted expenditure for the period.		Operating on budget is a measure of efficient management. The ERA has been made aware that very few public prisons operate on budget.	Yes.	Whether the prison is operating on budget is used as a KPI in the United Kingdom.	This metric is not relevant to private prisons as they are paid the same amount irrespective of their actual costs. Superintendents are only able to control the proportion of their budget relating to variable costs (about 15 per cent).
<b>Cost per prisoner per day</b>	Total cost of the prison divided by the prison's Daily Average Population		Cost per prisoner per day is an efficiency measure.	Yes. Total cost is reported by the Department. The Department has not yet been able to provide the ERA with marginal cost data.	Cost per prisoner per day is not used as a KPI in any of the jurisdictions assessed.	This could be measured in marginal or total cost. Additionally, there are several considerations regarding how to scale the cost to account for differences in prison characteristics.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Overtime hours</b>	Total overtime hours worked divided by total staff.		The use of overtime by prison officers has consistently been identified as an issue by stakeholders. It is a significant component of salary cost. In theory, overtime should only occur if management has failed to plan and roster appropriately, or there is excessive unplanned staff absences.	Yes.	Overtime hours are not currently used as a KPI in any of the jurisdictions assessed.	
<b>Overtime expense</b>	Total overtime expense divided by total salary expense.		This metric is included in combination with overtime hours so that prison operators have an incentive to decrease the overtime of highly paid staff, not just the staff where hours can be decreased most easily.	Yes.	Overtime expense is not currently used as a KPI in any of the jurisdictions assessed.	

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Workers' compensation taken</b>	Total hours of workers' compensation taken by staff divided by total staff.		<p>Workers' compensation claims at individual prisons can be comparatively high for two reasons:</p> <ol style="list-style-type: none"> <li>1. The prison is less safe than other prisons; or</li> <li>2. There are staff cultural issues that are leading to excessive volume of workers' compensation claims.</li> </ol> <p>Both of these reasons should be able to be influenced by good management in OHS or improving workplace culture.</p>	Yes.	Workers' compensation hours are a KPI for all public prisons in the State. It is not a KPI in private prisons or in New Zealand or the United Kingdom.	An average may be misleading if a few staff are on long workers' compensation claims. This could be more of a factor in smaller prisons.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Staff personal leave</b>	Total hours of personal leave taken by staff divided by total staff.		<p>High use of personal leave can be a result of two reasons:</p> <ul style="list-style-type: none"> <li>- An unhealthy staff; or</li> <li>- A poor staff culture leading to excessive use of personal leave.</li> </ul> <p>Management should have some influence over both of these factors.</p>	Yes.	Personal leave hours are a KPI for all public prisons in the State and in the United Kingdom. It is not a KPI in private prisons or in New Zealand.	<p>An average may be misleading if a few staff are taking long periods of personal leave. This could be more of a factor in smaller prisons.</p> <p>Personal leave may be beyond the control of management in some instances. For example, the workforce could be exposed to a virus that causes high levels of sick leave.</p>

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner grievances upheld</b>	Number of complaints made by prisoners, specific to individual prisons, which are upheld on investigation divided by a prison's Daily Average Population.	Prisoners are able to make complaints either through the Department's process, or directly to the Ombudsman.	Justified complaints by prisoners are an indication of where management may have been insufficient or staff conduct inappropriate.	Unsure. The Department, and individual Superintendents, are required to record all complaints made. <sup>143</sup> However, it is unclear whether complaints are resolved in a manner that could be used to assess whether claims are upheld.	Prisoner grievances are not currently used as a KPI in Western Australia or the United Kingdom. It is a KPI for prisons in New Zealand.	Consideration needs to be given to which claims are used. Whether it is complaints made to the Department or to the Ombudsman, or both.
<b>Performance Improvement Requests issued</b>	The number of Performance Improvement Requests issued to the prison.	Performance Improvement Requests are made to Serco when there is an area of performance that the Department considers insufficient.	Performance Improvement Requests provide a number for instances of poor performance and management.	Performance Improvement Requests are issued to private prisons and reported in their annual reports. Public prisons are not issued with Performance Improvement Requests.	Acacia and Wandoo are issued with requests, but the measure that is reported on is a failure to comply with a request.	Performance Improvement Requests do not exist for public prisons. In order for this to be a KPI for all prisons, Performance Improvement Requests would need to be implemented for public prisons.



Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Failure to comply with a Performance Improvement Request</b>	The number of instances that there has been a failure to make the improvements specified in a Performance Improvement Request.		Failing to comply with a Performance Improvement Request shows an inability, or unwillingness, of management to improve performance.	As above.	Acacia and Wandoo pay an abatement amount when they fail to comply with a Performance Improvement Request.	As above.

<sup>143</sup> Department of Corrective Services, *Adult Custodial Rule 5: Requests, Complaints and Grievances by Prisoners*, Perth, Government of Western Australia, 2003, p. 1.

## 6.5. Aspirational benchmark metrics

In the course of developing a list of performance benchmark metrics, the ERA has become aware that some metrics that it would like to recommend are not currently feasible due to a lack of assessment or data.

All of the aspirational benchmark metrics recommended relate to rehabilitation outcomes. Specifically, they measure improvement in prisoner education, physical and mental health and parenting and family development. Metrics have not been included in the initial list of metrics as either the Department does not currently collect the data or more work is needed to develop a means of assessment.

While the ERA appreciates that these metrics cannot currently be implemented, it considers that they should be developed and implemented at a later date.

Aspirational metrics are included in Table 4.

Table 4 Aspirational benchmark metrics

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner mental and physical health.</b>	Percentage of prisoners whose mental and physical wellbeing has been improved whilst at the prison.	A New Zealand measure that assesses the differences in prisoner wellbeing in a cohort of prisoners two weeks into their sentence and a cohort 12 weeks into their sentence.	Improving a prisoner's health and wellbeing can reduce the chance of a prisoner reoffending.	No. Prisons do not undertake an assessment of improvements in prisoner health and wellbeing. This KPI would thus involve the Department designing and undertaking an assessment it currently does not.	This is a KPI in the Mount Eden Correctional Facility contract in New Zealand.	This measure would rely on an unbiased selection of prisoners for assessment.
<b>Prisoner literacy and numeracy</b>	Percentage of prisoners whose literacy and numeracy has improved whilst in prison.	An assessment of the number of prisoners whose literacy and numeracy have improved during their sentence.	The absence of basic literacy and numeracy skills can be a major barrier to prisoners gaining employment. Measures of improved outcomes in literacy and numeracy provide a better measure of performance than course participation.	No. Prisons currently undertake literacy and numeracy testing for all prisoners who are to serve a sentence of at least 6 months, but they do not conduct a follow up assessment.	Unsure.	This measure involve a change in practice, whereby prisoners are assessed upon leaving a prison as well as upon entry.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Prisoner parenting and family development.</b>	Percentage of prisoners with improved parenting or family development outcomes.	A measure used in New Zealand that assesses the extent to which prisoners are able to engage with their families while in prison. This could be through participation in parenting and family development programs or facilitated family contact (visits, telephone, etc)	Connection with family is seen as a major factor influencing criminal behaviour. Prisons should seek to maximise a prisoner's engagement with their family.	Data is not yet collected.	This is a KPI in the Mount Eden Correctional Facility contract in New Zealand.	The measure would require further development to consider factors that could be measured and included.

## 6.6. Whole of Department metrics

Some benchmark metrics that would provide a useful measure of the performance of prisons cannot be adequately attributed to the activities of individual prisons. Such metrics provide an assessment of the performance of the Department as a whole.

These metrics focus on broader outcomes over which the Department has considerable control or influence.

Currently, the Department reports against a corporate scorecard that contains performance indicators for Adult Corrective Services, which includes community corrections and custodial services (prisons). The ERA has only commented on the indicators that relate to the performance of adult prisons. The indicators for community corrections are outside the Terms of Reference for this Inquiry.

Five of these indicators directly relate to prisons:

- Number of escapes
- Rate of return – offender programs
- Average out of cell hours
- Rate of serious assault per 100 prisoners
- Cost per day of keeping an offender in custody

The remainder of this section provides a discussion on some recommended changes and additions to this list of measures. The recommended list is included in Table 5 at the conclusion of the section.

### 6.6.1. Utilisation rates of prisons

The ERA considers that the main area that is not currently measured, and should be, is the utilisation rate of prisons. Prison utilisation rate is the daily average prisoner population as a percentage of the capacity of the prison. Prison utilisation provides a measure of whether the prison system is crowded.

Throughout this Inquiry, stakeholders have expressed concern that the Western Australian prison system is crowded. Additionally, the Inspector of Custodial Services has consistently identified crowding as an issue in most prisons in Western Australia.<sup>144</sup> Crowding limits the access of prisoners to programs and services and affects the prison environment, creating difficulty for prison officers.<sup>145</sup>

Ideally, prison utilisation will be between 85 to 95 per cent of design capacity to allow for prisoner movements and the needs of discrete prisoner cohorts.<sup>146</sup> In 2013-14, the Productivity Commission reported that the Western Australian prison system had a

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<sup>144</sup>Office of the Inspector of Custodial Services, *2013-2014 Annual Report*, Perth, Government of Western Australia, 2014, p. 8.

<sup>145</sup>New South Wales Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, Sydney, Government of New South Wales, 2015, p. 28.

<sup>146</sup>New South Wales Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, Sydney, Government of New South Wales, 2015, p. 28.

utilisation rate of 101.1 per cent.<sup>147</sup> Despite being below the average for Australia (104.4 per cent), the rate was well above the recommended threshold of 95 per cent.

Assessing the extent to which prisons are crowded is difficult because there is no universal agreement for how prison capacity should be measured. The utilisation rate reported by the Productivity Commission is based on design capacity. The Department has used design capacity in the past to measure prison capacity, but no longer supports this measure.

Design capacity includes the number of permanent beds available to the Department 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>148</sup> Total capacity refers to the total number of beds, which is design capacity and temporary beds. Total capacity includes accommodation used for special purposes (such as cells used for disciplinary segregation and mental health units).<sup>149</sup> There is no publicly available definition of operating capacity.

The Department has changed the way it reports prison capacity in recent years, using three different definitions: design capacity, operational capacity and total capacity.

The ERA considers that total capacity, which is the definition currently used, is an inaccurate representation of the true capacity of the prison system. This is because:

- Total capacity includes accommodation used for special purposes. Prisoners who are in special purpose accommodation, such as mental health units or segregation cells, are typically only in such accommodation on a temporary basis. That is, if a prisoner is temporarily in solitary confinement they will need an ordinary bed to return to when they are released from solitary confinement. It is therefore inappropriate to include both the special purpose accommodation and their permanent bed in the prison's capacity.
- Total capacity only accounts for the number of beds in a prison. It does not consider the capacity of the prison in other essential areas, such as its ability to deliver services (for example, health services) and programs to prisoners.
- Total capacity includes 'doubling bunking'<sup>150</sup> of cells that may not be designed to house more than one prisoner.

The ERA considers that a capacity measure should factor in a prison's ability to deliver services to prisoners and should not include accommodation used for special purposes. Given that designing a measure that considers these factors would require detailed operational knowledge of the prison system, the ERA considers that it should be developed in consultation with key stakeholders. The ERA may give further consideration to the development of a new capacity measure in preparing the Final Report.

With this in mind, the ERA has recommended that the utilisation rate of prisons should be included in a list of whole of Department benchmark metrics.

<sup>147</sup> Productivity Commission, *Report on Government Services 2015*, Government of Australia, 2015, Table 8A.23.

<sup>148</sup> Productivity Commission, *Report on Government Services 2015: Corrective Services Data Quality Information*, Government of Australia, 2015, p. 21.

<sup>149</sup> The definition for total capacity was provided by the Department of Corrective Services on request.

<sup>150</sup> Double bunking is the practice of replacing a single bed with a bunk bed to allow two prisoners to be housed in a single cell.

## 6.6.2. Recidivism

Rehabilitation is a key objective of the prison system. Rehabilitating prisoners reduces the likelihood that they reoffend. Preventing prisoners from reoffending reduces cost to the State through reduced costs to victims of crime, social services (such as health, law and order, child protection and others) and lower costs to corrective services through a lower prison population.

The ERA acknowledges that whether or not a prisoner reoffends when they are released is dependent on many factors, several of which are outside the control of the Department. As a result, there are a number of government services that play a role in reducing recidivism. However, rehabilitation is a fundamental objective for prisons and the Department is in the position to improve outcomes in this area.

Currently, the Department reports on the rate of return of prisoners, to prison or to community corrections, for prisoners who have completed at least one offender program prior to exit. This measure is useful in that it provides some assessment of the effectiveness of the programs offered in prison. However, by itself it does not provide for a full assessment of the recidivism rates of prisoners who are released from prison. In particular, the measure does not take into account:

- Any prisoner who is released without undertaking offender programs; or
- Prisoner desistance from criminal behaviour. That is, it does not allow an assessment of whether a prisoner who reoffended committed a more (or less) serious offence than when they were originally imprisoned.

The ERA considers that the Department should report on the rate of return of all of the prisoners released, not just those that have completed offender programs.

Additionally, the Department should consider more sophisticated recidivism measures. Typical measures of recidivism are binary measures of whether or not prisoners have returned to prison in a given period (usually two years). The Department should consider a measure that shows desistance from criminal behaviour. This reflects that desistance from offending occurs over time. Offenders, particularly serious offenders, do not typically just stop offending, offending may become less serious or there may be more time between offences.<sup>151</sup> If a prisoner commits a less serious crime on release or it takes a longer period before a prisoner commits a crime it shows progress towards rehabilitation.

There have been efforts elsewhere to develop more sophisticated measures of recidivism, which consider prisoner desistance from criminal behaviour. For example, Serco, in combination with the New Zealand Department of Corrections has developed the Out of Custody Index. The Out of Custody Index measures the number of days spent out of custody in the two years following release from prison.<sup>152</sup>

Developing measures in this area is difficult. Currently, there are very few measures currently used to reflect desistance from criminal behaviour. Those that are in place, or in development, such as the Out of Custody Index are often not available publicly.<sup>153</sup> For this reason, the ERA has not made a recommendation on a specific measure in this area. The ERA may give further consideration to the development of a measure of recidivism in preparing the Final Report.

<sup>151</sup> E. Wozniak, 'Book Reviews: Making good: How ex-convicts reform and rebuild their lives', *Legal and Criminological Psychology*, vol.10, no.1, 2005, p. 149.

<sup>152</sup> Serco Australia, *Submission to the Economic Regulation Authority: Inquiry into options to improve the efficiency and performance of Western Australian prisons*, Perth, Serco Australia, 2014, p. 27.

<sup>153</sup> The Out of Custody Index is considered the Intellectual Property of Serco and therefore details on the measure are not available publicly.



In the absence of such a measure, the ERA recommends that the Department should assess its performance against the rate of return of all prisoners to prison and to community corrections. These measures provide an indication of the rehabilitation of the prisoner cohort. Additionally, including measures for prisoners who are released and then return to community corrections provides some indication of their desistence from crime (offences that result in a community sentence are likely to be less serious than those resulting in a prison sentence).

To ensure continuity in data and to assist in the assessment of the Department's program provision, the existing measure of rate of return for prisoners completing offender programs should be retained.

## 6.7. Recommendations

The ERA recommends that:

7. The Department of Corrective Services uses a weighted scorecard approach, such as that used in the United Kingdom, to benchmark prison performance.
8. The Department of Corrective Services measure prison performance in the categories of Safety and Security, Rehabilitation, Prisoner Quality of Life and Prison Management using the metrics detailed in Table 3.
9. The Department of Corrective Services collect the data required to implement the aspirational benchmarks recommended in Table 4.
10. The Department of Corrective Services expand the indicators reported in its corporate scorecard to include the metrics listed in Table 5 of this Draft Report.

**Table 5 Recommended whole of system KPIs**

<b>Metric</b>	<b>Formula</b>	<b>Further detail</b>	<b>Rationale</b>	<b>Is the data available?</b>	<b>Is it used elsewhere?</b>	<b>Specific risks or considerations</b>
<b>Number of escapes or unlawful releases</b>	The number of escapes or incidents of unlawful release across the prison system.		This provides a measure of the prison system's performance in ensuring community safety.	Yes, the Department already reports on escapes as a KPI.	Escapes are commonly used as a KPI for prison systems.	
<b>Rate of return prison to prison</b>	The percentage of prisoners released who are reimprisoned within two years.		The recidivism rate of the prison population provides a measure of how well a prisoner is being rehabilitated.	Yes	Rate of return to prison is commonly used as a KPI.	
<b>Rate of return prison to community corrections</b>	The percentage of prisoners released who are sentenced to a community sentence within two years.		By measuring prisoners who return to community corrections in combination with those returning to prison, we get an indication of whether released prisoners are committing less serious crimes.	Yes		

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Rate of return offender programs</b>	The percentage of prisoners who completed at least one offender program before release who are reimprisoned within two years.		In addition to the above measures of recidivism, measuring recidivism of program completers gives some measure of the effectiveness of the Department's rehabilitation programs.	Yes, the Department already reports on this KPI.		
<b>Utilisation rate of prisons</b>	The number of prisons operating at an utilisation rate of between 85 and 95 per cent.	Utilisation rate is the prison population divided by the capacity of the prison.	The utilisation rate of prisons affects the rehabilitation and quality of life of prisoners and the safety and security of facilities. It also reflects the Department's ability to plan for, and manage, the prison population.	Yes.	Utilisation rates are reported in the Productivity Commission's Report on Government Services.	The Department should consider the development of a measure for capacity that factors in the services prisons need to deliver to prisoners. The utilisation rate should be calculated based on that new capacity definition.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Rate of serious assault</b>	The percentage of prisoners who are seriously assaulted in prison.	A serious assault occurs when the victim requires medical treatment involving an overnight stay in a medical facility. <sup>154</sup>	Assault rates provide an indication of how safe prisoners are across the system.	Yes, the Department already reports on this KPI.	Assaults in custody are reported in the Productivity Commission's Report on Government Services.	
<b>Out of cell hours</b>	The average number of hours in a 24-hour period that prisoners are not confined to their cells across the prison system.		Out of cell hours provide an indication of the Department's provision of a safe, secure and humane prison environment.	Yes, the Department already reports on this KPI.	Out of cell hours are reported in the Productivity Commission's Report on Government Services.	

