



Response to Inquiry into Microeconomic Reform in Western Australia

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Overview

Ajilon is a national Business and Technology company which provides a range of services to the WA public sector ranging from staff augmentation to managed application services for agencies such as WA Police, the Department of the Attorney General and Landgate. Overall, the public sector (around Australia) accounts for about 50% of our revenue.

The focus of our submission is the General Government sector where, notwithstanding the significant contestability gains of the last 20-25 years, we daily encounter impediments to greater efficiency and performance. We attribute this to one central factor: the lack of an enabling policy for the Enterprise productivity driver. Our belief is that, despite the presence of enabling policy in regard to other productivity drivers, its absence allows excessive gaming behaviour on the part of agencies which acts to diminish the policies' intended contestability outcomes. It specifically stifles what we believe is a route to significant improvements in productivity and community outcomes through greater portfolio efficiencies. This was most recently echoed in M J Keelty's August 2013 Sustaining the unsustainable: Police and Community Safety Review, final report commissioned by the Queensland Government viz.

The Review team has formed the view that portfolio agencies operate in silos, often in counterproductive ways that push resource consumption and time delays into other parts of the system's value chain....(p18)

In respect to WA, we explore this conclusion in more detail in our response to the Issues Paper's suggested questions. Our response is based on a draft Ajilon White Paper (attached). This is still undergoing internal peer review but provides the main analysis and research in which our central thesis is grounded.

Issues Paper Questions

1. What sectors of the Western Australian economy are likely to benefit from the implementation of microeconomic reforms?

While we mention the General Government Sector, our analysis is specifically directed at what we refer to as the Law Enforcement & Justice portfolio and the advantages that would derive from taking a portfolio approach to the (Criminal) Justice Delivery Chain business architecture. Although we believe the analysis is applicable to the wider sector, we selected this portfolio because our data was better but also because we believe that the conditions there are more likely to support the changes we suggest.

2. What specific reforms might improve the efficiency, productivity or flexibility of those sectors, and why?

Our belief is that the major constraints on improved outcomes are 'cultural'. That is, no Australian Government has ever really empowered public sector employees to think 'outside the box' through a policy



.....

which explicitly says that. This is what we mean when we talk of the absence of an enabling policy for Enterprise (which we consider the touchstone for all other productivity drivers). Agencies need to be given ‘permission’ (within appropriate legislative frameworks) to think of new approaches to service provision. Our thesis is that there are no major policy impediments on agencies doing this now but that the explicit absence of a statement to this effect acts as a brake. As a possible candidate policy, the attached paper suggests ‘co-design’ as an approach with increasing traction in Europe but which is also – albeit in limited form – finding its way into the vocabulary of the federal, Victorian and NSW governments.

3. What economic and social benefits might those specific reforms have for individuals, businesses and/or the State?

As the Keelty quote suggests, a recurring issue with agencies (and Ministers) within a connected delivery chain acting without regard to the effect of their actions on the wider chain is increased agency and social costs. In Law Enforcement and Justice, this mostly commonly exhibits in the emphasis on increases in ‘frontline’ police. These increases are rarely if ever accompanied by compensatory action for Courts or Corrective Services. Consequences (from the resulting increase in arrests) include increases in time to trial, overcrowded prisons, the ‘warehousing’ of offenders with mental disabilities (in prisons) and substantially reduced places on diversionary/rehabilitation programs. In contrast, action at a portfolio level (informed by co-design) offers the opportunity to smooth peaks and troughs in demand and, through improved business intelligence, apply scarce resources in more effective ways. It also opens the portfolio to more effective service models: for example, it is an area (reflecting overseas’ experience) where public/private/Third Sector partnerships and/or social benefit bonds would work well. Critically, it would improve the outcomes for service recipients (juvenile and adult offenders, victims etc.) through shorter processing times; better directed programs for reducing recidivism; and, reinvestment of savings in root causes e.g. identifying and addressing dysfunctional behaviours in early childhood.

4. What economic and social costs might those specific reforms have for individuals, businesses and/or the State?

We propose no additional resources or legislative action. Operationally, our solution could be as straightforward as a Cabinet-endorsed policy on Enterprise underpinned by a co-design approach. Importantly, it would state that where there is conflict with other enabling policy (such as contracting and competitive tendering), the Enterprise policy prevails. This is not to undermine the intended competitive effect but to curtail excessive gaming designed to forestall new entrants. This suggests to us that other than some effects on individuals (limited to the possible transfer of public sector employees into private and/or Third Sector employment), there are no economic or social costs.

5. Are you aware of any additional information that may assist the ERA in assessing the efficiency of the sector in question, or the costs and benefits of the proposed reforms?

Yes. See the attached draft paper.

.....



6. Are you aware of any examples of other jurisdictions (either in Australia or overseas) where similar reforms have been implemented? How effective were the reforms in those jurisdictions?

Yes. In the attached draft paper we refer to work by the UK’s National Audit Office ([Criminal Justice Landscape Review](#), November 2010) which draws similar conclusions. M J Keelty’s paper mentioned above is also relevant but its primary target is the Emergency Management Delivery Chain rather than the (Criminal) Justice Delivery Chain. At this stage, the best illustration of effectiveness is the benefit accruing from related national reform e.g. data sharing initiatives in regard to criminal histories (CrimTrac) and driver and vehicle licenses (NEVDIS)¹. These are discussed in the attached draft paper.

7. Is the ERA’s proposed use of the Compensation Principle appropriate or is there a more appropriate way to evaluate the net benefit of reforms?

Yes.

8. Is the ERA’s framework for prioritising reform opportunities (that is, likely benefit versus ease of implementation) appropriate?

Yes.

9. Are there alternative frameworks that would provide a superior assessment?

Not that we can suggest.