<sup>154</sup> Department of Corrective Services, *Department of Corrective Services Annual Report 2013-14*, Perth, Government of Western Australia, 2014, p. 141.

Metric	Formula	Further detail	Rationale	Is the data available?	Is it used elsewhere?	Specific risks or considerations
<b>Cost per prisoner per day</b>	The total cost of providing prison services divided by the Daily Average Population of the prison system.		The cost per prisoner per day provides an indication of how efficiently the Department is providing prison services.	Yes, the Department already reports on this KPI.	Cost per prisoner per day is reported in the Productivity Commission's Report on Government Services.	

## 7. Effective planning, processes, and use of information

### 7.1. Introduction

In order to perform well, the Western Australian prison system must be supported by good planning, processes, and use of information. These practices underpin sound evidence-based decision-making. They also determine the capacity of the Department to measure outcomes, and to be transparent about, and accountable for those outcomes.

However, the Department faces a number of longstanding issues with its planning and processes, and in the way in which it collects and uses information to make good decisions. These issues compromise the ability of the Department to perform efficiently and meet its objectives, both now and in the future.

In this chapter, the ERA examines the processes applied by the Department to make decisions that are supported by high quality information and analysis. It also addresses the ways in which better information and data management can improve transparency, accountability, and service delivery.

- *Infrastructure planning* – Prison infrastructure is a substantial cost component of the prison system.<sup>155</sup> Well-defined plans and processes for infrastructure are necessary to ensure that money is well-spent and provides the best outcomes for the State. The ERA recommends that the Department: better forecast the prison population by using a population projection model built by the Department of Treasury in tandem with its present model; establish a long-term plan for prison infrastructure; and better prioritise infrastructure expenditure.
- *Planning and evaluating program delivery* – The Department is responsible for delivering a range of programs to prisoners. The ERA has identified opportunities for the Department to: better assess and evaluate the program needs of individual prisoners; and better assess, at a system wide level, how effective programs have been at addressing the needs of prisoners collectively.
- *Administrative information and financial management* – Inadequacies in the Department's management of expenditure and administrative systems reduces the availability of funds that could be used to improve the performance and efficiency of the prison system.
- *Information sharing and transparency* – Appropriate information sharing processes and policies can support the performance and transparency of the prison system. The ERA has identified two areas where there are opportunities for the prison system to benefit from better information sharing. These are the way in which the Department shares information with external service providers (particularly providers of post-release services), and the extent to which the Department makes non-confidential data about its operations available to the broader public.

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<sup>155</sup> For detail on prison infrastructure expenditure in Western Australia, see Department of Corrective Services, *Annual Report 2013-2014*, Perth, Government of Western Australia, 2013, p.113.

## 7.2. Infrastructure planning

### 7.2.1. Introduction

Infrastructure spending is a substantial part of the cost incurred in operating a prison system.<sup>156</sup> Well-defined plans and processes for infrastructure development are essential for ensuring that money is well-spent and that funds are directed where they are most needed, and provide the best outcomes for the State.

The Department complies with the requirements of the State Government for infrastructure planning, and is seeking to improve its internal processes as part of current reform efforts. However, the ERA considers there is scope for further improvement in this area, including:

- better forecasting of the long-term prison population;
- establishing a robust long-term plan for prison infrastructure;
- undertaking better prioritisation of infrastructure expenditure (particularly in relation to the women's estate); and
- better resourcing of infrastructure planning to help ensure that future infrastructure spending is targeted and well-considered.

These opportunities for improvement are discussed in detail below, following a brief discussion of the Department's current approach to infrastructure planning.

An overview of the State Government requirements relating to good infrastructure planning, and how the Department complies with these requirements, is set out in Section A3.2 of Appendix 3.

### 7.2.2. Better forecasting of the prison population

Reliable forecasting of the demand for prison services (that is, the future prison population) is important to the efficient planning of prison infrastructure.<sup>157</sup> Accurate forecasts assist the Department and the Government in making decisions that are informed by the future needs of the State's prison system. However, the ERA is concerned that the Department's current population forecasting model limits its ability to provide well-evidenced advice to the Government.

The Department currently uses a regression model (**the regression model**) to forecast Western Australia's likely future prison population. The main benefits of the regression model are that it is relatively simple to operate and the Department has found the model to be reasonably accurate in the medium term. However, the ERA has the following concerns with use of the regression model as the Department's only means of forecasting the prison population:

- The ERA considers that the model has been accurate, at least in part, because past justice policy decisions have progressively become 'tougher on crime'. The model is less likely to be accurate if there is a change in policy direction. This is because

<sup>156</sup> For detail on prison infrastructure expenditure in Western Australia, see Department of Corrective Services, *Annual Report 2013-2014*, Perth, Government of Western Australia, 2013, p.113.

<sup>157</sup> This involves not only forecasting the overall prison population, but also the demographic composition of the prison population (that is, gender, security level, age, ethnicity), which has an effect on the types of infrastructure and services that need to be provided.



models of this kind do not attempt to understand and explain the *reasons* for changes in the prison population.<sup>158</sup>

- The model is not well-suited to modelling future hypothetical scenarios, which would allow the Department to inform the Minister and Cabinet about the likely effect of proposed policy changes on prisoner numbers and costs. This is particularly concerning, since one of an agency's key roles is to provide Government with robust information to support well-evidenced policy decisions.

The Department of Treasury is in the process of building a micro-simulation model (**the micro-simulation model**) to forecast the prison population due to its concerns about the capacity of the regression model. This model will be handed over the Department of Corrective Services upon its completion.

An explanation of the key differences between these models is provided in Section A3.1 of Appendix 3 in addition to an overview of the main benefits of using a micro-simulation approach. The ERA considers that the benefits are significant and will improve the Department's ability to understand its operations on a more detailed level, and to provide better advice to Government.

Ultimately, there is no reason that the models should not be run in tandem to realise the benefits of both, drawing on both the familiar shorter-term forecasting model and the sophisticated projection model where each is fit-for-purpose. In any case, it would be essential to run the models in tandem for several years simply from a risk management and best practice development point of view.<sup>159</sup>

The ERA considers that several implementation issues will need to be managed to ensure successful adoption of the micro-simulation model. These implementation issues are listed below, with more detail provided in Section A3.1 of Appendix 3.

- *Agreeing upon inputs and forecast scenarios* – Obtaining broad, ongoing consensus on the inputs and scenarios used by the model, as agreed by a justice sector Governance Committee.<sup>160</sup>
- *Ensuring ongoing data quality* – Ensuring the data in the model is updated in a timely and efficient manner, and seeking to automate this process as much as possible
- *Ensuring integrity and accountability* – Publishing information about the Department's model (as listed in Section A3.1), so that it can be understood and challenged by external stakeholders.

<sup>158</sup> Department of Treasury, *An Experimental Prisoner Projection Model for Western Australia*, report prepared by N. Riste and K. Sibma, Perth, Government of Western Australia, 2014, p. 12.

<sup>159</sup> It will also be important to regularly review the outputs of the model to track how closely they match actual results, and to assess how and why actual outcomes have diverged from those predicted by the model. Butts, J, & W Adams, *Anticipating space needs in juvenile detention and correctional facilities*, US Department of Justice, Washington D.C., 2001, p. 18.

<sup>160</sup> This Governance Committee would incorporate representatives from the Department of the Attorney General, Western Australian Police, Department of Corrective Services, and other departments with knowledge of the drivers of the prison population. The Committee would also provide guidance as to the effect of policy changes on the prison population. The ERA supports this approach, and notes that research on prison population modelling generally endorses the involvement of a panel. For instance, Stewart, A, N Spencer, I O'Connor, G Palk, M Livingston, & T Allard, *Juvenile Justice Simulation Model: A Report on the Australian Research Council Strategic Partnerships with Industry Research and Training*, Brisbane, Griffith University, 2004, p.18; Harries, R, *Criminal Justice Modelling*. London, Home Office Strategy Policy Team, 2000, pp. 52-53.

### 7.2.3. Establishing a long-term infrastructure plan

Good long-term planning is critical to the efficiency and performance of the prison system, particularly considering the time and costs involved in implementing major infrastructure decisions. A lack of such planning can have significant consequences for the ability of the prison system to meet the demands placed upon it. The constraints on the juvenile justice system arising from the establishment of Wandoo and accompanying redevelopment of Banksia Hill Detention Centre provides an example of these consequences.

#### Box 6 - Case study: the Banksia Hill redevelopment project

In 2008, the incoming Government made an election commitment to upgrade the State's prison infrastructure. This included the establishment of a new young adult facility (to accommodate 18 to 24 year old minimum security prisoners).

The Department was asked to provide advice on how this young adult facility could be established. The Department recommended to the Minister of Corrective Services that an existing juvenile remand facility (for 10 to 17 year olds), the Rangeview Remand Centre, be converted into a young adult facility (the present Wandoo Reintegration Facility). In addition, the Department recommended the detainees from Rangeview be relocated to Banksia Hill Detention Centre and that Banksia Hill be expanded to accommodate additional juvenile detainees.

The Office of the Auditor General found the Department did not adequately consider the long-term impact of the solution it recommended.<sup>161</sup> The approach did not appear to take into account the best outcomes for the prison system as a whole. The decision left the Department with only one juvenile facility in the State, and resulted in no significant increase in overall juvenile capacity.<sup>162</sup>

The ERA considers that, with a good long-term plan in place, the Department would have been far more capable of efficiently assessing the alternatives and presenting them to Government, along with evidence supporting a preferred option.

Good long-term planning requires an understanding of the investments that make best use of available funds, and an ongoing commitment to implementing those investments. Following through on investment plans also relies on the Government's support for infrastructure decisions, and appropriation of the necessary funds via the State Budget. There is a risk that this support and funding will not be provided if plans are not clearly articulated and the costs and benefits are not well-evidenced and quantified.

In the past, the Department has undertaken 'logic mapping'<sup>163</sup> exercises to decide between investment alternatives. The ERA considers this practice should be repeated as it not only assists the Department in assessing various investment options, but also allows it to provide high-quality, well-evidenced advice to Government about the likely outcomes of any given decision. This is critical in ensuring that Government is well-informed and able to make decisions that support the future efficiency and performance of the prison system.

The ERA considers that this logic mapping should be used to develop and commit to a long-term plan for the management and development of the prison estate. This exercise

<sup>161</sup> Office of the Auditor General, *The Banksia Hill Detention Centre Redevelopment Project*, Perth, Government of Western Australia, 2013, p. 8.

<sup>162</sup> Office of the Auditor General, *The Banksia Hill Detention Centre Redevelopment Project*, Perth, Government of Western Australia, 2013, p. 15.

<sup>163</sup> Logic mapping is a systematic way of developing the key steps required in order to turn a set of resources or inputs into activities that lead to a specific set of changes or outcomes.

Source: Department for Transport, *Logic mapping hints and tips*, London, United Kingdom, 2010, p. 5.

should be conducted in a manner consistent with the Strategic Asset Management Framework policies and standards, to ensure Government receives accurate and reliable information on the available alternatives and the basis for determining the preferred options.

The ERA further considers that this exercise will benefit from engagement with key stakeholders, including the Office of the Inspector of Custodial Services. This process will not only ensure the plan is informed by external expertise, but will also provide stakeholders with an accurate and consistent understanding of the investment alternatives, and the reasoning driving the selection of preferred options.

Finally, the ERA advises that the Department publish this plan on its website. This will serve to increase transparency and accountability, provide stakeholders with greater confidence around its long-term planning, and clearly articulate the reasons for investment decisions.

#### 7.2.4. Better prioritisation of infrastructure expenditure

The ERA considers that there is scope for improvement in the way in which the Department prioritises its capital works projects.

Bandyup provides a good example of questionable prioritisation. The prison's new, modern gatehouse (that is, main entrance) sits alongside older infrastructure that has been described as "deteriorated, out-date, and inadequate" by the Office of the Inspector of Custodial Services.<sup>164</sup> The ERA's observations during a visit to the prison supported this description.

The Office of the Inspector of Custodial Services noted that the funds used to construct the gatehouse would have been better allocated to improving facilities that would have more direct impact on management, staff, prisoners, and visitors, including the prison's Outcare centre, reception building, and other support facilities.

The ERA is also concerned that a lack of investment in the women's estate has been a consequence of poor prioritisation of capital works. In recent years, there has been substantial investment in male prison accommodation, but relatively little investment in female prisons, despite rapid growth rate in the number of female prisoners.<sup>165</sup>

While there was a strong focus on improving management of women's prisons throughout the early 2000s, this appears to have declined over the past decade, and is observable both directly in terms of prison conditions, and indirectly in the Department's structure. (For instance, the executive-level position of Director for Women's Corrective Services, established in 2003, no longer exists.)<sup>166</sup>

Consequently, conditions in the State's women's prisons are of a lower standard than those in men's prisons. This has led to criticism of the Department's management of women's prisons. A 2014 report from the Office of the Inspector of Custodial Services highlighted the prison's poor layout and inadequacies in services, attributing these problems in large part to a lack of investment, and a lack of prioritisation of investment.<sup>167</sup> Having visited

<sup>164</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.9.

<sup>165</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>166</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.9.

<sup>167</sup> The report commented that "no other prison [in the Western Australian prison system] is this overcrowded" and described living conditions at the prison as "unhygienic, lacking in privacy and totally unacceptable", contrasting this with the better conditions in male prisons. The report 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.

prisons and reviewed the findings of inspections, the ERA is similarly concerned about the state of the women's prison estate.

As a result of escalating pressures in the women's estate, in 2014, the Government announced its plan to transform existing parts of the male-only Hakea Prison into a women's remand facility.<sup>168</sup>

The Department has informed the ERA that it has recently established a steering committee for the women's estate. This committee has a mandate to deal with a broad range of issues related to the women's estate, beyond issues of infrastructure and planning. The ERA considers that this has provided the Department with an improved capacity to assess the infrastructure requirements of women's prisons in Western Australia, and recommends that responding to these infrastructure needs should be a priority for the steering committee.

### 7.2.5. Recommendations

The ERA recommends that:

11. The Department of Corrective Services adopts the micro-simulation model as the primary prisoner population projection model for the Western Australian Government, after an appropriate trial period agreed with the Department of Treasury.
12. The Department of Treasury establish a standing cross-agency Governance Committee to inform the inputs and choice of scenarios for the micro-simulation model, and reconvene the Committee on a regular basis to provide guidance on policy or major demographic changes.
13. The Department of Corrective Services use the micro-simulation model to provide ongoing feedback to the Minister and Cabinet on the effects of any proposed policy change on prisoner population forecasts, including an assessment of the relative effects of alternative policies.
14. The Department of Corrective Services publish information about the underlying assumptions, inputs, methodology, and outputs of each of its models, as well as information about the variance between forecast and actual values.
15. The Department of Corrective Services conduct a logic mapping exercise to identify a long-term plan for the prison estate, and publish the plan on its website.
16. The Department of Corrective Services engage key stakeholders more in the development and prioritisation of capital expenditure decisions.
17. The Department of Corrective Services place a greater focus on the women's prison estate. In particular, the infrastructure needs of the women's estate should be a high priority for the women's estate steering committee.

<sup>168</sup> Government of Western Australia, 2014, *Major revamp for women's prison estate*, Media Statements, published on 15 December 2014, Perth.

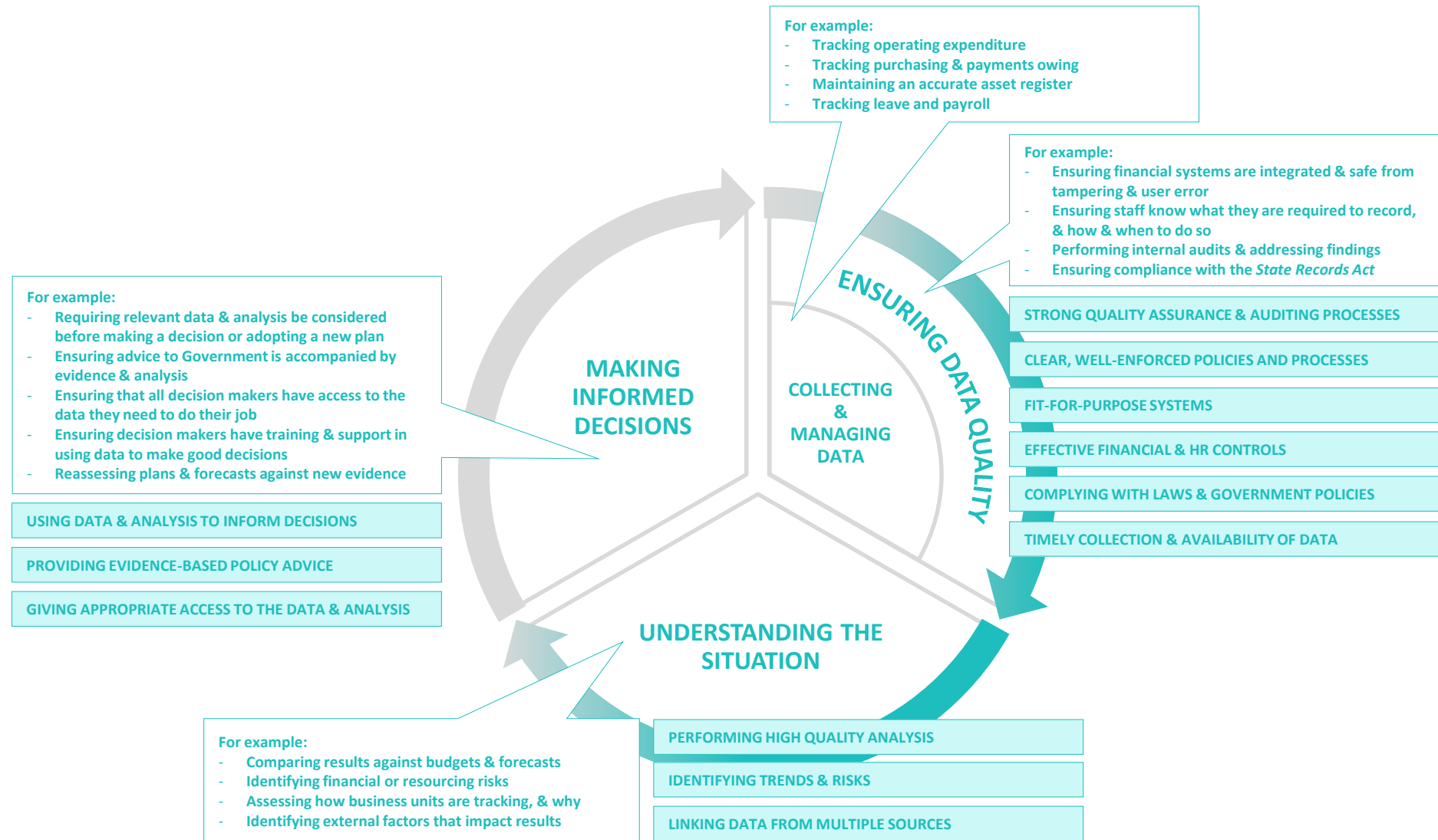
### **7.3. Managing and using information for good decision-making**

Decisions will only be as good as the evidence on which they are based. If information is to be used to support good decision-making and planning, it must be appropriately collected, stored, and quality-assured.

Only then can it be analysed and used to undertake cost-benefit analysis, inform contracting and procurement decisions, design better rehabilitation programs, or any one of a multitude of other tasks the Department undertakes. Figure 12 overleaf illustrates this process.

In investigating how well the Department manages information and uses it to inform decision-making, the ERA has considered two broad areas: the Department's planning and evaluation of programs delivered to prisoners; and the Department's management of administrative and financial information.

Figure 12 Building a strong information and decision-making framework



### 7.3.1. *Planning and evaluating program delivery*

The Department is responsible for delivering programs to prisoners, including education and training, and targeted programs such as those delivered to sex offenders and prisoners convicted of violent crimes.

In order to deliver programs effectively, the Department needs to:

- assess the program needs of prisoners on entry, allocate them to programs and then assess how effective those programs have been for individuals; and
- assess, at a system wide level, how effective programs have been at addressing the needs of prisoners collectively.

This is illustrated in Figure 13 overleaf.

The information collected by the Department when a prisoner is admitted and assessed appears to be broadly consistent with that collected in other jurisdictions. However, the ERA observes that this data does not feed into the systems used to allocate prisoners to programs. The Department has informed the ERA that initial and ongoing prisoner assessment is currently not ideal, both in respect to security classifications, and to identifying prisoners' rehabilitation needs.

That said, the Department does appear to have systems that currently collect a broad range of data, as well as some in-house staff with the skills to expand this capacity.<sup>169</sup> The ERA considers that there are a number of opportunities for the Department to use this data to expand its understanding of how its operations influence future outcomes for prisoners.

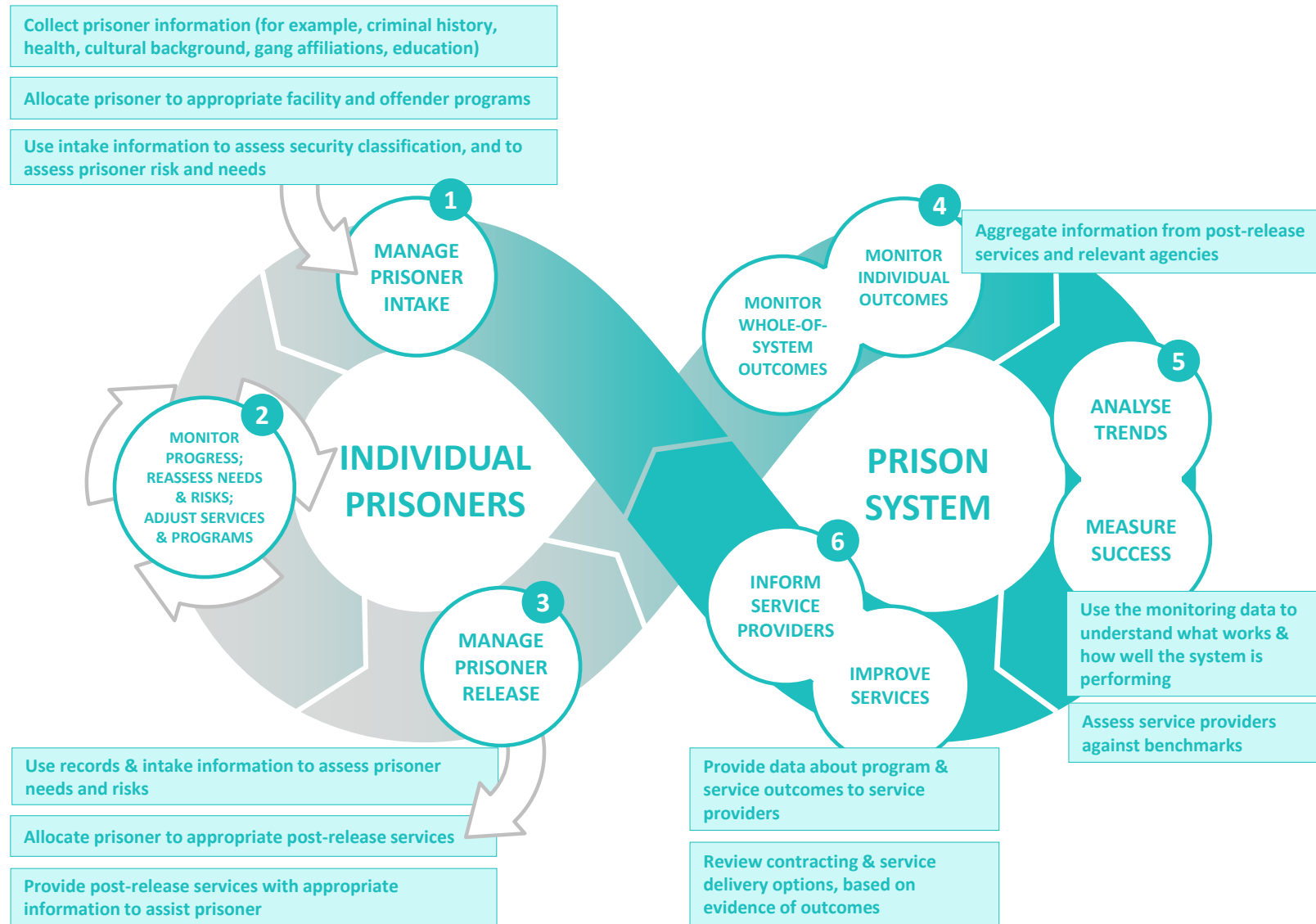
In the following sections, the ERA discusses opportunities to improve assessment and allocation of individual prisoners to programs and opportunities to improve system-wide assessment of programs.

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<sup>169</sup> For example, it retains programmers among its staff who are able to build upon existing systems for the collection of different types of data.



**Figure 13 The feedback loop: collecting and using information to make better decisions in the prison system**



### 7.3.1.1. *Improving prisoner intake and program allocation processes*

The Department's processes for the intake of new prisoners and the management of those prisoners during their time in custody are described in Box 7.

The ERA observes that the Department does not use the information it has about a prisoner's sentence length and extent of their rehabilitation needs to properly plan how and when the prisoner will attend programs.

The Department has indicated to the ERA that this results in a substantial percentage of prisoners being released back into the community without having completed programs intended to reduce their risk of reoffending. As a result, the Department bears the considerable expense of keeping a prisoner in custody, but releases them as likely (or even more likely) to commit more crimes. This further adds to the costs borne by taxpayers, as future crimes result in additional demand for policing, court services, and prison services.

#### Box 7 - How prisoner intake and program allocation works<sup>170</sup>

When an offender is convicted by the court, they may be held on remand in one of the State's prisons until they are sentenced. It is not unusual for prisoners to remain on remand for three months or more, since the average remand time in Australia for unsentenced prisoners is currently around five months.<sup>171</sup>

Within five days of admission to prison, prisoners undergo a risk assessment to identify any immediate mental or physical health needs. Prisoners will also receive a security rating during this time.

In the meantime, the Department may provide a Pre-Sentence Report to the judge upon request. The judge considers this report when sentencing the prisoner and deciding what programs should be mandatory for the prisoner to complete.

Once the prisoner is sentenced, if they will be in prison for six months or more, the Department will work with them to establish an Individual Management Plan (IMP) within 28 days.<sup>172</sup> Prisoners with a sentence of less than six months do not receive an IMP.

From the Department's perspective, the IMP is an agreement between the prisoner and the prison, wherein the prisoner agrees to the requirements and expected behaviours that will result in privileges, a decrease in security classification, and potentially early release.<sup>173</sup>

In developing the IMP, the Department will consider factors such as the prisoner's risk of harm to self or others, educational history, and any substance abuse issues. This will result in a profile of the individual's risks and rehabilitation needs.

The prisoner will also be allocated to the programs they are required to complete. The allocation is generally based on the next available opening in the program.

Throughout their time at the prison, the prisoner will have periodic reviews of their IMP.<sup>174</sup>

<sup>170</sup> Per the Department of Corrective Services, *Sentence Management Manual for Use in the Assessment and Sentence Management of Prisoners*, Perth, Government of Western Australia, 2013, and information provided by the Department of Corrective Services.

<sup>171</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2014*, Canberra, Government of Australia, 2014.

<sup>172</sup> The ERA has been informed that, in practice, there is a considerable backlog in some prisons.

<sup>173</sup> Note that the Individual Management Plan process is also subject to a range of other issues, relating to the prisoner's capacity to understand what they have committed to, and the cultural appropriateness of the process. The ERA has been informed by the Department of Corrective Services that this area requires improvement.

<sup>174</sup> The ERA has been informed by the Department of Corrective Service that these reviews are currently somewhat cursory, and do not tend to lead to significant modifications of Individual Management Plans.

The ERA considers that the Department's current processes and programs have two key shortcomings.

Firstly, the Department does not have a good process for prioritising the way in which prisoners are allocated to programs. Rather, prisoners who are required to complete a program tend to be allocated to the first available slot, using a tool that is little more than a spreadsheet showing program slots over time. This 'first-come first-served' approach does not consider the individual's sentence length, the average sentence length in prisons, or the Department's rules around access to programs.

This leads to suboptimal outcomes. For example, a prisoner may wait for three months on remand before receiving a sentence of eight months. Because sentences are backdated, the three months spent on remand will count towards completion of the prisoner's sentence. This means that the prisoner will only have five months left to serve. However, the Department requires a prisoner to have six months left to serve to establish an Individual Management Plan and so to receive rehabilitation programs. As a result, this prisoner will not undergo rehabilitation programs, but will simply wait out their time in custody and be released directly into the community. This is not an unusual outcome given that prisons have a high turnover, with around half of prisoners staying for under a year.<sup>175</sup>

Further, when a prisoner does receive an assessment but upcoming programs in the near future are full, the prisoner may be allocated to a program that takes place *after* their release date regardless of the fact that they are no longer able to attend.

To address these problems, the Department needs to review the way in which it allocates prisoners to programs. It should give consideration to optimising the number of prisoners who receive programs, and prioritising delivery to prisoners who are most in need. Further, it should assess the suitability of any internal rules, policies, and systems that underpin the program allocation process.

Secondly, there is a lack of practical, well-timed programs that are based on information that the Department has about the needs of individual prisoners. Existing programs focus narrowly on the attitudes and beliefs that have led to the prisoner committing a crime, and on improving the prisoner's self-control and life choices.

However, the Department collects information to determine whether a prisoner may have personal issues with managing, say, personal finances, family relationships, or basic life skills. The ERA considers that there is an opportunity to delivery short life skills, literacy, and numeracy courses to both general population prisoners, and remand prisoners who are likely to be held in custody for more than a few weeks.<sup>176,177</sup> The current practice of holding prisoners on remand for three months (as is often the case) without providing support programs is a wasted opportunity for early intervention.<sup>178</sup>

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<sup>175</sup> Based on information provided by the Department of Corrective Services.

<sup>176</sup> Courses could include things like addressing lack of housing, dealing with debt, how to access help in dealing with a difficult relationship, or finding suitable parenting support and community services.

<sup>177</sup> For example, the Pathfinders program in the UK. Lewis, S, J Vennard, M Maguire, P Raynor, M Vanstone, S Raybould, et al., 'The resettlement of short-term prisoners: an evaluation of seven Pathfinders', *RDS Occasional Paper No.3*, London, UK Home Office, 2003, p.67.

<sup>178</sup> International reviews of short-term prison programs have found significant benefits from these interventions, leading to both lower reconviction rates, and a positive change in attitude to crime. Similarly, other studies have emphasised the importance of personal development strategies for short-term prisoners, and the provision of basic life-skills, literacy, and numeracy training. (Scottish Government, *Learning in Custody: Report of the Offender Learning in Custody Workstream*, Edinburgh, 2009; The Office for Standards in Education, Children's Services and Skills (Ofsted), *Learning and skills for offenders serving short custodial sentences*, London, UK Government, 2009, p.4.)

### 7.3.1.2. *Improving the ongoing assessment processes*

Prisoners respond differently to programs, and good case management and monitoring is the best way to assess whether their needs are being met, or whether an adjustment is needed. The ongoing assessment process needs to be efficient to ensure opportunities are not missed for timely intervention for individual prisoners.

The ERA considers that the Department's ongoing monitoring of prisoner risks and needs would benefit from better systems that identify prisoner needs as they arise. The Department's Total Offender Management System is able to collect extremely detailed, near real-time data about how well each prisoner is tracking across a number of areas. The Department can use data from the Total Offender Management System to understand changes in prisoners' choices and behaviours on a very detailed level.

Additionally, the system has recently been expanded to link with community corrections, police and court systems. Prison officers can also use this information in understanding and adjusting their assessment of prisoner needs based on a more detailed understanding of an offender's case history.<sup>179</sup>

The ERA recommends the Department develop a module for the Total Offender Management System to improve monitoring of prisoner risks and needs to support early intervention.

### 7.3.1.3. *Monitoring and assessing the prison system's overall effectiveness*

An improved understanding of the causes of recidivism and effectiveness of interventions would assist the Department to design a robust, resilient system that can adapt as needed. It would also assist the Department to identify high-performing prisons and effective programs, so that successes can be replicated in other facilities.

The ERA considers that the Department can improve its capacity for analysis – and consequently ongoing performance improvement – by:

- *Prioritising use of analytical findings* – Good analysis is not valuable if it is not used in the decision-making process. For this to happen, decision makers should have access to relevant information. The ERA recommends that the Department require all major operational and strategic proposals to incorporate relevant analytical findings, including an assessment of how the proposal is likely to affect prisoner outcomes, before a decision is made and approved.
- *Connecting human services and justice sector information* – The Department can improve its understanding of how the prison system is performing by linking to data from other Government service providers (refer to Box 8 on Data Linkage WA). For example, data from family-related services is a good proxy for understanding an offender's progress post-release, because family cohesion has been shown to correlate with a reduced risk of reoffending.<sup>180</sup> Such linkages would require careful management of privacy issues, but have the potential to provide insights into offender outcomes that might not otherwise be available.

<sup>179</sup> Until recently, the Department of Corrective Services, Department of the Attorney General, and the Western Australian each used a different identifying number or code for individuals in contact with the justice system. This meant that data about individuals could not easily be linked across the three systems. Last year, the three Departments established a mechanism to link this information, using a unique identifier for each offender.

<sup>180</sup> Bayse, DJ, SM Allgood, & PH Van Wyk, 'Family life education: An effective tool for prisoner rehabilitation.' *Family Relations*, 1991, pp. 254–257.

- *Drawing on external resources* – Collaborating with other organisations can provide the Department with valuable opportunities to perform high quality analysis in a more cost-effective way. The ERA considers that Data Linkage WA and the State's universities offer particularly good opportunities for collaboration, as detailed in Box 8 and Box 9, and considers that the Department should seek to work with these parties.

#### Box 8 - Partnering with Data Linkage WA

Data Linkage WA, a project run by the Department of Health in collaboration with the not-for-profit and academic sectors, already has access to data that spans a wide variety of Government services and agencies.

It can offer valuable services to partner agencies including anonymising large datasets, combining cross-agency data into a useful format for analysts, and ensuring data quality. Drawing upon these functions would save the Department a great deal of work, and allow its analysts to negotiate access to data they would not otherwise be able to access.

Data Linkage WA also has considerable experience in working with justice related organisations such as the Department of the Attorney General and the Department of Child Protection, and is currently establishing a working relationship with the Western Australian Police.

The ERA has consulted with Department of Health staff responsible for the project, who have advised that they are confident that they can enhance the Department's capacity for high quality analysis. They have also noted that they have had preliminary contact with the Department in the past, but that work has not been pursued to date.

The project team have also noted that the Department is likely to gain a more immediate benefit by collaborating to produce preliminary datasets that provide a 'snapshot' of the system (and related systems) at a point in time, rather than seeking to develop a more complex, real time project. Beginning with a somewhat less ambitious project will provide both the Department and project staff with a clearer picture of the kind of larger projects that would be genuinely useful.

#### Box 9 - Engaging with Universities

No agency has unlimited capacity to engage in detailed academic research, and few are well placed to undertake large research projects that will take many years to complete.

However, the Department has a wealth of data that has a high potential for use in academic research, and could be used to develop much deeper insights into specific issues, which in turn would enable performance improvements.

The ERA considers that the Department would benefit from establishing a more comprehensive, formal framework for establishing research partnerships, and from actively seeking opportunities to collaborate.