10. What do you consider to be the most appropriate method for assessing the economic value of a given reform? What are the significant advantages and disadvantages of this approach?

Co-design emphasises the importance of benefit measurement. At a portfolio level this is not an insignificant task (especially in terms of an accurate productivity measure) but initiatives such as WA Police’s intended investment in Activity Based Costing provide a good foundation for an effective measurement regime (combined with a suitable tool for assessing new service models such as <http://www.businessmodelgeneration.com/canvas>). The focus of our draft paper is on reversing public sector productivity decline so, from our perspective, the best measure of economic value is Multifactor Productivity.

¹ Although it is arguable that outcomes such as the Dutch closure of prisons is indicative of a more effective portfolio approach (http://www.huffingtonpost.co.uk/2013/06/26/netherlands-prisons-close--lack-of-criminals-n_3503721.html).





11. Can you provide any additional information that may assist the ERA in understanding microeconomic reform opportunities in Western Australia?

See attached draft paper.



ADDRESSING PUBLIC SECTOR PRODUCTIVITY DECLINE

Despite the successful creation of a mixed Public Sector economy over the past 25-30 years and a massive concurrent investment in ICT, there is little evidence of productivity gain in the General Government sector beyond the 1990s. In reviewing the enabling policies which support productivity drivers, the absence of a policy to support the Enterprise driver is suggested as a key brake on new approaches to productivity improvement. A possible means of addressing this deficit is tested against a selected State Law Enforcement & Justice portfolio. The portfolio is selected on the basis that there are conditions in place likely to support such an approach.

*Law Enforcement &
Justice as
aCandidate
Portfolio for Co-
design*

DRAFT

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1. Overview

It is largely accepted that productivity in the public sector has declined over the past 15 years¹ despite a fairly massive investment in ICT². The intent of this paper is to examine the means by which ICT suppliers and government agencies can work together to reverse declining productivity and improve service outcomes. This will require changes;

...that take us on an entirely new path. They significantly transform or even replace existing systems, pursuing new goals and/or using entirely new methods. More and more changes of this type are demanded of us as the modern era unfolds. It requires leadership more than management...[and]..Far fewer people are good at it³.

Although change of this scale has historically been the target of formal microeconomic agenda, this paper argues that there are few policy impediments to individual agencies/portfolios achieving similar ends⁴. The principal constraints are cultural and stem from a gap in the range of enabling policies set up to establish a mixed public economy. These policies - linked to the appropriate productivity driver⁵ - are shown below. As indicated, the policy 'gap' relates to the Enterprise productivity driver.

PRODUCTIVITY DRIVER	Investment	Innovation	Skills	Enterprise	Competition
ENABLING POLICY	<ul style="list-style-type: none"> National PPP guidelines 	<ul style="list-style-type: none"> COAG Agenda Productivity Commission State ICT Plan 	<ul style="list-style-type: none"> State Strategic Sourcing 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> National Competition Policy State Competitive Tendering

Figure 1 - The Enabling Policies which Support Productivity Drivers

Although these policies have been very successful in introducing a level of competition into the public sector for goods and services (i.e. establishing a mixed economy), they are still subject to the political process. This means that, aside from the mentioned policy 'gap', their effectiveness can be compromised by other policy considerations but primarily by Machinery of Government (MoG) decisions which conflict with underlying business architecture boundaries.

¹ 'Among Australian state governments only Tasmania has attempted to measure productivity on a systematic basis, with a report by the Auditor General concluding that over the previous decade, 'output per FTE' has increased, but....output per employee dollar has decreased'....[the UK Office for National Statistics] concluded that in the ten years from 1998 to 2008. Multi-factor productivity of the public service economy declined, on average, by 0.3 percent a year. Over the period from 2000 to 2008, labour productivity as measured by gross value added, declined by an average 0.1 per cent a year....' Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012, p12.

² Intriguingly, there is considerable debate (best expressed as the 'Productivity Paradox') as the extent to which ICT has contributed to productivity gain (http://en.wikipedia.org/wiki/Productivity_paradox).

³ P39, Committee for Economic Development of Australia, Setting Public Policy, August 2013.

⁴ 'The limited evidence that is available suggests that the potential for productivity improvement is considerable – perhaps as much as 20-25% where services have not been previously exposed to competition.' (p7, Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012).

⁵ UK Office for National Statistics, Productivity Theory & Drivers: Guidance & Methodology, October 2008, p20.

If this does not arise, then decision as to policy application falls to portfolios and/or agencies. That is, if there is no overt policy constraint (such as MoG), then there is considerable agency/portfolio discretion to enhance business architecture to address productivity issues. As suggested, how this discretion is applied will, in part, be influenced by the absence of enabling policy for the Enterprise productivity driver. Productivity drivers rarely operate in isolation and usually complement or reinforce one another. It is reasonable to suppose that the absence of an enabling policy for what might be argued is the most important productivity driver leads to suboptimal returns.

On the basis that there is largely alignment between its MoG guise and the underlying business architecture, the discretionary application of enabling policy will be examined through the lens of a specific state government portfolio, Law Enforcement & Justice (LE&J). This will begin with a broad examination of initiatives stemming from enabling policy and implemented by the portfolio's three main actors: the portfolio itself, state governments and the federal government. Policy effectiveness will be assessed by the degree to which particular initiatives align to a candidate enabling policy for Enterprise i.e. co-design⁶. Co-design (also called social or service design) is an approach rising in prominence⁷ which through its concentration on the strategic as well as the tactical, can lead to a reappraisal of underlying policy assumptions. That is, it directly addresses cultural constraints which may hinder productivity solutions not otherwise prevented by enabling policy.