The Department has advised the ERA that it is currently reviewing its research engagement model, and has drafted a new research application and approval process that is currently awaiting approval, but this is not currently a priority for the Department.

The ERA strongly encourages the Department to pursue this further when it has the capacity to do so, as it offers an excellent opportunity for the Department to tap into high quality academic research and analysis.

### 7.3.1.4. *Recommendations*

The ERA recommends that:

18. The Department of Corrective Services review the way it currently allocates prisoners to programs (including requirements such as a 6 month minimum stay to receive assessment), and improve this process to optimise the number of prisoners receiving programs.
19. The Department of Corrective Services review the type and timing of programs currently delivered to ensure they adequately address prisoners' practical needs for education and life skills, and capitalise on opportunities to deliver short-course programs to prisoners on remand.
20. The Department of Corrective Services develop a module for the Total Offender Management System to improve monitoring of prisoner risks and needs to support early intervention.
21. The Department of Corrective Services require all major operational and strategic proposals to incorporate relevant analytical findings, including an assessment of how the proposal is likely to affect prisoner outcomes, before a decision is made and approved.
22. The Department of Corrective Services partner with the Department of Health's cross-sector Data Linkage WA project to obtain information about prisoner outcomes beyond the prison system.
23. The Department of Corrective Services establish a research partnership framework to actively seek out and engage in projects with universities, to gain a deeper understanding of specific issues within the prison system.

### 7.3.2. *Administrative information and financial management*

Administrative information is core information about the Department's resources, including the money, people, infrastructure and equipment the Department uses to run its operations. It covers many important factors, such as how much money the Department has, what it owes and to whom, how many people it employs and what they do, and how much leave they have accrued.<sup>181</sup>

Understanding and using resources appropriately is fundamental to the efficient management of prisons. Hence, this information needs be of good quality to support sound decision-making, and so to support good performance in the future.

However, the information the ERA has received – be it from the Department, the Office of the Auditor General, or external views such as the Mahoney Inquiry – suggests that the Department has longstanding problems with managing its administrative information and processes, particularly in relation to prison expenditure and payroll. Many of the problems

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<sup>181</sup> Managing this administrative information – in particular, financial information and records - is a well established field, with specific guidelines, standards, and legislative requirements. For example, there are many accounting rules about how things should be measured and recorded. Similarly, audit guidelines are clear when it comes to how information should be managed and quality-assured, and the *State Records Act* lays out exactly what agencies have to do to in terms of record keeping. Annual audits performed by the Office of the Auditor General also provide each department with very specific detail as to what needs to be improved to meet many of these standards.



with the Department's systems date back to decisions made at the time the Department of Justice was split in 2006.<sup>182</sup>

In isolation, these might be regarded as relatively minor administrative problems. However, the ERA considers that they are not isolated issues, but are symptoms of a broader failing of systems and processes within the Department – failings that do have significant consequences for the Department's ongoing performance.

Consultation with the Department indicates that staff, and in particular staff from the Office of Reform, are well aware of these problems and are working on addressing them. However, due to the scale and extent of the problems, the ERA has elected to comment on them in this report, and to provide some recommendations to support and expand upon the Department's current reform plan.<sup>183</sup>

To understand the nature and extent of the Department's problems in this area, the ERA met with Department staff and sought information from external reviewers. In particular, the ERA reviewed correspondence between the Office of the Auditor General<sup>184</sup> and the Department sent over a five-year period, in relation to the Department's annual financial audits and recent qualified audit opinion.<sup>185</sup>

Based on this review, the ERA considers that there is room for the Department to improve in three key areas: strengthening internal controls to ensure the accuracy of data; responding promptly when problems are identified; and improving record-keeping practices.

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<sup>182</sup> When the Department of Justice was split, the new Department of the Attorney General retained control of the administrative and financial systems used to manage the Department of Corrective Services. This resulted in a situation where the Department had little control over its human resources and finance system, as explained further in Section A3.3 of Appendix 3. This arrangement is unsuitable and hinders the ability of the Department to manage its financial position. The Department is now in the process of reforms to decommission the old shared systems and take independent control of its own administrative processes.

<sup>183</sup> The ERA emphasises that it is more efficient to address these problems now, rather than revisiting any outstanding issues after the current reform program is completed. Given the broad, systemic nature of the Department's problems in this area, a piecemeal approach is unlikely to deliver satisfactory results. Hence, it is important that the Department's present reform journey is a flexible one, and is capable of incorporating new findings as it progresses.

<sup>184</sup> The Auditor-General is the major independent reviewer of State Government agencies' financial statements, performance, and information systems, and is responsible for providing its findings to Parliament.

<sup>185</sup> Correspondence between the Office of the Auditor General and the Department of Corrective Services, 'Findings identified during the interim audit', and 'Findings identified during the final audit' for the periods of audit ending 30 June 2009, 2010, 2011, 2012, 2013, and 2014. A qualified audit opinion is a serious matter that indicates problems in the accuracy or verifiability of an organisation's accounting information – core information the organisation requires to measure its efficiency and performance.



**Box 10 - How audit findings relate to efficiency and performance**

Audit findings address the ways in which an organisation's financial information is managed and verified. They provide an assessment of whether this information can be relied upon to give a true and accurate picture of the organisation's situation.

Auditors assess the seriousness of these findings by considering the likelihood and significance of the outcomes, if each problem is not resolved.

Hence, audit findings are generally assessed in terms of the likely impacts of any problems on an agency's future efficiency and performance.

Likely impacts are considered in terms of "*both quantitative impact (for example financial loss) and qualitative impact (for example inefficiency, non-compliance, poor service to the public or loss of public confidence).*"<sup>186</sup>

**Strengthening internal controls to ensure the accuracy of data**

One of the major, recurring problems raised in annual financial audits of the Department has been weaknesses in its internal controls – that is, the processes and safeguards an organisation puts in place to insure the integrity of its accounting and financial information.<sup>187</sup> (More detail on these weaknesses is provided in Section A3.4 of Appendix 3.)

The Department's strategic plan includes a review of internal controls to take place during the 2015-18 period, which is certainly a step towards addressing the current problems. The Department has advised that this review will be undertaken by a new, internal Performance Assurance Branch that has been appointed to 'undertake and coordinate targeted reviews of systems, controls and procedures'.<sup>188</sup>

The ERA considers that this should be done as soon as is feasible, given that the Department is already focusing on resolving issues in this area. Any findings from this review should feed directly into the reform plan, modifying or adding to it as required.

**7.3.2.1. Responding promptly when problems are identified**

One of the key practical functions of the audit process is to highlight risks *before* they lead to major performance issues. However, the ERA has observed that the same findings tend to be raised by the Office of the Auditor General about the Department year upon year without being adequately resolved, resulting in ongoing costs to the Department's efficiency and performance. For example, the Department has been notified of problems with the integrity of its payroll records, but has not managed to resolve these problems in a timely manner.<sup>189</sup> (A more detailed explanation of these issues has been provided in Section A3.4 of Appendix 3.)

<sup>186</sup> Office of the Auditor General, *Audit Results Report – Annual 2013-14 Financial Audits*, 2015, <https://audit.wa.gov.au/reports-and-publications/reports/audit-results-report-annual-2013-14-financial-audits/management-issues/> (accessed 30 June 2015).

<sup>187</sup> In fact, weaknesses in internal controls was the specific reason the Department received a qualified audit opinion in the most recent financial year.

<sup>188</sup> Communication with the Department of Corrective Services, 15 May 2015.

<sup>189</sup> The ERA's concern around the Department's difficulty in addressing audit findings is compounded by the fact that the Department had significant problems simply finding the letters from the Office of the Auditor General that detailed the problems found in each audit. This suggests a level of disorganisation around both record keeping in general (as discussed further below), but also around tracking and addressing the significant issues raised in these annual communications.

It is important for the Department to prioritise resolving problems when they are raised. Doing so will provide the Government and taxpayers with assurance that risks to the Department's future performance are consistently and appropriately managed and protecting the Department from losing access to significant amounts of public money it could otherwise be using to operate and improve the prison system.<sup>190</sup>

The current reform process provides the Department with a good opportunity to review such outstanding issues, identify what actions are being taken to resolve them, and commit to a date by which the problems will be resolved. This may not be a particularly onerous process, as many of the necessary actions and deadlines will have already been set out in the Department's strategic reform plans.

The ERA also considers that the Department should publish the list of actions (and their associated deadlines) to be taken to comply with outstanding audit recommendations, and to provide progress updates in its Annual Report.

### 7.3.2.2. *Improving record-keeping practices*

The ERA has observed that record keeping practices in the Department are inadequate. Staff have stated that they have trouble finding documents they need, and the ERA has found it difficult to obtain core documents from the Department in conducting this Inquiry. The Department's record keeping practices do not appear to reflect the requirements specified under the *State Records Principles and Standards 2002*.<sup>191</sup>

The Department recognises this problem, and has advised it has established a record keeping plan that covers reforms until 2018, and that it develops 'policies, process, systems and tools' to enable staff to meet their record keeping obligations.<sup>192</sup>

Currently, it is difficult for the Department to locate significant records relating to its past decade of operations, and the ERA considers that the issue of cataloguing and organising historical information is enough of a problem to warrant specific consideration.

Hence, the ERA considers that the Department should seek expert advice from the Office of State Records as to how to manage and organise this backlog, and commit to a specific set of actions to improve its management of, and access to, its own historical records.

#### Box 11 - How record keeping influences performance and good decision-making

Poor record keeping poses a risk to the Department's future performance, as it inhibits the Department's ability to understand its historical performance, and so to draw meaningful conclusions as to how effective its past decisions have been. Without this context, it is difficult to assess which decisions have had a positive effect on the Department's performance, and which have been detrimental and should not be repeated.

<sup>190</sup> For example, the Department is still attempting to recover a substantial amount in salary overpayments that occurred as a result of administrative process issues over several years, as detailed in Section A3.4 of Appendix 3.

<sup>191</sup> *State Records Principles and Standards 2002* being the subsidiary legislation to the *State Records Act 2000*. The ERA has similar concerns regarding the Department's implementation of *Treasurer's Instruction 804*, and the State Records Commission standards.

<sup>192</sup> Communication with the Department of Corrective Services, 15 May 2015.

### 7.3.2.3. *Recommendations*

The ERA recommends that:

24. The Department of Corrective Services prioritise the review of internal controls raised in its Strategic Plan.
25. The Department of Corrective Services publish its planned actions and timeline for resolving outstanding audit issues, incorporate these into its current reform process, and report on its progress against this plan in its Annual Report.
26. The Department of Corrective Services consult with the Office of State Records in developing a plan to improve the management of the Department's existing records.

## 7.4. Information sharing and transparency

Making sure the right people have access to the right information is fundamental to running an efficient and effective operation. There are many people and organisations involved in the prison system. They need relevant and timely information to deliver services and track how well they are performing.

Further, agencies are ultimately answerable to the public, and as such, the Department should publish data that allows all stakeholders to make a robust, independent assessment of the Department's performance.

The ERA observes that the Department does not share information well. In particular, the Department does not:

- provide sufficient access to case management information to post-release service providers to allow them to most effectively assist former prisoners;
- provide meaningful performance feedback to post-release service providers to allow them to improve their services; and
- meet best practice in publishing information about its operations to ensure accountability and transparency.

Each of these matters is described in more detail below.

### 7.4.1. *Access to case management information*

The Department and post-release service providers (for example, Outcare) have told the ERA that third-party service providers do not have access to the case management information they need to undertake their jobs effectively.

The Department's case management systems effectively 'stop at the door' (that is, the point at which an offender exits prison), leaving offenders reliant on service providers who have inadequate information on their past history, risk factors, rehabilitation needs, or even the rehabilitation programs they have completed while in prison.<sup>193</sup>

The system relies on prisoners recalling and disclosing relevant information in order to receive meaningful help. The ERA considers this disadvantages people who – due to their

<sup>193</sup> For example, prisons do not formally share any data or history on individual prisoners with Outcare. Outcare relies on disclosure from individual prisoners to understand their background and rehabilitation activities during their time in prison.

health issues or history – are unable to provide this level of detail to caseworkers. This is a poor outcome, given the high risk of these former prisoners reoffending.

The Department has informed the ERA that there is no technical why reason the Total Offender Management System (discussed in Section 7.3.1.2) could not be used to share an appropriate level of case management information with post-release service providers. Enabling this would require the Department to build a module to provide post-release caseworkers with an agreed level of case management information, with information sharing subject to prisoner consent.

Such a module may also be useful in addressing a broad lack of consistency in the way post-release service providers provide information to the Department.<sup>194</sup>

#### **7.4.2. Performance feedback for post-release service providers**

The Department and post-release service providers have told the ERA that the Department does not provide meaningful performance feedback to post-release service providers to allow them to improve their services.

The ERA considers that this is a significant problem, given that good post-release care is a factor in preventing people from returning to prison. The United Kingdom provides a particularly good model for solving this problem, and helping service providers understand the efficacy of their programs.

##### **Box 12 - Case study: The United Kingdom's Justice Data Lab**

The United Kingdom's Ministry of Justice launched the Justice Data Lab project in early 2013, with the goal of providing voluntary and community sector agencies with access to 'high-quality data tailored to their needs'.<sup>195</sup>

In any given period, post-release service providers forward the details of the offenders they have assisted during a period, along with information on the specific program or intervention they have provided. The Justice Data Lab then matches the details with the Ministry of Justice's records and returns information about the reoffending rate for cohorts of offenders who have received the service, against that of a similar group of offenders who have not.

The project aims to help these service providers understand the impact of their work and design more effective interventions, by providing ongoing access to information about outcomes. It also allows the United Kingdom's system to develop a better understanding of what makes a difference outside the walls – an invaluable resource for planning how best to transition offenders to the community.

The ERA recommends that the Department establish a mechanism for providing feedback to post-release service providers.

This will help the Department and service providers to work more closely, and enable them to collaboratively design solutions to reduce reoffending that are consistently delivered through prisons and community providers.

<sup>194</sup> The Department has advised that post-release information is collected in different ways, and to different standards by various service providers, and is not well used or generally incorporated into the Department's own decision-making.

<sup>195</sup> UK Ministry of Justice, 'Justice Data Lab Launched', 2013, <https://www.gov.uk/government/news/justice-data-lab-launched> (accessed 28 May 2015).

### 7.4.3. Publishing data to improve transparency and accountability

Throughout this Inquiry, the ERA has repeatedly highlighted problems with transparency and accountability within the Department. This problem is discussed in Chapter 4, and some recommendations have been made in relation to specific issues raised earlier in this chapter.

The ERA considers that the publication of agency data is one of the simplest, most cost-effective ways to raise the level of transparency and accountability in any public sector organisation.<sup>196</sup> Additionally, publishing public sector data can contribute to economic benefits by supporting community innovation and new service delivery models.<sup>197</sup>

The ERA has undertaken a benchmarking exercise to assess how well the Department performs when it comes to releasing information, compared to other Australian and international jurisdictions. The benchmarking was based on five broad principles – that agency data should be:

1. **Regularly updated:** for example, quarterly publications provide more timely data, and better illustrate trends, than annual publications.
2. **Sufficiently detailed:** for example, many kinds of data are more informative and useful if provided for each prison, rather than as a total for the entire system.
3. **Comparable to prior periods:** for example, ensuring that the same measures are available for a number of prior periods allows users to better understand changes and trends. This also requires data definitions, and collection and calculation methods to be consistent over time. Where there is a change in methodology or definition, results using the legacy method should also be released to ensure the comparability of time series measures.
4. **Covering a range of metrics:** for example, prison population numbers may be of interest to a limited set of users, but providing additional data (for instance, the number of prisoners in various types of employment, or prisoners commencing and completing programs) provides a much better picture of the prison population.
5. **Published in a useful format:** for example, providing data tables in an Excel or CSV file is far more useful than providing it in a PDF document, or table on a website.

The ERA applied these principles to four major subject areas, being: prisoner population statistics; performance and recidivism statistics; workforce statistics; and safety and security statistics. Most prison data released falls into one of these four broad areas. The ERA then assessed the data released in Western Australia and in seven other jurisdictions, giving each jurisdiction a score out of five for how well it released data in each subject area.<sup>198</sup> The results are shown in Table 6.

<sup>196</sup> It is important to be clear that these recommendations are in relation to aggregated data about the Department's financial and operating performance – that is, system-wide data about what the Department is doing and how well it is doing it. They do not refer to data about individuals within the prison system, and should never be identifiable down to an individual level.

<sup>197</sup> The economic case has been increasingly well quantified in recent years, with Nicholas Gruen's recent study placing the potential value of the economic value of open data in Australia in the billions of dollars – a total of \$30 billion across a range of sectors. (Gruen, N, *Open for Business: How Open Data Can Help Achieve the G20 Growth Target*, Melbourne, Lateral Economics, 2014.)

<sup>198</sup> An assessment by subject area was considered a more informative metric than a single, overall score, since, as seen in the table, jurisdictions are often strong in some areas, and lacking in others.

**Table 6 Accessibility and quality of published prison system data (as at May 2015)**

	WA	UK	Can	NZ	Vic	SA	Qld	NSW
Prisoner population statistics	3	5	4	4	3	3	3	4
Performance & recidivism statistics	2	4	2	2	2	0	1	0
Workforce statistics	2	5	1	0	3	3	0	0
Safety & security statistics	1	5	3	3	4	3	1	0

**Key:**  5/5  4/5  3/5  2/5  1/5  No results found

Source: ERA analysis; various government websites.<sup>199</sup>

Most Australian jurisdictions do not tend to be in line with best practice when it comes to releasing data about corrective services. This inadequacy persists, despite Federal and State Government policies that aim to broadly improve the extent to which agencies publish data.<sup>200</sup>

Western Australia performs better than its counterparts in some other States. Most importantly, it has recently recommenced the publication of a range of prisoner population statistics on a monthly and quarterly basis – statistics that other agencies tend only to publish in their Annual Reports. However, there is significant room for improvement. The Department's publication of data does not approach that seen in best practice jurisdictions (particularly in the United Kingdom, a clear leader in the field).