Moving to the specific – and using LE&J business architecture as a case study - a state jurisdiction (WA) will then be assessed as to its 'current state' application of enabling policy (and where co-design does not currently apply). Based on analysis of the functional outsourcing component of the resultant policy mix, it will be shown that, within existing cultural boundaries, there are few options to enact other than marginal further gain. It will be suggested that the introduction of co-design (as part of a state jurisdiction 'future state'), introduces the potential for much greater productivity return. This will be discussed in the context of a viable mechanism for major return which, while not prevented by current policy, is stymied by cultural factors.

A final section will bring these themes together and discuss how better use of ICT suppliers could, through co-design, contribute to better service outcomes.

2. Filling the Policy Gap

The issue of declining public sector productivity has been attracting attention for some years. Much of this is premised on the fact that while there is a public sector economy, it is not a market. Research in the area might, therefore, be construed as an attempt to find an alternative to the market mechanism for making 'rational' choices in a public economy. Attempts to do this have generally fallen into three categories:

- An analysis of contestability models with a view to identifying successful and less successful outcomes and means to improve them⁸.

⁶ http://www.lucykimbell.com/stuff/CACHE_DUVIE=7904b90eaf0a3825f22e00f798efa631/Fieldstudio_SocialDesignMethodsMenu.pdf

⁷ For example, it is listed as one of the 8 principles of the Victorian Government's ICT Strategy (2013-2014).

⁸ See, for example, Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012.

- The emergence of new conceptual frameworks for public administration (which challenge conventional notions of what is ‘inherently governmental’)⁹; and,
- Methodological approaches which attempt to move contestability initiatives from the tactical to the strategic¹⁰.

All these approaches recognise that there are limits to the application of market principles in the public sector but argue that notwithstanding past reform, there is only a limited understanding of how these can be best used to improve productivity. This often exhibits as nominally competitive structures which have been structured for administrative convenience rather than the benefit of service consumers.

A recent report¹¹ aligned with the last category includes a graphic which suggests current contestability effort (in the General Government sector) largely resides at what it terms ‘Step 1 – Design for discrete problems’ but, in order to identify more efficient boundaries, needs to progress to ‘Step 3 – Design for policy’.. ‘Boundaries’ in this sense refers to the mix of resources which goes to delivery of a service and the search for efficient boundaries (or ‘contestability’) goes to the mix of resources which delivers the best service outcome.

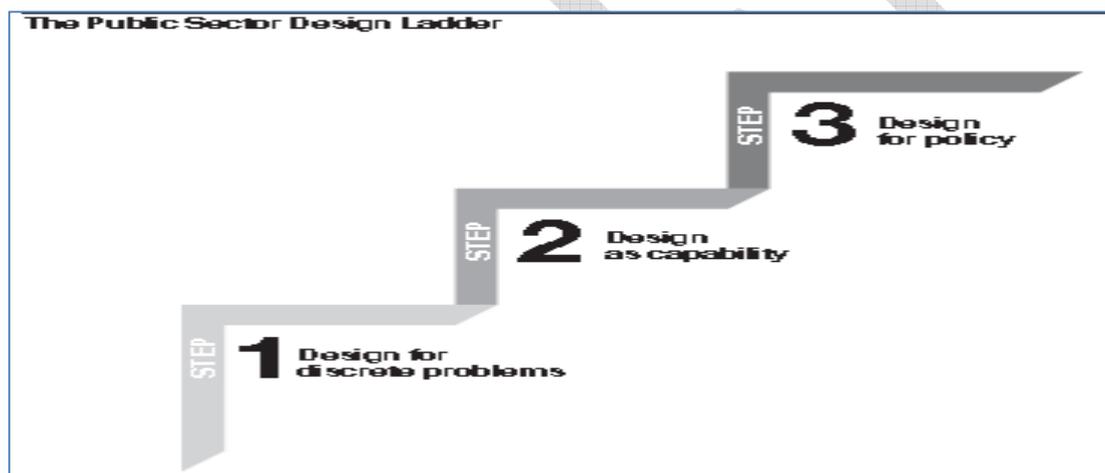


Figure 2 - The Public Sector Design Ladder

The graphic outlines the stages by which Step 3 design (the ‘co-design’ referred to in the Overview) is embedded in the public sector. ‘Design’ refers to the process of maximising service outcomes through processes which, in the best case, are inclusive of all stakeholder interests and take a system rather than a piecemeal view. Stakeholders is meant in the widest sense and includes service recipients as well as suppliers.

The linking of co-design to the Enterprise productivity driver in the Overview goes to co-design’s capacity to remove constraints on thinking. As noted, there is service delivery competition in the public economy but, arguably, it is unimaginative and sticks to conventional forms e.g. functional outsourcing through public tender. Enabling policies exist for other drivers with similarly

⁹ See, for example, Denhardt J V & Denhardt R B The New Public Service: serving, not steering (3rd ed.), M.E.Sharpe, Inc., New York 2011

¹⁰ See, for example, Bradwell P & Marr S Making the most of collaboration: and international survey of public service co-design, DEMOS Report 23 (in association with PwC’s Public Sector Research Centre), 2008

¹¹ Page 8, UK Design Council et al Design for Public Good, 2013

underwhelming results. Enterprise is the mind-set which empowers agencies to combine the other drivers in more imaginative and effective responses to changing demands (such as reduced budgets), responses that may entail very different service delivery models. This is moderated in a public sector setting by co-design's emphasis on the maximisation of service recipient benefit as a central measure of the effectiveness of Enterprise.