The ERA considers that, with the current level of disclosure in Western Australia, it is not possible for interested parties to understand how the Department operates, nor how well it operates. This further hinders the Department in establishing effective service delivery relationships with communities and businesses. The ERA considers that the Department should adopt a policy of publishing its operational and financial data by default, wherever there is no compelling technical or confidentiality reason not to do so.

The Department has advised that its current reform process incorporates plans to improve data sharing, but that it is currently engaged in preliminary work around 'standard definitions and counting rules, data classification, data integrity, data ownership and a review of Department reporting'.<sup>201</sup>

This review of data quality is welcome and extremely important. However, the ERA notes that it is common for agencies to take the view that any overhaul of data release procedures is a single, large project to be completed.

In contrast, an incremental approach is generally considered more practical, and is consistent with the *Western Australian Whole of Government Open Data Policy*.<sup>202</sup> Under this approach, where individual datasets are of sufficiently good quality for release and it

<sup>199</sup> Results derived using Google Web Search, and the websites of the Department of Corrective Services (WA), Ministry of Justice (UK), Justice Data Lab (UK), Department of Corrections (NZ), Statistics New Zealand, Statistics Canada, Department of Community Safety (Qld), Department of Justice and Attorney-General (Qld), Department of Community Safety (former) (Qld), Queensland Treasury and Trade, Government Statistician's Office (Qld), Bureau of Crime Statistics and Research (NSW), Department of Justice (NSW), Department of Justice and Regulation (Vic), Office of Crime Statistics and Research (SA), and Department for Correctional Services (SA). In assessing the 'discoverability' of data, the ERA assumed a hypothetical user with professional research skills but no prior knowledge of the websites consulted.

<sup>200</sup> For instance, the New South Wales, South Australian, Victorian, and Queensland State Governments all have open data policies or strategies in place to facilitate better whole-of-government data release. Similarly the *Western Australian Whole of Government Open Data Policy* has recently been published, with the Government directing agencies to adopt an open-by-default policy when it comes to data release. (See <https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/07/Open-Data-Policy-delivers-new-WA-opportunities.aspx>, accessed 7 July 2015.)

<sup>201</sup> Communication with the Department of Corrective Services, 15 May 2015.

<sup>202</sup> *Western Australian Whole of Government Open Data Policy*, Perth, Government of Western Australia, 2015, p. 6.



takes minimal effort to release them, it is better to publish them immediately as they become available. (In fact, starting to publish the data that is already released in a more accessible format is, in itself, a significant improvement.)

An incremental approach also stands to benefit the Department in the long term, as it will encourage feedback from data users as to how publication could be improved, and what further data may be useful.

A best practice data portal should certainly be a goal, but this is a longer-term goal, and should not replace incremental improvement. Further, the Government's current work on developing a whole-of-Government data portal for Western Australia over the coming year may ultimately provide the Department with a less resource-intensive alternative to building and maintaining its own portal.

Finally, when improving the release of its data, the Department should also be guided by the broad principles outlined above, and likewise, seek to improve best practice compliance as the process evolves.

#### 7.4.4. *Recommendations*

The ERA recommends that:

27. The Department of Corrective Services build a Total Offender Management System module to provide post-release service providers with secure access to case management information.
28. The Department of Corrective Services establish a mechanism to report to post-release service providers on the efficacy of their post-release services.
29. The Department of Corrective Services identify individual datasets that are of acceptable quality and commence publishing these as soon as feasible.
30. The Department of Corrective Services adopt a policy of publishing its operational and financial data by default, wherever there is no compelling technical or confidentiality reason not to do so.
31. The Department of Corrective Services review options for creating a best-practice data portal either through the establishment of its own portal, or through the use of the forthcoming whole-of-government portal.



## 8. Introducing greater competition to the prison system

### 8.1. Introduction

The ERA considers that the overall performance of the prison system can be enhanced through greater competition for the right to manage prisons and deliver prison services. Greater competition will provide the Department with more choice in the number and type of providers that are able to deliver the services that best meet Western Australia's needs.

Greater competition in the delivery of services will encourage better overall performance of the prison system through a wider choice, better quality service offerings, higher levels of innovation and potentially lower cost.

Some limited competition currently exists for the right to manage prisons and deliver prison services. However, while contracting out the management of individual private prisons has introduced some competition, it does not create competitive pressure in the broader system.

To be clear, by "competition", the ERA does not mean "privatisation". The ERA expects that prison management and prison services will continue to be delivered by a mix of public, private and not-for-profit service providers. It would be a decision for the Department, on a case-by-case basis, to determine which service provider is best able to deliver the services being sought.

The ERA has identified several options for extending competition in the Western Australian prison system.

- *Applying greater competitive tension to in-house service delivery* – Under this approach, the Department would have a greater focus on comparing the performance of individual prisons using Service Level Agreements and benchmarking. These comparisons, combined with the potential of not renewing the fixed term contracts of Superintendents, would increase competitive tension in the public system. However, competition would remain limited under this approach, because it does not introduce a wider range of providers to the market.
- *Direct procurement* – This approach involves the Department entering into a contract with a non-public provider to operate a prison or services within a prison. This would generally be achieved through a tender process that ideally involves multiple potential service providers. However, this does not require Superintendents of public prisons to adjust their approach to service delivery because competition is limited only to the prisons or services that are subject to tenders, in which the public sector may not participate.
- *Commissioning* – Under this approach, a commissioning division within the Department determines the outcomes that it wants from a specific prison or prison service and invites public, private and not-for-profit providers (or any combination of these groups) to tender for the right to provide these services. Under a commissioning approach, the public sector providers compile their own tender documents and compete directly with other providers.

The ERA considers commissioning to be the best approach because it:

- Creates the strongest competitive tension by increasing the choice of service providers available to the Department. This is achieved by removing the barriers to competition that prevent public prisons and alternative service providers (private and not-for-profit) from directly competing with each other.

- Requires Superintendents to take a more commercial approach to service delivery, generating system-wide improvements.

The ERA suggested that a commissioning approach be adopted for the prison system in its March 2015 Discussion Paper. Feedback from stakeholders was mixed. Some expressed concern that the ERA had arrived at a conclusion without sufficient analysis and understanding of the problems.

Others were supportive of the proposed approach, while others still were supportive in-principle, but were concerned that the structural reforms proposed by the ERA to address probity issues may be too cumbersome. (A commissioning approach may create real or perceived conflicts of interest because government agencies would have the role of both a procurer of services and a competitor to deliver these services.)

The ERA has sought to address the concerns of the latter group of stakeholders by reconsidering the structural reforms required to support a commissioning approach. The ERA considers that a high degree of probity can be achieved without structural separation of the Department into two entities. However, a ring-fence would need to be established between the commissioning and service delivery functions within the Department.

The decisions of the commissioning division would need to be overseen by a newly-established independent probity auditor. The probity auditor would participate as an independent observer of tender processes and publish a post-tender probity review assessing the fairness of the process. The review could include recommended modifications to processes or Departmental structure for future tender processes. The remainder of this chapter discusses:

- the benefits of competition;
- the different means through which greater competition can be introduced in the Western Australian prison system;
- why commissioning is the ERA's recommended approach for extending competition in Western Australia;
- how commissioning can be introduced in Western Australia; and
- issues that need to be addressed in implementing commissioning.

## 8.2. Benefits of competition

Public money is scarce; the government is responsible for ensuring those funds are spent appropriately. The Department cannot be sure that resources are being spent efficiently if it does not consider all available options. It is through robust competition that the Department is able to consider the options that are available to it.

There are many examples of the benefits that competition has introduced to the prison system. These include:

- *Choice* – The introduction of competition provides the Department with the choice to select the prison services that best meet its needs. Competition encourages businesses to compete for customers (in this case the Department) and can result in lower prices, better quality, greater choice, and higher levels of innovation.
- *Better quality* – The Office of the Inspector of Custodial Services observed, in its 2014 report assessing recidivism rates and the impact of treatment programs, that prisons that were performing well against its standards also delivered lower recidivism rates than prisons that were struggling to provide services and meet the

standards of the Office.<sup>203</sup> At the time of the report, the Office of the Inspector of Custodial Services viewed both Acacia<sup>204</sup> and Wandoo<sup>205</sup> as being high performing facilities.

- *Innovation* – Acacia prison has introduced a range of innovations to the Western Australian prison system. These include:
  - Custodial Management System – An electronic kiosk system that allows prisoner movements to be tracked and allows prisoners to access their account balances, purchase items from the canteen, top up their phone allowance, order their meals in advance, and check their timetables for appointments and visits. Messages and notices from staff can also be delivered through the Custodial Management System kiosk.
  - Story Book Dads – This initiative allows prisoners to make a recording on compact disc of their child's favourite bedtime story. The disc is then mailed to the child to play at home.
  - Meal choices – Prisoners are able to select from three choices for the evening meal. Providing prisoners with meal choices reduced food wastage by 15 per cent<sup>206</sup> at no additional cost to the prison.
- *Reduced costs* – Between 2009 and 2011, the National Offender Management Service in the United Kingdom ran a competitive process for the right to operate four prisons, three established and one new build, with the public sector successfully tendering for one of the established prisons. The result of this competitive process is that the National Offender Management Service expects the combined operational costs of the three established prisons to fall by 16 per cent (£200 million, approximately AUD \$400 million) over the life of the contracts.<sup>207</sup>

### 8.2.1. Arguments against introducing competition

Arguments have been made against prisons being operated by private enterprise on the basis that businesses should not profit from the involuntary imprisonment of people,<sup>208</sup> and that the profit motive will incentivise private operators to cut costs and provide inferior services<sup>209</sup>. The ERA observes that the Western Australian Government (and governments in other national and international jurisdictions) has determined that these risks can be appropriately managed.

The Office of the Inspector of Custodial Services was established, when Acacia was placed into private administration, to provide oversight of private prisons in Western Australia.

<sup>203</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>204</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>205</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>206</sup> New South Wales Legislative Council, *Inquiry into the privatisation of prisons and prison-related services*, 2009, p. 85.

<sup>207</sup> Ministry of Justice (UK), *Offender Services Competitions Annual Update 2012*, London, United Kingdom Government, 2012.

<sup>208</sup> Ryan M and Ward T, *Privatization and the Penal System: The American Experience and the Debate in Britain*, Open University Press, 1989, p 83-84.

<sup>209</sup> Porter R.G., 'The Privatisation of Prisons in the United States: A Policy that Britain Should Not Emulate', *The Howard Journal*, vol. 29, no. 2, 1990, p. 73-74.

Reports by the Office of the Inspector of Custodial have addressed concerns that privately run prisons would cut costs and be unable to deliver appropriate services. In the Office of the Inspector of Custodial Services' most recent inspection of Wandoo, the Inspector found that in many areas, Wandoo was best practice in Western Australia.<sup>210</sup> Similarly, findings from the most recent inspection at Acacia indicated that the prison is also performing well.<sup>211</sup>

In any case, by "competition", the ERA does not mean "privatisation". The ERA expects that prison management and prison services will continue to be delivered by a mix of public, private and not-for-profit service providers. It would be a decision for the Department, on a case-by-case basis, to determine which service provider is best able to deliver the services being sought.

At the public roundtable meeting held on 21 April 2015, it was suggested that a recent British House of Commons Justice Committee report reviewing prison planning and policies<sup>212</sup> had concluded that it was unclear whether a recent deterioration in safety standards and performance across the United Kingdom prison estate was due to budget cuts or the introduction of commissioning. It was put forward that given the possibility that commissioning could be the cause of performance deterioration in the United Kingdom, the ERA should exercise caution in recommending the introduction of commissioning in Western Australia.

The report contains few references to commissioning and where it does, it implicitly supports the use of commissioning. Specifically, when discussing prison industries it states that

*"...the current commissioning arrangements for prison work and learning and skills do not appear to support the integration of these two vital aspects [the aims of involving prison industries on a commercial basis and normalising a working week for prisoners] of rehabilitation. We recommend that the Ministry of Justice and the Department for Business, Innovation and Skills take steps to ensure that the next round of commissioning for learning and skills in prisons prioritises arrangements for embedding learning in the various forms of purposeful activity in which prisoners are engaged."*<sup>213</sup>

The report places relatively little attention on the broader concept of competition, despite it being explicitly referenced in the terms of reference. Of the 34 conclusions and recommendations offered in the report, competition is addressed only once.

The report states that the Committee agreed, "the benchmarking of prisons to develop more efficient regimes is in principle an effective way of reducing expenditure more rapidly than would be possible through prison-by-prison competition."<sup>214</sup>

This conclusion does not dismiss competition, rather it remarks on the speed with which reductions in expenditure can be achieved, in principle.

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<sup>210</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>211</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>212</sup> House of Commons Justice Committee, *Prisons: planning and policies*, London, Government of the United Kingdom, 2015.

<sup>213</sup> House of Commons Justice Committee, *Prisons: planning and policies*, London, Government of the United Kingdom, 2015, p.24.

<sup>214</sup> House of Commons Justice Committee, *Prisons: planning and policies*, London, Government of the United Kingdom, 2015, pp.69-70.

Although the ERA does not agree with the implications that reducing expenditure is the sole objective for introducing benchmarking and/or competition, and that benchmarking and competition are substitutes, the ERA broadly agrees with the conclusion.

On the issue of falling standards of safety and performance, the report stated that it was improbable for there to be no link between estate reconfiguration,<sup>215</sup> benchmarking<sup>216</sup> and changes to operational policy<sup>217</sup> and the shift in safety across the prison estate.<sup>218</sup>

The report concluded that the fall in staffing levels, stemming from redundancies and increased staff turnover, were bound to have reduced the consistency of relationships between officers and prisoners, and in turn affected safety.<sup>219</sup>

### 8.3. Options for introducing greater competition

Competition can be introduced in a number of ways, depending on the level of competitive tension desired. Three approaches are discussed below:

- Applying greater competitive tension to in-house service delivery;
- Direct procurement; and
- Commissioning.

#### 8.3.1. Applying greater competitive tension to in-house service delivery

Under this approach, the Department would have a greater focus on comparing the performance of individual prisons using Service Level Agreements and benchmarking. These comparisons, combined with the potential of not renewing the fixed term contracts of Superintendents, would increase competitive tension in the public system.

Service Level Agreements specify the services and standards expected of each prison and benchmarks are used to compare the performance of each prison. The introduction of Service Level Agreements provide Superintendents with clarity around the objectives of the prison, certainty about how the prison's performance will be measured, and the autonomy to achieve these outcomes in the manner they consider most effective. This allows Superintendents to direct their resources to avenues that best achieve the desired performance.

Benchmarking introduces competitive tension by explicitly identifying those prisons that are performing poorly against the benchmarked measures. Benchmarking allows prison performance to be compared. There are inherent challenges in comparing different prisons (as discussed in Chapter 6). Nonetheless, high-level comparisons between prisons can be

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<sup>215</sup> The prison estate in the United Kingdom has been reconfigured using the “new-for-old” program in which old and inefficient facilities are closed as modern cheaper establishments open, whilst maintaining sufficient places to meet demand.

<sup>216</sup> Benchmarking in the United Kingdom is informed by the specification, benchmarking and costing program referred to in Chapter 5.

<sup>217</sup> This refers to the standardisation of some aspects of prison operations that had previously been left to the discretion of the prison Governor. Explicit reference is made to the Incentives and Earned Privileges scheme and the Release on Temporary Licence scheme.

<sup>218</sup> House of Commons Justice Committee, *Prisons: planning and policies*, London, Government of the United Kingdom, 2015.

<sup>219</sup> House of Commons Justice Committee, *Prisons: planning and policies*, London, Government of the United Kingdom, 2015.



made to determine relative performance in order to identify good and poor performing prisons.

Benchmarking introduces competition between Superintendents by encouraging them to improve the performance of their prison to ensure that it is not at or near the bottom of the benchmark table. However, benchmarks merely discourage poor performance, rather than encourage good performance. Comparing prison performance offers few incentives for high performance beyond the satisfaction of being identified as a high performing prison.

Competitive tension is strengthened when benchmarking is combined with fixed term contracts for Superintendents. Fixed term contracts will encourage Superintendents to ensure that the prison they are managing is performing to a standard that is acceptable to the Department.

The ERA considers that competition would remain limited under this approach, because it does not introduce additional providers to the market.

### **8.3.2. *Direct procurement with private providers***

This approach involves the Department entering into a contract with a non-public provider to operate a prison or services within a prison. This is generally achieved through a tender process that ideally involves multiple potential service providers competing for the right to operate the prison in question, or the right to provide specific services within the prison (for example, education or health services).

Direct procurement is the main approach used in Australia and New Zealand when engaging private prison providers. Direct procurement was also used in the United Kingdom, but has subsequently been replaced with a commissioning approach. The Department used direct procurement when Serco was awarded the contracts to operate Acacia prison and the Wandoo reintegration facility.

The ERA considers that the introduction of direct procurement (as a complement to Service Level Agreements and benchmarking) would create additional competition. However, competition would remain limited because the direct procurement model excludes the public sector from competing for the right to operate the prison or prison service. This denies Superintendents the opportunity to use their experience and expertise to reconsider how services can be provided in a more competitive manner.

The additional competitive benefit of direct procurement is generated by creating an environment in which non-public service providers compete with each other for the opportunity to provide the services being tendered. However, the benefits of competition are largely limited to the prison or prison services being tendered.

Direct procurement generates few system-wide benefits. Despite suggestions that private sector involvement in the prison system will increase innovation and lead to a cross-fertilisation of ideas, the extent to which this has occurred appears to be limited.

This can be observed in the Western Australian context. The direct benefit created by each of the privately operated prisons in Western Australia can be observed from the primarily positive inspection reports published by the Office of the Inspector of Custodial Services and the annual performance reports published by the Department. However, the introduction of private operation to Acacia and Wandoo does not appear to have led to material improvements across the prison system, despite a range of innovations being introduced at Acacia and Wandoo.