As mentioned, most attempts to improve contestability have been what the graphic refers to as Step 1 initiatives. That is, they have not been pursued because of a public sector culture which pursues contestability as the best means to secure public good (the intent of Step 2) or because other than sporadically, contestability is an enduring feature of policy (the intent of Step 3) but in response to specific circumstances which, on occasion, only incidentally result in improved contestability. This is arguably the case with Queensland's recent PPP initiative involving its proposed Government Wireless Network¹² and NSW's flagged intention to outsource and/or privatise components of its Land, Property & Information portfolio¹³. These are largely debt-driven initiatives which display limited evidence of a more systemic attempt to instil contestability. In contrast, Step 3 approaches promise not only a systemic approach but a transformational one potentially capable of meeting the increasing gap between the demands of the digitally literate populations of OECD countries and the their governments' capacity to meet the demands¹⁴. Some would go further and suggest that is also the means to reach an accommodation with the as yet inchoate but burgeoning social movements such as Occupy and the Arab Spring¹⁵. Step 3 design provides;

- *A joined up process from policymaking to implementation*
-
- *A way of getting an overview of a system*
- *A way of cutting across departmental silos and engaging people from outside government too (added emphasis, ibid p6)*

which, as a more holistic approach, looks to minimise unintended consequences and move from 'problem reaction to problem prevention'.

Although the evidence of Stage 3 design is scant, the issue is not the involvement of new parties¹⁶ or that the need is contested: rather, the issue is where might be the best environment for it to thrive? In this paper, 'best environment' is defined as one where;

- there are less entry barriers (to Stage 3 approaches);
- there is evidence of proto-solutions which might be enabled by Stage 3 thinking;

¹² <http://www.treasury.qld.gov.au/projects-queensland/projects/government-wireless-network/>

¹³ http://www.lpi.nsw.gov.au/about_lpi/announcements/?a=179588

¹⁴ 'Increasing community expectations are again outpacing fiscal and productive capacities.' (Committee for Economic Development of Australia, *Setting Public Policy*, August 2013, p50).

¹⁵ See, for example, Mason P *Why its STILL Kicking Off Everywhere: the New Global Revolutions*, Guardian Books 2013 who suggests such movements may be interpreted as a middle class reaction to its steady marginalisation by the concentration of wealth resulting from neoliberal policy.

¹⁶ 'Successful change requires the engagement...[of business organisations and their employees]...This is where change becomes much more than consultation – it becomes co-production....The tasks involved go...to co-design and co-production at working levels typically below the radar of the political and media discourse. (Committee for Economic Development of Australia, *Setting Public Policy*, August 2013, p47-8).

- there is evidence that conventional approaches to reform are exhausted (and hence there is a capacity to create a ‘sense of urgency’ as a critical first step in building the case for change¹⁷); and
- candidate State 3 participants have the political and budgetary ‘clout’ to improve service outcomes.

The analysis which follows examines the extent to which the State Law Enforcement & Justice (LE&J) portfolios fulfil these criteria.

3. Machinery of Government Entry Barriers

A view of the business architecture of state LE&J agencies reveals a common structure. At the highest level, this exhibits as follows:



Figure 3 - High Level Criminal Justice Business Processes

In private sector parlance, this might be called the LE&J ‘delivery chain’. Organisationally – and in ‘generic MoG’ terms – this can also be represented as this:

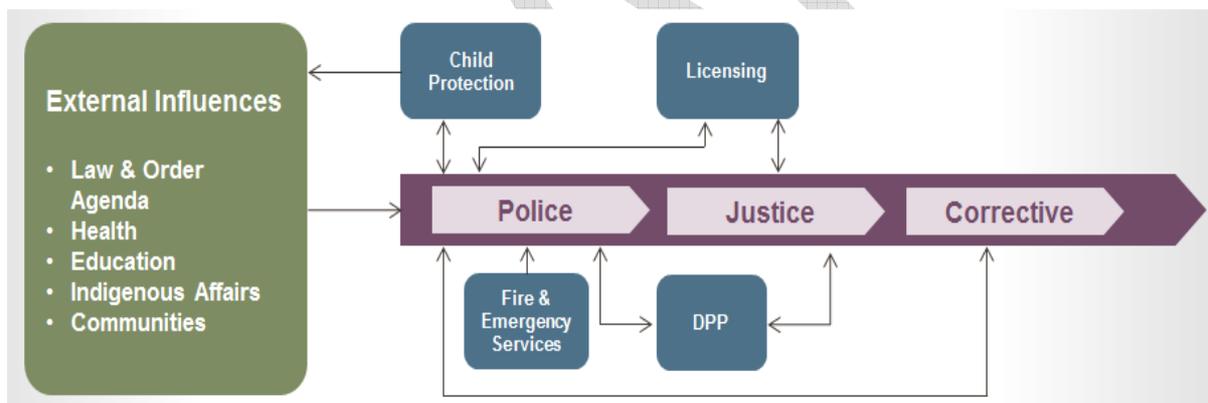


Figure 4 - Law Enforcement & Justice (LE&J) Delivery Chain

The Police/Justice/Corrective sequence is regarded as the primary delivery chain with aspects of other delivery chains (such as Licensing) connecting with it for some functions. Depending on the state jurisdiction, MoG boundaries vary across the delivery chain: for example, in some states the ‘Justice’ agency (usually referred to as the Department of the Attorney General or similar) includes Courts and in others, it does not. As mentioned, public sector boundaries are not always set by an objective force (i.e. competition) but by political decision. As a result, these are not always ‘efficient’ boundaries (in terms of business architecture alignment).

The potential diseconomies associated with MoG changes in the General Government Sector (where LE&J resides) have increased as the level of process and system integration has increased. For

¹⁷ Ibid., p42.

example, an unreflective demerger of a large agency which also involves separation of its systems (and the human resources which support them) will invariably have adverse productivity consequences unlikely to be recovered¹⁸. A reasonable aspiration is to elevate the efficient (and established) integration of processes and systems above MoG changes but without compromise of government's legitimate right to alter boundaries across the integration. This is progressively occurring with data exchange mechanisms such as NEVDIS and CrimTrac and, outside of LE&J, with emerging national systems such as PEXA (national electronic conveyancing). State agency responsibility for interaction with these systems/processes may vary over time but this is not accompanied by other than cosmetic related changes in the systems/processes themselves.