The prospect of replacing the management of poor performing prisons could be used to encourage these prisons to improve performance. However, doing so encourages these prisons to address only areas of poor performance, to the extent that the prison is no longer one of the relatively poor performing prisons. Replacing poor performing Superintendents

offers them little incentive to improve overall performance and/or build on areas of good performance.

### 8.3.3. 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. Unlike direct procurement, commissioning allows Departmental and non-departmental service providers to participate in the process. This results in a move away from a 'Department as the default provider' approach, and establishes processes and guidelines that allow agencies to consider and choose from a range of alternative providers.<sup>220</sup>

Wholesale privatisation of the prison system is neither the aim of the commissioning approach, nor its likely outcome.<sup>221</sup> Rather, the approach focuses on providing choice and ensuring that the organisations that are most likely to achieve the stated objectives are those providing the services. It aims to offer an environment in which contestability, competition, and collaboration between public, private and non-government service providers are actively encouraged.<sup>222,223</sup>

Under the commissioning approach, a commissioning division within the Department would determine the outcomes that it wants from a specific prison or prison service and invites public, private and not-for-profit providers (or any combination of these groups) to tender for the right to provide these services.

Public sector providers would compile their own tender and compete directly with other providers. However, tender documents are time and resource intensive documents to compile. Superintendents are unlikely to have the time or full range of skills required to put together a tender document. It would also be unworkable for the burden of producing a tender document to fall solely on those responsible for operating Western Australia's public prisons (that is, Superintendents).

In order to adequately compete with other providers, the public prison system would have to develop a central 'tendering unit' with the capability to submit commercial tenders and for these tenders to be informed by extensive knowledge of best practice and innovative prison

<sup>220</sup> CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia, 2010, p.5.

<sup>221</sup> In the UK, where direct procurement and then commissioning have been in place since 1992 and 2009, respectively, only 14 of the 119 prisons in the estate are privately operated. Data sourced from the UK Ministry of Justice website.

<sup>222</sup> Ernst and Young, *Public Service Commissioning: A catalyst for better citizen outcomes*, Ernst and Young, 2014, p. 3.

<sup>223</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.



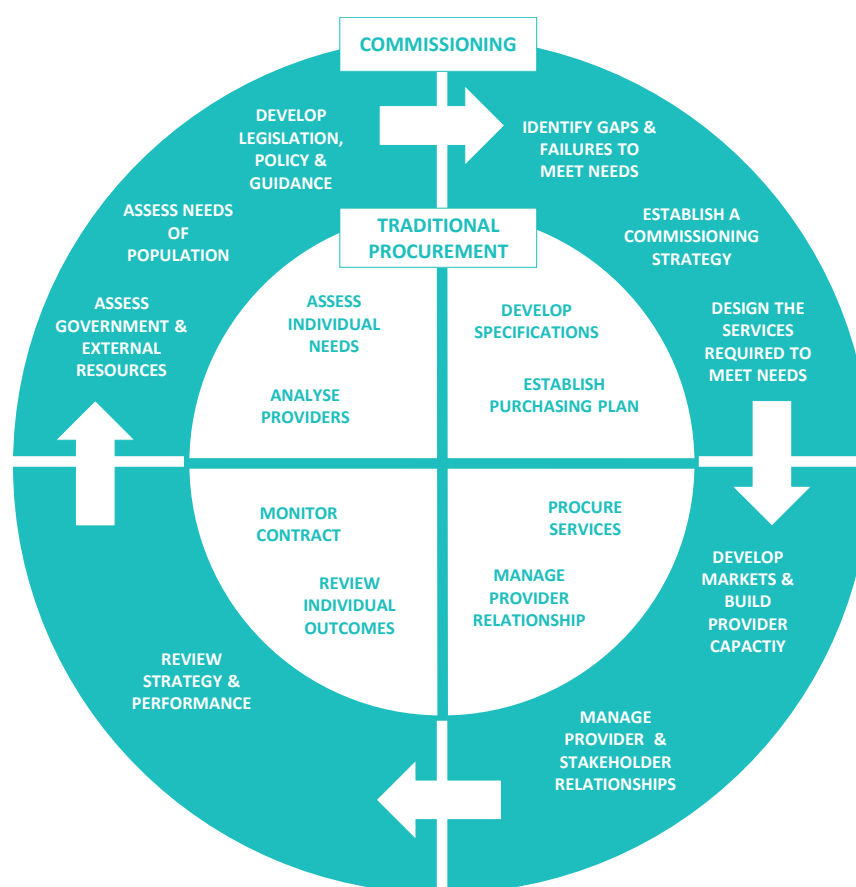
operations. The tendering unit would be responsible for coordinating with operational staff to develop public sector tenders.

This specialist team would have a sole focus on best practice prison operations and using this knowledge to produce commercially competitive tender documents.

There are similarities between commissioning and direct procurement. 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 14 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>224</sup>

**Figure 14 Commissioning versus traditional procurement**



Source: CIPS Australia, *The UK Public Sector concept of commissioning*, 2010.

### 8.3.3.1. National Competition Policy Review

The recent Competition Policy Review chaired by Professor Ian Harper (**the Review**) has endorsed the use of commissioning for human services.

<sup>224</sup> Based on CIPS Australasia, *The UK Public Sector concept of commissioning*, Melbourne, CIPS Australasia, 2010, p. 10.

The Review recommended that each Australian government should adopt choice and competition principles in the domain of human services.<sup>225</sup>

The Review stated that by commissioning the provision of human services with an outcomes focus, governments could encourage a diversity of supply, which can have important benefits for users in relation to choice, adaptability, and innovation. In commissioning human services, the Review stated that governments should:<sup>226</sup>

- encourage careful commissioning decisions that are sensitive and responsive to individual and community needs, and recognise the contribution of community organisations and volunteers;
- ensure that commissioned services are contestable and service providers face credible threats of replacement for poor performance;
- establish targets and benchmarks for service providers based on outcomes, not processes or inputs; and
- offer financial rewards for performance above specified targets.

## 8.4. Why is commissioning the optimal outcome?

The ERA considers commissioning to be the best approach for introducing greater competition to the Western Australian prison system because it:

- increases the choice of potential prison operators; and
- requires Superintendents to take a more commercial approach, generating system-wide improvements.

### 8.4.1. Increased choice of potential prison operators

Commissioning creates the greatest degree of competition by increasing the choice of service providers available to the Department. This is achieved by removing the barriers to competition that prevent Superintendents and alternative service providers (private and not-for-profit) from directly competing with each other.

In instances where the public sector is successful, commissioning delivers better outcomes than would be achieved from direct procurement. The experience in the United Kingdom shows that with appropriate training and structures in place, the public sector is capable of producing successful tenders.<sup>227</sup> Commissioning will result in better outcomes than direct procurement in cases where the public sector successfully tenders for a prison against private competitors. This is because direct procurement would have excluded the provider best placed to deliver the services.

There are considerable barriers to entry in compiling tender documents to operate a prison or supply prison services. The ERA has been told that it can cost over \$1 million to compile a tender document to bid to operate a prison. These barriers to entry may limit the extent to which private providers participate in a tender process (commissioning or direct

<sup>225</sup> Commonwealth of Australia, *Competition Policy Review Final Report*, Canberra, Commonwealth of Australia, 2015, p. 36.

<sup>226</sup> Commonwealth of Australia, *Competition Policy Review Final Report*, Canberra, Commonwealth of Australia, 2015, p. 244.

<sup>227</sup> During phase one of the UK National Offender Management Service's prisons competition, four prisons were subject to a commissioning process. Her Majesty's Prison Service was successful in its tender for one of these prisons, HMP Buckley Hall.

procurement). In the event that a tender process attracts only one alternative provider (as was the case when the Wandoo contract was tendered in 2011) the presence of a public sector competitor introduces genuine competition that would be absent in a direct procurement process.

### 8.4.2. System-wide improvements

Commissioning requires Superintendents to take a more commercial approach to service delivery, which via the tendering unit, can be used to generate system-wide improvements. In doing so, commissioning provides the public sector with a legitimate platform for reviewing the manner in which services are delivered within their prison.

The tendering unit is responsible for developing public sector tenders for each commissioning exercise undertaken by the Department. Over time, this unit would acquire extensive experience in participating in tender processes and create considerable intellectual capital within the Department.

It is neither practical nor optimal for the Department to subject every prison to a commissioning process at the expiry of its Service Level Agreement. The cost alone would be prohibitive when compared to the likely benefits.<sup>228</sup>

The expertise of the tendering unit does not have to be limited to participating in tenders in competition with the private sector, it can also be used to develop Service Level Agreements and deliver public sector reforms by ensuring that Superintendents are more effectively held to account for the outcomes they are expected to deliver.<sup>229</sup> It is through this process that the tendering unit is capable of introducing material system-wide change.

For those prisons that are not subject to commissioning, the tendering unit can be used to develop a 'tender' document for the prison as though it were participating in a competitive tender. The prison's new Service Level Agreement can be developed from this 'tender' document, as it would be if it were successful in a commissioning process.

This process will not be subject to the same competitive tension that direct competition would create. However, it ensures that there is a systematic review of every prison in the estate, ensuring operations and standards systematically evolve over time to maintain best practice.

The ERA has observed that the Department is unduly risk averse and subject to cumbersome bureaucracy. Both of these characteristics have the effect of disproportionately stifling innovation within the public prison system, even in the presence of innovation that has been developed within Western Australia and proven to improve operations. Commissioning frees Superintendents from these constraints to develop efficient best practice services. Box 13 discusses two innovations that have been introduced in Acacia prison and publicly praised by the Department, but are still yet to be introduced to the public prison system.

<sup>228</sup> The cost of undertaking a commissioning process for the Department is considerable. Given the considerable cost to non-public providers of participating in a commissioning exercise, it is unclear whether they would have the financial appetite or human capital to participate in multiple commissioning exercises concurrently.

<sup>229</sup> Ministry of Justice (UK), *Competition Strategy for Offender Services*, London, United Kingdom Government, 2011, p. 6.

### Box 13 - Innovation introduced at Acacia Prison

Two examples of innovations that would improve the public system are Serco's introduction of the Custodial Management System kiosks and the introduction of a menu system for evening meals, both at Acacia Prison.

Custodial Management System kiosks are ATM-style kiosks located in the accommodation blocks and common areas of the prison. Each prisoner has their own profile, which they can access by scanning their fingerprint and entering their own personalised code. Once a prisoner has logged into the system, they can access their account balances, purchase items from the canteen, top up their phone allowance, order their meals in advance, and check their timetables for appointments and visits. Messages and notices from staff can also be delivered through the kiosk.<sup>230</sup>

The menu system at Acacia provides prisoners with the choice of three meal options for the evening meal, one of which is vegetarian.

In evidence provided to a 2009 New South Wales Inquiry into the privatisation of prisons and prison-related services, the Department's contract manager for Acacia prison referred to the Custodial Management System kiosks as fantastic and "light years ahead of anything I have seen anywhere else in the world".<sup>231</sup>

To the same inquiry, the contract manager stated that Acacia's "fantastic"<sup>232</sup> menu system<sup>233</sup> reduced food wastage by 15 per cent and he believed that it would be introduced across the public prison system.

## 8.5. How can commissioning be introduced?

The introduction of commissioning needs to be supported by a framework to manage the conflicts of interest that potentially arise from government acting as both the commissioning agent (commissioning function) and a participant in the commissioning process (service delivery function, including the tendering unit and Superintendents). Alternative service providers are less likely to submit a tender if they perceive conflicts of interest because it creates uncertainty about their chances of success. This may reduce the extent of competition, unless conflicts of interests are, and are seen to be, appropriately managed.

In the Discussion Paper, the ERA proposed addressing this issue by separating the commissioning activity from the service delivery activity. The ERA suggested that this could be achieved by removing one of those activities from the Department.

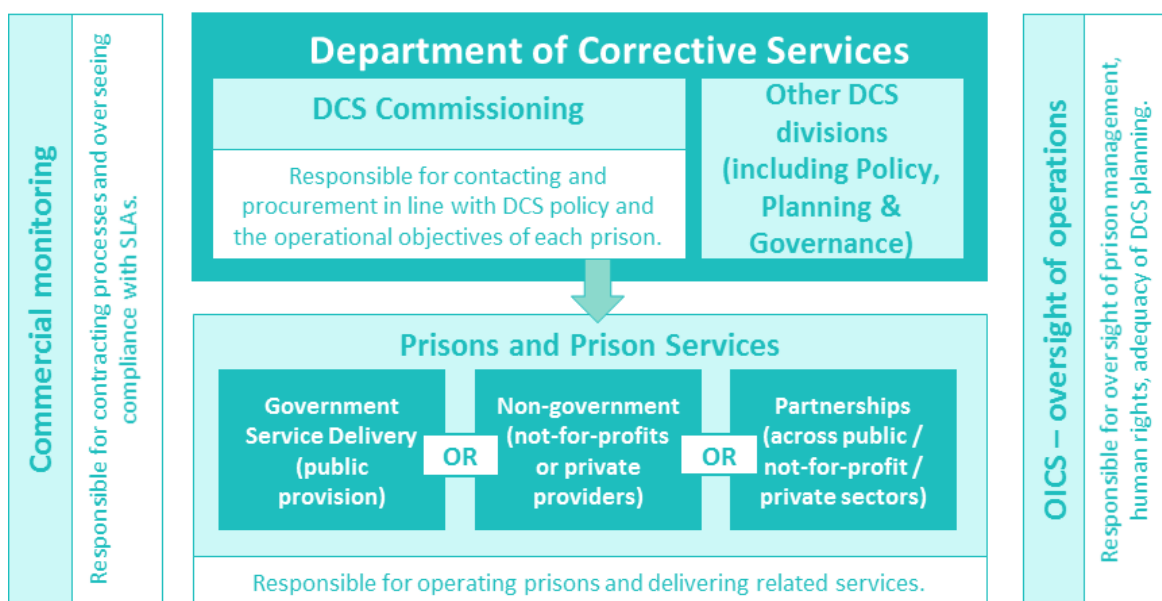
In the Discussion Paper, the ERA concluded that there is greater synergy from having the policy function and the commissioning function in the same Department than there is from having policy and service delivery housed together. Accordingly, the ERA proposed removing service delivery from the Department and making it an independent organisation, as demonstrated in Figure 15.

<sup>230</sup> Office of the Inspector of Custodial Services, *Report of an announced inspection of Acacia Prison*, Perth, Government of Western Australia, 2014, p 42.

<sup>231</sup> New South Wales Legislative Council, Inquiry into the privatisation of prisons and prison-related services, 2009, p. 85.

<sup>232</sup> New South Wales Legislative Council, Inquiry into the privatisation of prisons and prison-related services, 2009, p. 85.

<sup>233</sup> Where inmates are given a choice of three dishes to eat at any particular meal.

**Figure 15 ERA's proposed structure of the prison system – Discussion Paper**

However, some stakeholders expressed concern that the structural reforms proposed by the ERA in the Discussion Paper to address probity issues may be too cumbersome. The ERA has reconsidered the structural reforms required to support a commissioning approach. Having done so, the ERA has identified two alternative structures under which a commissioning approach could be implemented. These two frameworks are discussed in turn below.

### 8.5.1. Ring-fencing activities within the Department and establishing a probity auditor

Under this approach:

- The commissioning function and the service delivery function (including tendering unit and Superintendents) would be retained within the Department, but a ring-fence separating the two divisions responsible for these functions would need to be established.<sup>234</sup>
- The decisions of the commissioning division would need to be *overseen* by a newly-established independent probity auditor. The probity auditor would participate as an independent observer of tender processes and publish a post-tender probity review assessing the fairness of the process. The review could include recommended modifications to processes or Departmental structure for future tender processes.

The probity issue is not addressed through structural separation of the commissioning and service delivery divisions, as suggested in the Discussion Paper. Rather, it is addressed by ring-fencing the service delivery division responsible for operating the publicly managed prisons (including the newly established tendering unit) from the remainder of the Department, including the commissioning division responsible for managing the commissioning process and deciding on the successful tender proposal.

<sup>234</sup> In the context of this report, the ERA has adopted the term 'ring-fence' to denote an operational separation between divisions designed to manage risks of improper influence or conflicts of interest.

The purpose of ring-fencing the service delivery division from the remainder of the Department is to prevent it from accessing information that would provide it with an unfair advantage over alternative providers when participating in a commissioning process.

In this approach, the ring-fencing arrangement is complemented by the presence of an independent probity auditor. The probity auditor would provide advice on the conduct of the commissioning process (including the tender evaluation procedures), ensure that the commissioning rules and procedures are followed, and ensure the commissioning process is conducted fairly and tenders received are assessed in accordance with the stated evaluation criteria. The role of probity auditor is to monitor the tender, evaluation and selection processes to ensure that they are defensible and conducted in a fair and unbiased manner.<sup>235</sup>

The probity auditor may attend and monitor meetings of the commissioning division. The probity auditor may also be required to advise on the composition of the tender evaluation team to ensure that there are no conflicts of interest and that the team contains the appropriate skills for the evaluation.

The probity auditor should have unrestricted access to all documentation and communication related to any commissioning process and publish a report that reviews the commissioning exercise and recommends amendments to the commissioning process or Departmental structure for future commissioning exercises.

### 8.5.2. Independent decision-making agency

Under this approach:

- A newly established decision-making agency (that is independent of both the Department and Government) would be responsible for managing commissioning processes and determining successful tenderers.
- However, the decision-making agency would not be responsible for identifying areas (prisons or individual services) that would benefit from being subject to a commissioning process or specifying the details of the services that are to be commissioned (that is, compiling the request for tender document packs that are distributed to interested parties). This would be the role of a commissioning division within the Department.
- The commissioning division and the service delivery division (including tendering unit and Superintendents) would both be contained within the Department. There would *not* be a ring-fence between the two divisions. Probity concerns would be addressed by ensuring that the commissioning process is managed by the independent decision-making agency.

In this framework, the service delivery division may hold a competitive advantage over non-public providers as it may have access to information about the parameters of the commissioned services prior to alternative providers. Advanced access to this information would provide the service delivery division with a competitive advantage if non-public providers are not afforded sufficient time to develop comprehensive tender documents. However, provided all parties are afforded sufficient time, this risk is considerably mitigated. There will always be an advantage to being provided more time to develop a tender document, but this advantage diminishes over time. The ERA is of the view that timeframes for responding to a request for tender can be managed to ensure that any competitive advantage is immaterial.

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<sup>235</sup> University of Tasmania, *Probity in Tendering - Guidelines*, 2005.



The decision-making agency has no input into the design of the request for tender pack and is solely responsible for conducting a process that best achieves the outcomes specified by the Department in the request for tender. For the purposes of transparency, any supplementary instructions or contextual information required by the decision-making agency in order to conduct the commissioning process efficiently should be made available to all parties participating in the process.

The independence of the decision-making agency addresses any remaining areas for potential competitive advantage or conflict of interest.

### 8.5.3. Conclusion

Theoretically, the best model would be to separate the commissioning division from all potential providers, regardless of their sector. This enables true competition, provides a mechanism for churn between sectors, and ensures consistent standards are applied across sectors. Thus, if the Department decides that new prison management is required, the separation between purchaser and provider enables the public, private sector and not for profit sectors to compete against each other on equal terms in a way that meets probity standards.<sup>236</sup>

Structural separation between the commissioning division and the service delivery division resolutely addresses the conflict of interest concerns. However, it also represents a considerable disruption for the Department and the costs of establishing another agency are not guaranteed to outweigh the marginal benefit of this option.

This concern could potentially be remedied by expanding the scope of the commissioning division and the service delivery division to encompass, for example, youth justice<sup>237</sup> and community corrections. The ERA notes that the idea of introducing commissioning for youth justice services has been recommended by the Office of the Inspector of Custodial Services in the past.<sup>238</sup>

The ERA is of the view that it is likely that such action would generate considerable benefits to the corrective services system in Western Australia. However, as youth justice and community corrections activities are outside the scope of this Inquiry and without additional research, the ERA has not undertaken analysis that would determine with certainty whether the benefit of such action would outweigh the costs.

Of the remaining two options, the introduction of an independent decision-making agency to the commissioning process is the next most robust approach. However, as with the full structural separation approach, it is not clear that this would be economic.

Firstly, it is unlikely that there will be sufficient workload to sustain an independent decision-making entity. Assuming that fixed-term Service Level Agreements are introduced to all public prisons it is unlikely to be strategically or operationally optimal for all prisons to be subject to a commissioning exercise during the term of their Service Level Agreement or contract. The ERA notes that at the end of the original term of the Acacia contract between Serco and the Department, the Department did not undertake a competitive process prior to awarding Serco with a five-year contract extension.

<sup>236</sup> R. Harding, 'Private Prisons', *Crime and Justice*, vol. 28, 2001, pp. 309-310.

<sup>237</sup> The ERA recognises that the Youth Justice Innovation Fund is responsible for commissioning youth justice services. However, the Youth Justice Innovation Fund has a budget of \$2 million, out of a total annual budget for youth justice of \$106 million in 2013-2014.

<sup>238</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.



Similarly, the ERA observes that of the 120 prisons under the authority of the National Offender Management Service in England and Wales, only ten per cent of them have been subjected to a commissioning process in the six years since a commissioning framework was introduced in 2009.

If the same proportion of prisons in Western Australia were subject to commissioning over the proposed five year term of a Service Level Agreement, only one or two would be subject to a commissioning process.<sup>239</sup>

The ERA is not in a position to recommend an optimal number of prisons that should be subject to a commissioning process at any point in time. This is a decision for the Department. However, it is highly unlikely that the number determined by the Department would be sufficient to provide an adequate workload to economically justify the establishment of an independent commissioning agency.

The ERA has considered the possibility that the responsibility for these activities be placed in the Office of the Inspector of Custodial Services. However, the ERA considers that having the Office of the Inspector of Custodial Services responsible for reviewing and awarding tenders and then inspecting the performance of those same operators to which it has awarded tenders is likely to compromise its independence.

The final option is to internally restrict the Department by ring-fencing the service delivery division from the remainder of the Department. Unlike the other two approaches, the Department would remain responsible for managing the commissioning process and participating in that same process. Although this approach is less robust than the other two options, the ERA is confident that the presence of a probity auditor and a ring-fenced service delivery division provide an appropriate and proportionate framework to address the probity issues. In addition, this approach is more practical, more economic, and less disruptive than the two alternative options.

The ERA is satisfied that this approach will achieve robust levels of probity without imposing undue economic costs, provided the following conditions are met.

- The probity auditor is completely independent of the Department.
- The probity auditor is not restricted in his or her ability to monitor the tender, evaluation and selection processes.
- Following the conclusion of any commissioning exercise, the probity auditor publishes a post commissioning review that includes lessons for future processes.

## 8.6. Implementation issues

Commissioning cannot be introduced immediately. For the public sector to be capable of successfully competing in a commissioning process the Department will need a robust understanding of its costs. Additionally, Superintendents will need to acquire additional skills in order to effectively manage the additional responsibilities that accompany the introduction of Service Level Agreements and commissioning.

The Department will also need to introduce structural and procedural processes prior to commissioning being introduced.

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<sup>239</sup> There are 16 prisons in Western Australia, although Broome and West Kimberley are under the authority of a single management team.

### 8.6.1. Costs

Robust competition by the public sector in any commissioning exercise is predicated on the Department having a thorough understanding of the cost of delivering services. This is currently absent from the Department. Without it, the public sector cannot effectively compete in a commissioning process. The possibility that the public sector could offer a winning tender without being certain of its capability of delivering the services tendered would risk undermining competing providers' confidence in the probity of the process. The issue of cost and specification benchmarking is discussed in detail in Chapter 5.

Commissioning represents a broadening of scope for Superintendents. Their roles will entail greater emphasis on commercial and administrative matters. Similarly, the greater emphasis on performance will require the Department to provide greater decision-making support for Superintendents to ensure that they use the data available to them to make better and more informed decisions.

Finally, commissioning requires the Department to undertake a number of activities to support the introduction of commissioning. These activities can broadly be split into structural arrangements and improving processes and skills.

### 8.6.2. Departmental structure

Although the commissioning model recommended in this report does not require the transfer of responsibilities from the Department to an independent agency, the introduction of commissioning does require the Department to alter the structure of some of its activities.

The most significant of these modifications is the ring-fencing of the service delivery division (including the tendering unit and Superintendents) from the remainder of the Department. In this arrangement, communication between the service delivery division and the remainder of the Department is subject to criteria that specifies the conditions under which the two entities may communicate and the information they are able to share in that communication. All of this communication will be made available to the probity auditor.

The role and responsibilities of the probity auditor will also need to be established and a probity auditor appointed.

Commissioning represents a change to the manner in which the Department operates and the activities that it engages in. The Department will have to introduce or improve its existing processes and skills in order to engage effectively in these activities. Some activities will be new to the Department. In these circumstances, it will be required to develop internal skill sets in order to be able to complete its role effectively. This includes the development of internal commercial tendering skills within the tendering unit.

### 8.6.3. Processes

Similarly, the Department will need to introduce additional processes for activities associated with its commissioning role. It is not optimal for the Department to subject every prison to a commissioning process at the conclusion of their Service Level Agreement or contract. Accordingly, the Department must establish internal criteria for identifying the prisons from which commissioning would generate the most benefit for the prison system.

The Department will also need to establish and publish the process that it will follow when undertaking a commissioning process.

## 8.7. Recommendations

The ERA recommends that:

32. The Department of Corrective Services improve competition in the Western Australian prison system by introducing a commissioning model that:
  - a. Establishes a commissioning division as a central Departmental division responsible for running commissioning processes, which includes developing tender documents, running tenders and determining tender winners.
  - b. Establishes a service delivery division that includes a central tendering unit and prisons operated by the public sector. The central tendering unit is responsible for liaising with Superintendents to develop public sector responses to commissioning processes.
  - c. Ring-fences the service delivery division from the remainder of the Department in a manner that prevents information about commissioning processes being shared by the Department with the service delivery division.
  - d. Uses a probity auditor to monitor each commissioning process. Following the conclusion of each commissioning process, the auditor is to publish a report on the probity of the process followed.
33. The Department of Corrective Services publish a timeline, no later than six months following the conclusion of this Inquiry that sets out the scope, milestones and timeframes for introducing commissioning.

## 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 Summary of Recommendations

### Chapter 5: Consistent standards across the prison system

The ERA recommends that:

1. The Department of Corrective Services introduce Service Level Agreements to all public prisons and make these agreements publicly available through its website.
2. The Department of Corrective Services be required to report annually to Parliament on the performance of each prison in Western Australia against the standards set out in the relevant Service Level Agreement.
3. The Department of Corrective Services undertake a program of service specification and costing for the prison system.
4. The Department of Corrective Services introduce financial performance incentives for Superintendents of public sector prisons.
5. The Department of Corrective Services introduce fixed term contracts for Superintendents that align with the term of the Service Level Agreement applied to the prison they are responsible for managing.
6. The Department of Corrective Services introduce a revenue sharing arrangement to allow each Superintendent to retain a proportion of revenues generated by their prison through industries for use on specified activities within their prison.

### Chapter 6: Performance benchmarks

The ERA recommends that:

7. The Department of Corrective Services uses a weighted scorecard approach, such as that used in the United Kingdom, to benchmark prison performance.
8. The Department of Corrective Services measure prison performance in the categories of Safety and Security, Rehabilitation, Prisoner Quality of Life and Prison Management using the metrics detailed in Table 3.
9. The Department of Corrective Services collect the data required to implement the aspirational benchmarks recommended in Table 4.
10. The Department of Corrective Services expand the indicators reported in its corporate scorecard to include the metrics listed in Table 5 of this Draft Report.

### Chapter 7: Effective planning, processes, and use of information

#### *Infrastructure planning*

The ERA recommends that:

11. The Department of Corrective Services adopts the micro-simulation model as the primary prisoner population projection model for the Western Australian Government, after an appropriate trial period agreed with the Department of Treasury.
12. The Department of Treasury establish a standing cross-agency Governance Committee to inform the inputs and choice of scenarios for the micro-simulation model, and reconvene the Committee on a regular basis to provide guidance on policy or major demographic changes.
13. The Department of Corrective Services use the micro-simulation model to provide ongoing feedback to the Minister and Cabinet on the effects of any proposed policy change on prisoner population forecasts, including an assessment of the relative effects of alternative policies.

14. The Department of Corrective Services publish information about the underlying assumptions, inputs, methodology, and outputs of each of its models, as well as information about the variance between forecast and actual values.
15. The Department of Corrective Services conduct a logic mapping exercise to identify a long-term plan for the prison estate, and publish the plan on its website.
16. The Department of Corrective Services engage key stakeholders more in the development and prioritisation of capital expenditure decisions.
17. The Department of Corrective Services place a greater focus on the women's prison estate. In particular, the infrastructure needs of the women's estate should be a high priority for the women's estate steering committee.

### ***Managing and using information for good decision-making***

The ERA recommends that:

18. The Department of Corrective Services review the way it currently allocates prisoners to programs (including requirements such as a 6 month minimum stay to receive assessment), and improve this process to optimise the number of prisoners receiving programs.
19. The Department of Corrective Services review the type and timing of programs currently delivered to ensure they adequately address prisoners' practical needs for education and life skills, and capitalise on opportunities to deliver short-course programs to prisoners on remand.
20. The Department of Corrective Services develop a module for the Total Offender Management System to improve monitoring of prisoner risks and needs to support early intervention.
21. The Department of Corrective Services require all major operational and strategic proposals to incorporate relevant analytical findings, including an assessment of how the proposal is likely to affect prisoner outcomes, before a decision is made and approved.
22. The Department of Corrective Services partner with the Department of Health's cross-sector Data Linkage WA project to obtain information about prisoner outcomes beyond the prison system.
23. The Department of Corrective Services establish a research partnership framework to actively seek out and engage in projects with universities, to gain a deeper understanding of specific issues within the prison system.
24. The Department of Corrective Services prioritise the review of internal controls raised in its Strategic Plan.
25. The Department of Corrective Services publish its planned actions and timeline for resolving outstanding audit issues, incorporate these into its current reform process, and report on its progress against this plan in its Annual Report.
26. The Department of Corrective Services consult with the Office of State Records in developing a plan to improve the management of the Department's existing records.

### ***Information sharing and transparency***

The ERA recommends that:

27. The Department of Corrective Services build a Total Offender Management System module to provide post-release service providers with secure access to case management information.

28. The Department of Corrective Services establish a mechanism to report to post-release service providers on the efficacy of their post-release services.
29. The Department of Corrective Services identify individual datasets that are of acceptable quality and commence publishing these as soon as feasible.
30. The Department of Corrective Services adopt a policy of publishing its operational and financial data by default, wherever there is no compelling technical or confidentiality reason not to do so.
31. The Department of Corrective Services review options for creating a best-practice data portal either through the establishment of its own portal, or through the use of the forthcoming whole-of-government portal.

## **Chapter 8: Introducing greater competition to the prison system**

The ERA recommends that:

32. The Department of Corrective Services improve competition in the Western Australian prison system by introducing a commissioning model that:
  - a. Establishes a commissioning division as a central Departmental division responsible for running commissioning processes, which includes developing tender documents, running tenders and determining tender winners.
  - b. Establishes a service delivery division that includes a central tendering unit and prisons operated by the public sector. The central tendering unit is responsible for liaising with Superintendents to develop public sector responses to commissioning processes.
  - c. Ring-fences the service delivery division from the remainder of the Department in a manner that prevents information about commissioning processes being shared by the Department with the service delivery division.
  - d. Uses a probity auditor to monitor each commissioning process. Following the conclusion of each commissioning process, the auditor is to publish a report on the probity of the process followed.
33. The Department of Corrective Services publish a timeline, no later than six months following the conclusion of this Inquiry that sets out the scope, milestones and timeframes for introducing commissioning.



## Appendix 3 Supplementary information to Chapter 7

Appendix 3 provides additional information in support of Chapter 7, including a description of:

- models used to forecast the prison population;
- processes of the State Government and the Department to plan infrastructure;
- how the administrative systems of the Department have developed overtime; and
- key administrative issues of the Department identified in financial audits.

### A3.1 Prison population modelling

The Department currently uses a regression model to forecast Western Australia's likely future prison population.

Regression models take data about what has happened in the past and use it to predict what will happen in the future. They rely on past trends, and so incorporate the effects of policy changes on prisoner numbers over time.

The ERA considers that the model has been accurate, at least in part, because justice policy decisions have progressively become 'tougher on crime'. For example, the underlying data used to generate forecasts incorporates the historical effects of policies such as the 'truth-in-sentencing' amendments, mandatory sentencing, and the three-strike law for breaches of community-based orders.

These policies have had effect of increasing the number of people in prison, and so the model's outcomes are based on an implicit assumption that this trend will continue at the same rate. The model is unlikely to continue to be accurate if there is a reversal in policy direction, or a change in the rate of policy change.

Models of this kind do not have the capacity to determine the *reasons* for changes in the prison population. Hence, the regression model is not well suited to modelling hypothetical scenarios so the Department can inform Ministers about the likely impact of proposed policy changes on prisoner numbers and costs.

Department of Treasury is in the process of building a new micro-simulation model to project the likely future prisoner population using an approach that addresses these shortcomings.

The micro-simulation model is based on a more advanced technique that has been used increasingly in recent years to help plan for the future needs for Government services.<sup>240</sup> It is similar to a model previously used by the Department in the mid-2000s. This model was not maintained because staff members with the necessary expertise left the agency and

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<sup>240</sup> For example, Stewart *et al* note that '[t]he development of such models allows for the simulation of proposed practice, policy, and legislative changes which provides decision-makers with information pertaining to the short-term and long-term consequences of any proposed changes.' (Stewart, A, N Spencer, I O'Connor, G Palk, M Livingston, & T Allard, *Juvenile Justice Simulation Model: A Report on the Australian Research Council Strategic Partnerships with Industry Research and Training*, Brisbane, Griffith University, 2004, p. 2.)

were not replaced.<sup>241</sup> This model was generally well-regarded internationally, as an example of good prison population forecasting practice.<sup>242</sup>

Micro-simulation models operate quite differently to regression models, and consider how a system works in a greater level of detail to understand how it may respond to change.

The micro-simulation model begins with current data about the prison population, and identification of a set of factors that may change over time (for example, the average stay of different kinds of prisoner, and the number of arrivals of different kinds of prisoner including a breakdown by age, gender, and security classification). It then incorporates the probability of various changes in these factors (for example, recidivism rates, and the number of offenders on early release orders).

The model then runs a Monte Carlo Simulation (effectively, a large number of simulations using the same base assumptions, randomly making a different selection from the distributions used in each simulation). This returns a range of possible outcomes for the same set of assumptions, reflecting the inherent uncertainty in the factors affecting the prison population. The distributions used by the model are derived from known information. For example, the modelled sentence a prisoner serves is sampled from the observed pattern of sentences for their offence category.

The micro-simulation model incorporates a more sophisticated understanding of how the justice system works and what changes in the system are likely to mean for the prison population. It expands the current modelling functions available to the Department, providing:

- the capacity to perform detailed modelling of multiple scenarios to assist decision-makers to understand the effects of alternative policy options or operational changes;
- the capacity for analysis based on changing demographic factors – the composition of the prison system in terms of, say, age, gender, or race; and
- the potential to expand the model to assess possible changes in the justice and human services systems. For example, the model could be used to assess the likely outcomes from changes in policing efficiency, or in the availability of secure mental health facility beds.

The ERA considers that these benefits are significant and will improve the Department's ability to understand its operations on a more detailed level, and to provide better analysis to Government. It is clearly the more useful model for informing strategic decisions and policy, a core function needed for making evidence-based plans.

As noted in Chapter 7, there are a number of implementation issues associated with the adoption of a new model.