While boundary change occurs in the non-Government component of Total Public Sector (i.e. Government Trading Enterprises), these generally only occur as the result of a federal and/or state microeconomic reform agenda (usually founded on sound analysis by bodies such as the Productivity Commission or its state equivalents). That is, any diseconomies are generally understood and seen to be offset by the economies delivered by the overall reform.

LE&J stands somewhere in the middle of these extremes in that, in MoG terms, it is relatively 'static'. The accepted requirement for an apolitical police command and the 'separation of powers' doctrine (requiring the separation of the Executive, Judiciary and Parliament) means that, while MoG changes occur, they tend not to be fundamental in nature. This suggests broad alignment between the MoG and business architecture aspects of most LE&J jurisdictions. In other words, there are no overt political barriers to the portfolio/agencies acting in regard to enabling policy.

4. How Enabling Policies have been applied

In the last 30 years, state public sectors (and LE&J portfolios) have substantially transitioned from monopoly providers of public services to a mixed economy of public, private and third sector providers. This was largely initiated by the Hawke/Keating microeconomic and structural reform agenda and accelerated by contestability strategies, notably involving the commissioning of various competitive tendering and contracting models. Although the evidence is sporadic for more complex functions such as ICT, it is generally accepted that this has driven costs out of the public sector. What is less well known is that this has usually been accompanied by a reduction in public sector productivity. This apparent contradiction is because cost reduction has often been achieved through FTE and/or service reduction often with some deterioration in quality¹⁹. This is partially because there has been no systemic search for efficient boundaries but also because of other issues. These include constraining the effectiveness of expert providers through over-regulation and ineffective contestability regimes which allow excessive 'gaming' behaviour on the part of agencies. Nevertheless, the achievement of all Australian public sectors in achieving mixed economies – at least in terms of diversity and citizen choice – is among the best in the OECD.

In this sense, the creation of a mixed public economy is arguably a successful Stage 1 response to the first financial crisis which hit Western democratic welfare systems in the 70s and which led to

¹⁸ There is some indication that these diseconomies are slowly being recognised as in the increasing persistence of shared ICT services beyond a MoG change (typically involving ERP services).

¹⁹ 'Traditionally, the policy solution has been one of reduced spending, reduced services, and/or increased fees, taxes and charges.' p6, Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012

stagflation. This sparked a retreat from Keynes and the advance of Milton Friedman and other neo liberal economists in providing the framework for political leaders such as Thatcher and Regan to initiate the managerial reform agenda which wrought extensive change in the public sector. It was Stage 1 because its primary purpose was to reduce public sector expenditure as a proportion of GDP on the premise that the contestability generated by a mixed economy would reduce costs (largely correct) and achieve better public outcomes (not as evident and often based on an ideological bias). In the wake of the GFC, Western democracies face another financial crisis. While extended contestability remains part of the response, the ‘easy gains’ have been taken and responses will need to move up the design chain. This will require more sophisticated ‘problem framing’ than simply saying that a service needs to cost less or should not be undertaken by the public sector. Rather, it goes to the societal outcome sought and this involves not only policy makers and funders but potential suppliers and, critically, service recipients.

4.1 Law Enforcement & Justice Portfolios

Illustrative of the successful creation of a mixed economy is the following ‘snapshot’ of initiatives stemming from contestable models in the primary LE&J agencies of the major states (intended to be indicative rather than comprehensive). This is particularly impressive given the ‘inherently governmental’ nature of many LE&J functions such as judicial review and policing (one form of sanctioned state ‘violence’). Note that the instances shown are in addition to the routine outsourcing of major components of their ICT functions by many large LE&J agencies.

Agency	Western Australia	South Australia	Victoria	Queensland	New South Wales
POLICE		<ul style="list-style-type: none"> • Six new police stations/court-houses built using public-private partnerships 	<ul style="list-style-type: none"> • Since 1998, a private company has been contracted to install and maintain traffic cameras • Another company is responsible for the enforcement of penalties including debt collection and the execution of warrants 	<ul style="list-style-type: none"> • Police will be the main user of a Government Wireless network currently out for tender on a design, build, operate and fund basis 	<ul style="list-style-type: none"> • 2008 contract with the Division of Analytical Laboratories (part of the Department of Health) for DNA testing
JUSTICE	<ul style="list-style-type: none"> • In 2008, the District Court and central law Court was designed, built and constructed under a public-private partnership. This includes custody services, court security, court recording, courtroom booking and facilities management 		<ul style="list-style-type: none"> • In 2002, Melbourne’s County Court building was designed, built and operated as a public-private partnership and included facilities management, security and IT support 		
CORRECTIVE	<ul style="list-style-type: none"> • At least one privately managed prison • The escorting of detainees between prisons and between prisons and courts is by private contractor • In 2012, award of a contract for the management of a Young Adult facility (the first instance in the country) 	<ul style="list-style-type: none"> • At least one privately managed prison • The escorting of detainees between prisons and between prisons and courts is by private contractor 	<ul style="list-style-type: none"> • At least one privately managed prison • The escorting of detainees between prisons and between prisons and courts is by private contractor 	<ul style="list-style-type: none"> • At least one privately managed prison 	<ul style="list-style-type: none"> • At least one privately managed prison (the first in Australia, Borallon, opening in 1990)

Figure 5 - Examples of Mixed Economy in LE&J Agencies

Australia’s lead in this space is being overtaken in Europe as a result of the pressures forced on LE&J agencies by government debt-related cuts in recurrent budgets (as much as 20%) as well as

reformist policies such as the UK Conservative Party's 'Big Society' manifesto²⁰. For example, in the UK, this has seen the increasing use by police forces of PFI (Private Finance Initiatives – see for example the Two Counties Police Investigation Centres²¹) and the direct election of Police and Crime Commissioners²².