- *Agreeing upon inputs and forecast scenarios* – The ERA considers that it is essential that various organisations within the justice sector participate in determining the

<sup>241</sup> The fact that the micro-simulation model is inherently more complex than the existing model used by the Department of Corrective Services will pose some challenges. However, these are not insurmountable. An outline of these anticipated challenges and some recommendations for managing them are provided below, and in Chapter 7.

<sup>242</sup> Stewart, A, N Spencer, I O'Connor, G Palk, M Livingston, & T Allard, *Juvenile Justice Simulation Model: A Report on the Australian Research Council Strategic Partnerships with Industry Research and Training*, Brisbane, Griffith University, 2004, pp. 14-15; Harries, R, *Criminal Justice Modelling*. London, Home Office Strategy Policy Team, 2000, pp. 5-7.

inputs of the model and the scenarios that are run. The Department of Treasury has proposed to do this by establishing a cross-agency Governance Committee.<sup>243</sup>

- *Ensuring ongoing data quality* – It is important for the Department to continue to work with the Department of Treasury to review the data needs of the new model and, where the current data is inadequate, to improve this.<sup>244</sup> Additionally, models become less useful when the inputs become outdated, as they fail to reflect the system accurately. This can be overcome by automating the process as much as possible.<sup>245</sup> This may involve developing a way for data from the Total Offender Management System to be imported into the model with minimal user intervention.<sup>246</sup>
- *Ensuring integrity and accountability* – It is important to ensure that the Department is accountable for the way in which it forecasts, as this process drives important investment and expenditure decisions. This can be achieved by publishing information about the Department's models so that it can be understood and challenged by external stakeholders.<sup>247</sup> The Department should publish, at a minimum, the following information about each of its models:
  - The inputs used for the baseline and scenario forecasts.
  - An explanation of scenarios considered.
  - An explanation of the model's methodology.
  - Annual updates of forecasts.
  - Annual outcomes against forecasts, with an assessment of what caused variances.

This disclosure also assists the public in holding Government accountable for justice policies, as it informs readers as to where variances between forecasts and actual figures have been driven by a policy decision.

<sup>243</sup> This Governance Committee would incorporate representatives from the Department of the Attorney General, Western Australian Police, Department of Corrective Services, and other departments with knowledge of the drivers of the prison population. The Committee would also provide guidance as to the effect of policy changes on the prison population. The ERA supports this approach, and notes that research on prison population modelling generally endorses the involvement of a panel. For instance, Stewart, A, N Spencer, I O'Connor, G Palk, M Livingston, & T Allard, *Juvenile Justice Simulation Model: A Report on the Australian Research Council Strategic Partnerships with Industry Research and Training*, Brisbane, Griffith University, 2004, p.18; Harries, R, *Criminal Justice Modelling*. London, Home Office Strategy Policy Team, 2000, pp. 52-53.

<sup>244</sup> The Department can also take this as an opportunity to reassess the input data used in its current regression model, and identify any potential improvements.

<sup>245</sup> For example, Stewart, A, N Spencer, I O'Connor, G Palk, M Livingston, & T Allard, *Juvenile Justice Simulation Model: A Report on the Australian Research Council Strategic Partnerships with Industry Research and Training*, Brisbane, Griffith University, 2004, p.21; Livingston, M, A Stewart, & G Palk, *A micro-simulation model of the juvenile justice system in Queensland*, Australian Institute of Criminology, Brisbane, 2006, p. 1268; Rhodes, W, *Models of the Criminal Justice System: A Review of Existing Impact Models*. Cambridge, Abt Associates Inc. for the US Department of Justice, 1990, p. 51.

<sup>246</sup> Victorian Auditor-General, *Prison Capacity Planning*, Melbourne, Government of Victoria, 2012, pp. 34-35; *Review of forecasting the prison and probation populations*, National Statistics Quality Review (NSQR) Series, London, Office for National Statistics, 2002, p. 6.

<sup>247</sup> That said, human input and insight is critical, and not all decision and processes can be automated. As discussed above, this should be provided by the Governance Committee on an ongoing basis. The right balance of automation and human review will help make sure the model remains a useful forecasting tool into the future.

## A3.2 Overview of State Government and Departmental infrastructure planning processes

### A3.2.1 State Government processes and requirements

There are a series of strong institutional and governance arrangements and processes in place in Western Australia to guide the provision and delivery of the State's public infrastructure.

Oversight of State agencies' annual strategic asset planning cycle is the responsibility of the Department of Treasury, which has developed the Strategic Asset Management Framework (**SAMF**). The objective of the framework is to ensure the Government receives quality information to make sound investment decisions.

The framework provides policies and guidelines to improve asset investment planning and management across the State public sector. The Department of Treasury applies the SAMF policies and standards when reviewing an agency's Strategic Asset Plan and business cases each year in preparation for the State budget.<sup>248</sup>

A Strategic Asset Plan is a corporate planning process to ensure agencies communicate with Government the relationship between demand, existing assets and new infrastructure priorities. Strategic asset planning requires a thorough understanding of the condition of the existing assets and the most cost-effective mix of maintenance and asset renewal as a pre-condition to further asset investment.

Strategic Asset Plans play a central role in generating the business cases for individual project evaluation. Business cases articulate the proposed infrastructure investment decision and its costs and benefits relative to other options through a cost-benefit analysis. Cost-benefit analysis aims to determine the highest possible net benefit to the community from the provision of public infrastructure in aggregate.

The Cabinet requires that project proposals be compliant with the Strategic Asset Management Framework before funding is considered.<sup>249</sup>

### A3.2.2 The Department of Corrective Services' current approach to infrastructure planning

The ERA has discussed the Department's approach to infrastructure planning with both staff and the Department's lead architect, and has examined various architectural planning documents that have been developed, as well as the Department's 2015-2018 Strategic Plan.

The Strategic Plan is the current iteration of the Department's key planning document, and sets a goal of 'developing and maintaining models that optimise infrastructure in the future'. To meet this goal, the Department plans to develop a strategic asset framework that

<sup>248</sup> Department of Treasury, *Strategic Asset Management Framework*, Perth, Government of Western Australia, 2015.

<sup>249</sup> "The financial implications of Cabinet proposals must be evaluated by the Department of Treasury prior to the submission being lodged for Cabinet consideration. If the submission includes an asset investment proposal, the Department of Treasury must be consulted as to whether the proposal complies with the SAMF. Cabinet Secretariat may not accept Cabinet submissions without this verification." Source: Department of Premier and Cabinet, *Cabinet Handbook*, Perth, Government of Western Australia, 2013, p.26.

‘encompasses the current requirements and projects of the prison system, and informs future asset requirements’.<sup>250</sup>

The plan also includes the development of a capital works program to meet the projected growth of the prison population, sets out a range of specific future actions including:

- updating strategic asset plans annually to address the needs of specific prisoner cohorts, and to inform future asset requirements;
- maintaining a balanced budget using innovation, cost management, and resourcing initiatives; and
- developing short, medium and long-term options to address population pressures in women’s estate.

The Department also has a Strategic Asset Plan that aims to identify and prioritise infrastructure requirements. In order for an infrastructure project to be included in this plan, a business need must be demonstrated, and a business case compiled – processes that are a key part of best practice planning. The ERA has examined the Strategic Asset Plan, and a number of business cases. The Strategic Asset Plan covers building and maintenance programs, and does appear to align these with business demand and operational risks.

Similarly, business cases developed by the Department appear to be appropriate and relevant. They follow a consistent format and include information on business need, strategic justification, gap and options analyses, applicability to Government policy, investment proposal, options and associated cost-benefit analysis, and implementation issues. Consequently, ERA considers the Department follows good process in developing business cases to support its Strategic Plan.

The Department has also commenced long-term planning to map out infrastructure priorities for 2016 to 2024. The ERA understands the Department intends to base this long-term plan on the micro-simulation model discussed in Section A3.1 of this appendix, and in Chapter 7.

Finally, ERA understands the Department has detailed master plans for most major prison sites, and that these plans are designed to maximise flexibility and allow for a range of building options in the future. This flexibility is important, as it enables the prison system to adapt to future demographic and policy changes.

Based on the above evidence, ERA considers that some of the Department’s planning process are appropriate in principle. That said, many of these planning processes have only been initiated during the past year as part of the Department’s reform process, and are still being developed. Consequently, it may be some time before the benefits are fully realised.

### A3.3 The development of the Department’s current administrative systems

When the Department of Justice was split, the new Department of the Attorney General retained control of the administrative and financial systems used to manage the Department of Corrective Services. This resulted in a situation where the Department had little control over its human resources and finance system.

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<sup>250</sup> Department of Corrective Services, *Creating Value Through Performance: Strategic Plan 2015 - 2018*. Perth, Government of Western Australia, 2015, p.5.

The Department of the Attorney General continues to be responsible for most of the administrative and financial systems of the Department. This arrangement is unsuitable and hinders the ability of the Department to manage its financial position.

In 2013 a commissioned report by Nous Group presented a range of recommendations to Government on how to address problems with the shared systems of the Department of the Attorney General and the Department of Corrective Services. Ultimately, the decision was made to separate the systems of the two Departments.

The Department is now in the process of reforms to decommission the old shared systems and take independent control of its own administrative processes. The Department has informed the ERA that this process is planned to be completed by 30 June 2016.

### A3.4 Key administrative issues identified during financial audits

The source of this information is correspondence between the Office of the Auditor General and the Department of Corrective Services, 'Findings identified during the interim audit', and 'Findings identified during the final audit' for the periods of audit ending 30 June 2009, 2010, 2011, 2012, 2013, and 2014. The findings of the interim audit for the year ended 30 June 2014 were summarised in the *Audit Result Report Annual 2013-14 Financial Audits*, published by the Office of the Auditor General in November 2014.<sup>251</sup>

Issue	Concerns
Manual systems	The Department currently uses 'a manual system' – that is to say, spreadsheets - to process and record expenditures in prison facilities, and had poor controls over who could access and edit these spreadsheets. The Office of the Auditor General specifically noted that 'a staff member could change EFT payment details to their own personal account or process fictitious payments without detection'.
Approving payments	The Department keeps an 'incurring officer register' – that is, a list of employees who can approve payments – that has never been approved by any authority, and 'is out of date as it includes employees who no longer work for the Department'.  This means the Department is not compliant with its obligations under the <i>Financial Management Act 2006</i> and <i>Treasurer's Instructions</i> .
Use of credit cards	Of the 995 active purchasing cards (credit cards) used by the Department, a number had 'inappropriate credit limits'. The Office of the Auditor General gave an example of one card that had an \$800,000 credit limit, and noted that most cards did not have any limit for individual transactions.  The Department has further indicated to the ERA that it has tended to rely on credit cards to make Departmental purchases, because of the difficulty of processing transactions through the Department of the Attorney General's systems.

<sup>251</sup> Office of the Auditor General, Audit Results Report – Annual 2013-14 Financial Audits, 2015, <https://audit.wa.gov.au/reports-and-publications/reports/audit-results-report-annual-2013-14-financial-audits/management-issues/> (accessed 30 June 2015).



	<p>This, in combination with high credit card limits, makes it difficult for the Department to manage information about purchases, as the first indication that a significant expense has been incurred may only come when the purchase is billed to a card.</p>
Asset register	<p>The Department has not maintained an up to date asset register. The Office of the Auditor General noted that 'a number of items were only added to the asset register after they were discovered during the stocktake' and that this was up to two years after the assets were acquired.</p>
Salary overpayments	<p>In 2009, the Office of the Auditor General advised that the Department of Corrective Services not been providing the Department of the Attorney General (the administrator of payroll for the two Departments) with timely documentation when employees left the organisation.</p> <p>This resulted in many employees being overpaid, as payroll staff were not aware they had ceased employment.</p> <p>In a single 10 month period, the Office of the Auditor General found that there had been 250 salary overpayments with a value of over \$400,000.</p> <p>In each of the following three years, the Office of the Auditor General raised the same issue, finding overpayments of a similar magnitude. (In fact, in 2010, in spite of the audit findings in the previous year, salary overpayment incidents in the period had increased to more than 400 incidents.) Even in the Department's most recent audit, the Office of the Auditor General has noted that over \$550,000 worth of historical overpayments have not yet been collected.</p>
Payroll certification	<p>In 2008, the Office of the Auditor General raised concerns about the Department's payroll certification process – that is, the process in which managers sign off on the records of employees who have worked during the pay period, to confirm these are accurate before employees are paid. While the Department is required to certify 100 per cent of employees' pays to comply with Government requirements (under <i>Treasurer's Instruction 506(7)</i>) only 72 per cent of pays were certified during that year.</p> <p>The issue was raised again in 2009, and the Department responded by noting that over 95 per cent of pays had been certified during the period – a large improvement. However, on further investigation, less than half of those pays had been certified before the relevant employee was paid. The rest were only signed off after payment had been made.</p> <p>The Office of the Auditor General continued to raise the problem in the subsequent years, and even in the Department's most recent audit findings, noted that only 55 per cent of pays had been authorised within 'a reasonable timeframe'. (The Department has now set a target of a certification completion rate of 85 per cent, which is less than the 100 per cent rate required by Government.)</p>



## Appendix 4 List of Submitters

The ERA published a Discussion Paper on 18 March 2015 and received eight public submissions in response. Submissions were received from the following stakeholders:

- Australasian Corrections Education Association (Raymond Chavez)
- Baptistcare
- G4S
- Jade Lewis & Friends Inc
- Mike Burbridge
- Peter Abetz MLA
- Uniting Church Australia (Western Australia)
- Western Australia Council of Social Services

In addition to the public submission process, the ERA invited some stakeholders to a public roundtable to discuss the Discussion Paper. The following organisations or individuals were represented at the roundtable:

- Aboriginal Legal Service of Western Australia
- Community and Public Sector Union/Civil Service Association of Western Australia
- Developmental Disability Western Australia
- G4S
- Infrastructure Partnerships Australia
- The Office of the Inspector of Custodial Services
- Outcare Western Australia
- Professor Richard Harding
- Serco Australia
- Western Australia Prison Officers' Union
- Western Australia Association of Mental Health
- Western Australia Council of Social Services
- Western Australia Network of Alcohol and other Drug Agencies

## Appendix 5 Glossary

<b>ABE</b>	Adult Basic Education: remedial or school-level education for adults, usually with emphasis on the literacy, numeracy and social skills needed to function within the community or to gain employment. <sup>252</sup>
<b>ACCO Notice</b>	Assistant Commissioner Custodial Operations Notices are issued to prison Superintendents to announce operational changes in prisons. ACCO notices are typically detailed in nature and are ad hoc, often in response to an incident.
<b>Adult Custodial Rules</b>	Adult Custodial Rules dictate how prisons conduct certain activities or processes. This includes processes such as how to conduct visits and issue medication to prisoners.
<b>AIMS</b>	Australian Integration Management Services Corporation.
<b>AOD</b>	Alcohol and other drugs.
<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>Community Corrections</b>	Relates to offenders serving their time in the community, either on a community-based sentence (probation), completion of a custodial sentence under community supervision (parole), or on bail while awaiting sentencing.
<b>Compliance Testing Standards</b>	Compliance testing standards are the requirements the compliance testing team within the Department uses to check public prisons. Compliance testing standards are effectively the service standards of public prisons.
<b>Contracting</b>	Establishing a formal, legally binding agreement between the Government and the service provider.
<b>Criminogenic</b>	Relating to the causes of criminal behaviour.
<b>Custodial sentence</b>	A sentence that requires the offender to be incarcerated in prison or other secure facility.
<b>DCS, the Department</b>	Department of Corrective Services.
<b>Desistence</b>	Desistence refers to the process of a former prisoner ceasing offending. Desistence from offending typically occurs over time.
<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>ERA, the Authority</b>	Economic Regulation Authority.

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<sup>252</sup> Definition provided by the Queensland Government Department of Education and Training.

<b>HMIP</b>	Her Majesty's Inspector of Prisons.
<b>IMP</b>	Individual Management Plan: an agreement between the Department and the prisoner that defines the prisoner's needs and outlines their requirements and expected behaviours while incarcerated.
<b>KPI</b>	Key Performance Indicator.
<b>LCC</b>	Local Consultative Committee: a committee maintained at each prison to facilitate communication and consultation between the Superintendent and local union representatives regarding workplace issues with a view to resolution at a local level.
<b>MOU</b>	Memorandum of Understanding.
<b>MQPL Assessment</b>	Measuring Quality of Prisoner Life Assessment: a survey designed to assess a prison's performance in terms of providing an appropriate quality of life to prisoners.
<b>Non-custodial sentence</b>	A sentence that imposes a penalty other than incarceration (for example, a community service order or suspended sentence).
<b>Parole</b>	Supervised release of a prisoner, subject to certain conditions, prior to the completion of a sentence.
<b>PCC</b>	Prisons Consultative Committee: a Department-wide committee that includes (among others) the Deputy Commissioner Adult Custodial and the WAPOU President. Representatives from a Local Consultative Committee may refer a workplace matter to the PCC if genuine efforts to resolve an issue have been unsuccessful.
<b>Prison operator</b>	This term refers to both public and private operators of prisons.
<b>Recidivism</b>	The repeating of, or return to, criminal behaviour following release from prison.
<b>Rehabilitation</b>	Reintegration of a former offender into society without a relapse into criminal behaviour.
<b>Remand</b>	Holding a defendant in custody before their trial or sentencing.
<b>Ring-fencing</b>	In the context of this report, an operational separation between divisions designed to manage risks of improper influence or conflicts of interest.
<b>SAMF</b>	Strategic Asset Management Framework: a Western Australian whole-of-government framework that provides policies and guidelines to improve asset investment planning and management across the State public sector.
<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>Special Purpose Accommodation</b>	Beds and cells usually used for temporary accommodation for reasons such as solitary confinement, mental health crisis care and other health concerns.
<b>Superintendent</b>	A Superintendent is responsible for overseeing the operation of a public prison.

<b>ToR</b>	Terms of Reference.
<b>WAPOU</b>	Western Australia Prison Officers' Union.