Although not in systemic terms, there is some evidence of co-design thinking by Australian LE&J portfolios/agencies in their implicit and explicit recognition of a LE&J delivery chain. This reveals a capacity to transcend the 'silo-based' thinking which captures many agencies. Examples include:

- Attempts to design across a number of agencies in the chain as with Queensland's 2008 Integrated Information Justice Strategy (IIJS)²³. IIJS was significant in having 'reduced offending' as a measurable outcome in the original business case (as well as the usual internal process efficiency and effectiveness goals).
- Integration efforts within an individual LE&J agency: the most common of these involves the integration of lower and higher courts (usually involving civil as well as criminal jurisdictions²⁴). Partially driven by the emergence of tailored public security products (rather than conscious design), Police agencies have also improved internal integration²⁵ through procurement activity. In recent years, the emergence of Enterprise Architecture practices within most Police agencies has led to more disciplined design thinking often involving a migration to a SOA²⁶ environment (as with WA Police). However, this remains predominantly focussed on internal process efficiencies rather than a more expansive notion of public good.
- All states have pursued 'point' (Step 1) LE&J integration solutions between agencies to automate shared process and to reflect MOG changes (such as the shedding by Police of non-core business). Typical targets are the exchange of driver and vehicle information between Police and state Transport agencies (a critical task as the MDL is a primary person identifier); the exchange of briefs between Police and prosecuting agencies; the exchange of offender intelligence between Police and Corrective Services agencies; and, the exchange of enforcement actions between Courts and Police (& Transport) agencies.

With very few exceptions, even the closest of these approaches to Step 3 thinking ends at the delivery chain boundary. This is not unexpected and is consistent with an agency focus on its own affairs and - at best – portfolio affairs. Due to its importance in State politics, this approach is reinforced by the periodic 'Law & Order' auction which usually occurs ahead of elections. This is a primary cause of imbalance (read 'unintended consequence') in the LE&J delivery chain. The main example of this is the concentration on funding increases in the number of uniformed Police officers at the expense of other sections of the chain. Historically, there has been little regard for what this

²⁰ <https://www.gov.uk/government/topics/community-and-society>

²¹ <http://www.norfolk.police.uk/aboutus/ourorganisation/privatefinanceinitiative.aspx>

²² http://en.wikipedia.org/wiki/England_and_Wales_Police_and_Crime_Commissioner_elections,_2012

²³ Perkins S *Criminal Justice Sector Transformation – Calculating Social & Economic Benefits*, (Case Study – Integrated Justice Information Strategy), Fourth National Justice Modelling Workshop, 10 July 2008

²⁴ For example, the NSW Online Registry (formerly JusticeLink eServices) or WA's Integrated Court Management System (ICMS).

²⁵ For example, Queensland's 2005 implementation of QPRIME which reputedly replaced 246 systems <http://www.police.qld.gov.au/Resources/Internet/services/reportsPublications/bulletin/314/documents/Page%207%20-%20QPrime%20-%20a%20vital%20weapon%20in%20the%20fight%20against%20crime.pdf>

²⁶ Services Oriented Architecture

does to increases in waiting times for Court appearances, overcrowding in prisons or exacerbation of minority imprisonment rates. Those (such as the current NSW Attorney General, Greg Smith) who resist this populist approach attract criticism:

And he's paying the predictable price, being accused of "going soft" on criminals by influential sections of the electronic and print media.²⁷

However, as this quote indicates, there are committed and progressive senior public servants whose thinking is not confined by arbitrary boundaries and look to explore root causes (which is a means to more effective service outcomes). A recent example of such thinking is the following quote by the WA Police Commissioner, Karl O'Callaghan arguing for better advertising regulation for alcoholic products (to reduce its effect on children) and more responsible behaviour by the alcohol industry:

No one would doubt that the promotion of a gambling culture is not in the interests of our community and we ought to do something about it.

But no police officer has ever been assaulted on the streets because the perpetrator had a gambling addiction. We can't link 40% of all domestic violence to gambling. We can't link brain damage and high risk behaviour in our teenagers to gambling...we can't link 30% of all fatal and serious crashes to a gambling addiction and we can't link increases in the intensity of violence on our streets like one punch attacks to gambling...but we can link it to alcohol.²⁸

The issue then in the LE&J delivery chain is not a lack of agency understanding about possible routes to better outcomes but – confronted by a range of longstanding institutional barriers – the absence of a repeatable means to overcome them. As the UK Design Council notes:

- *Top-down government responses to problems tend to be reactive, addressing symptoms in isolation rather than engaging with the often complex web of factors that create a problem – what [is]...referred to as the "architecture of the problem".*
- *Government can always find a supplier when it knows what it needs, but has fewer options sourcing support with framing a problem.*
- *What analysis is available to government e.g. from management consultants, tends to be separate from execution. This is inefficient.²⁹*

Notwithstanding, the evidence of a wider thinking on the part of LE&J portfolios/agencies about causal factors indicates a potential to consider non-traditional means to improve service and productivity outcomes.

4.2 State Governments

At a state government level, one of the most effective ICT contestability initiatives (also practised by the federal government) has been the establishment of procurement panels. In respect to goods,

²⁷ <http://www.theaustralian.com.au/national-affairs/state-politics/chief-law-officer-eschews-a-law-and-order-auction-for-young-offenders/story-e6frgczx-1226334725476>

²⁸ June 2013 address to National Alliance for Action on Alcohol (<http://blogs.crikey.com.au/croakey/2013/06/24/police-chief-names-the-real-culprits-in-alcohol-related-offences/>)

²⁹ P62, UK Design Council et al *Design for Public Good*, 2013

they have been used to aggregate government buying power and secure significant discounts. Similar although lower savings have also been secured through panels for services. This said, there is substantial state variation in the form of panels and, as a consequence, state agencies are able to engage in varying gaming behaviours (especially in regard to services). Specifically in regard to ICT services, evidence is scant that that state governments have been able to effectively apply the resultant increase in supplier diversity to design improvement on a large scale. Where this has been attempted, it has often been based on a belief (rather than evidence) that ‘common sense’ private sector solutions will work in the public sector. The most obvious example of this are the various permutations of shared services arrangements that have been attempted. Few of these attempts have delivered on their original promise and several of the larger instances have been spectacular failures. The best documented of these is WA’s Office of Shared Services. From a 2003 business case which estimated a NPV of \$137.4M (in 2003/04 dollars) over the first 8 years of its operation, it moved by 2011 (when the project was abandoned) to a NPV of minus \$355M (in 2010/11 dollars)³⁰. Moreover, it was recognised as early as 2007 that the government would never recover its capital costs from agency payments for their shared ERP services³¹. In a similar instance, the Queensland Health Payroll System Commission of Inquiry (which opened on 1 February 2013) reported its purpose as;

.....determin[ing] why such large amounts of money have been lost to the public, whether anything might be recovered; and why such distress was inflicted on the Queensland Health workforce.”³²

In contrast, a more iterative approach taken to shared services (backed by good documentation of design intentions) is showing more promise in NSW³³. Generally, however, such initiatives have struggled to even achieve Step 1 design requirements³⁴. Additionally, there is little evidence of concerted design effort by State governments in their LE&J portfolios.

4.3 The Australian Government

There is an argument that the various initiatives which have been driven by the Council of Australian Governments (COAG) contain Step 3 elements. A sample of these is shown below (a number with a LE&J component) and, as indicated, they broadly divide into those which have a predominant inwards focus and those with a predominant outwards focus. Generally (but not entirely), the inwards initiatives are primarily designed to benefit the participating agencies through greater information sharing and have a ‘light’ contestability impact (although there are indirect citizen benefits). The outwards initiatives are designed to improve process and reduce ‘red tape’ and user costs. The accompanying consultation means that they are generally regarded by affected citizens

³⁰ Page ix, Inquiry into the Benefits and Cost Associated with the Provision of Shared Public Services in the Public Sector, Economic Regulatory Authority (Final Report), November 2011

³¹ Page xvi, *ibid*.

³² <http://www.healthpayrollinquiry.qld.gov.au/>

³³ Department of Premier & Cabinet, Blueprint for Corporate and Shared Services in the NSW Government, 15 July 2010. With some changes, the new NSW Government recommitted to the Blueprint.

³⁴ The 2004 establishment of Economic Regulation Authority (ERA) as the independent economic regulator for Western Australia is, however, an indication of deeper thinking on these matters which may – in respect of referrals outside its main role in the regulation of monopoly infrastructure – lead to Stage 3 design in respect to the General Government Sector.

and businesses as beneficial. They have a greater contestability impact at least to the extent that they increase economic diversity (through the creation of statutory authorities and/or companies with fewer constraints on innovative behaviours).

Inwardly Directed	Description	Outwardly Directed	Description
NEVDIS (National Exchange of Vehicle & Driver Information System)	NEVDIS is the database of driver and vehicle information of states and territories in Australia used by land transport and police agencies. It also maintains the national Vehicle Identification Number (VIN) and the Written Off Vehicle Register.	NEC (National Electronic Conveyancing)	NECS will provide a convenient online means for legal practitioners, conveyancers, banks and mortgage processors across Australia to conduct the settlement and lodgement stages of conveyancing. A company (National eConveyancing Development Limited) has been established to build and operate the new online business system.
CrimTrac	CrimTrac is the national information-sharing service for Australia's police, law enforcement and national security agencies. CrimTrac enables police agencies to share policing information with one another across Australia's state and territory borders.	NOL (National Occupational Licensing)	Currently, occupations are licensed by each state or territory with the licence only covering work performed in that state. Under a national licence, companies and individuals will be licensed to work anywhere in Australia, removing duplicated and inconsistent regulation between states and territories for specific occupations. The new licensing will operate from 2014 and be administered by a National occupational Licensing Authority.
PPSR (Personal Properties Security Register)	Consumers and business operators search the PPS Register when they need to know whether certain personal property has a security interest registered against it. Among other things, in 2012, it replaced the previous Register of Encumbered Vehicles System.	NHVR (National Heavy Vehicle Registration System)	This is a system ultimately designed to allow heavy vehicle operators to secure, via a single permit, an approved route for land transport of goods anywhere in the country. The system will be managed by the National Heavy Vehicle Regulator (NHVR) currently responsible for National Heavy Vehicle Accreditation Scheme (NHVAS) accreditations and Performance Based Standards (PBS) Scheme design and vehicle approvals.

Figure 6 - Examples of COAG Initiatives

However, it is arguable that any claim to Step 3 status is diminished by the following:

- particularly since the advent of tied funding, they could be construed as one government (the Commonwealth) imposing its will on other governments (the States); and,
- there is less evidence of similar rigour within the governments themselves (as compared to between them)³⁵.

Some of this is the 'overhead' of a federal system but, whatever else might be said, there is little question that COAG initiatives tend to be more 'data-driven' and deliver more measurable benefit³⁶ than comparable 'across-silo' State Government initiatives.

5. Assessment of a selected LE&J portfolio's use of Enabling Policy

³⁵ There is, for example, limited evidence of governments' progressing to Step 2 capability building within their workforces. The exception to this is the 18 month DesignGov (<http://design.gov.au/about/>) trial established by the Australian Government in mid 2012. Comment on the site suggests limited progress although, interestingly, it claims most success working 'in the spaces between departments'.

³⁶ Note for example, the National Heavy Vehicle National Law Regulation Impact Statement (RIS) <http://www.ntc.gov.au/filemedia/Reports/HVNatLawRISFINAL.pdf> which built on related Productivity Commission analysis to confirm the establishment of a single regulator (rather than other options considered) as contributing the greatest 'public good'.

The analysis to this point shows that LE&J agencies/portfolios are well-placed to exploit co-design as a means to build new avenues for productivity growth (which is taken to equate to better service outcomes). There are no major MoG entry impediments and the impetus for the wider thinking within the portfolio has been generated by LE&J entities themselves rather than imposed by a State or national government. However, 'Filling the Policy Gap' suggested other conditions were necessary for co-design to thrive i.e. evidence of 'proto-solutions'; evidence of the exhaustion of conventional routes to productivity improvement; and, the means to enact change through co-design. An indication of these can be gained from a 'current state' assessment of a specific LE&J portfolio, in this case WA. This (and a possible 'future state') is depicted below:

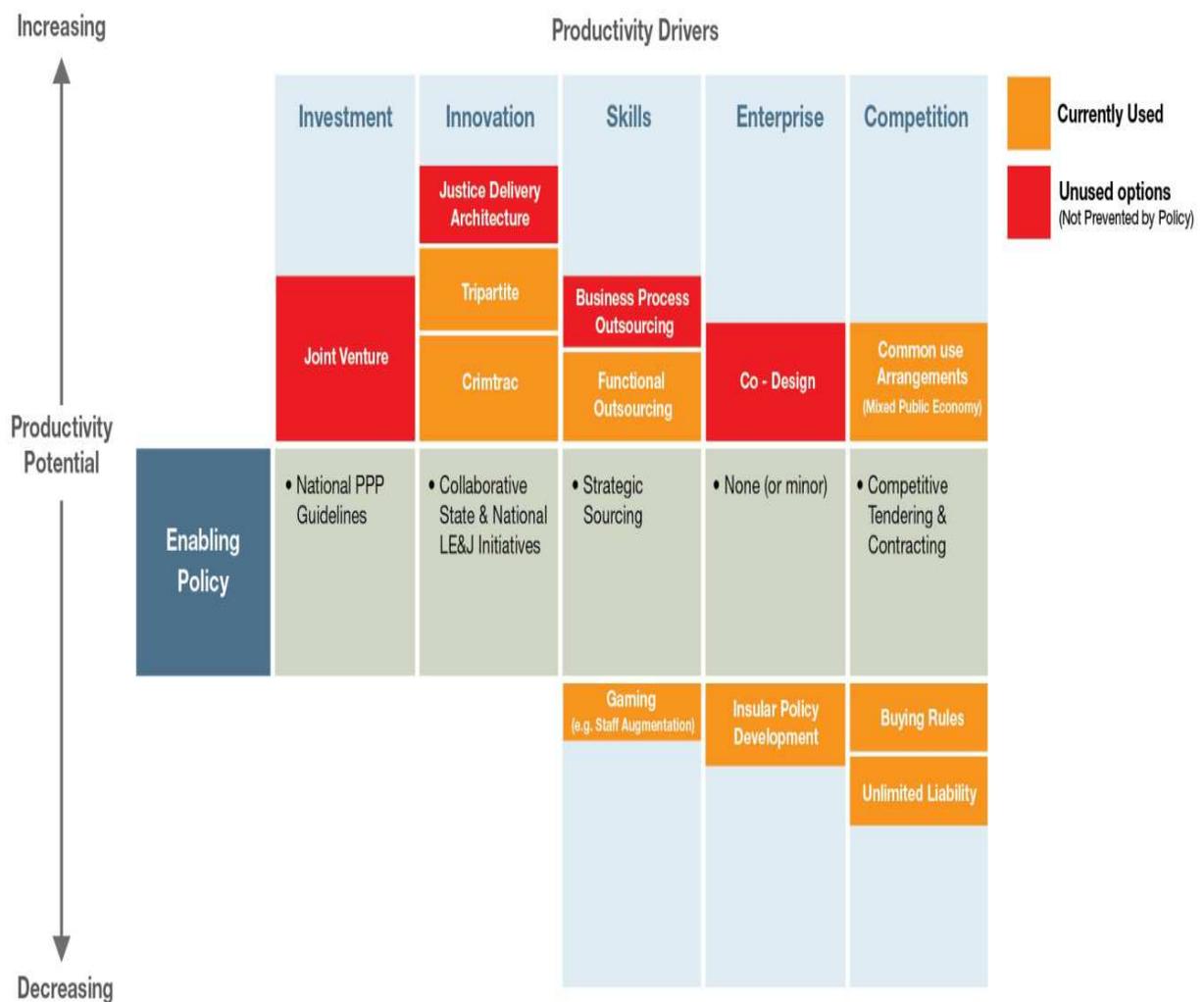


Figure 7 - Analysis of WA LE&J Enabling Policies

While this is not a comprehensive assessment, it is enough to make a number of things clear:

- Unlike other state and territory governments (excepting the NT), WA does not have a State ICT Plan/Strategy to provide some direction for Innovation.

- While the current initiatives stemming from enabling policy have had limited service recipient or ICT supplier design input³⁷, both these parties have direct interests either through the quality of the service delivered and/or because they are major contributors to service delivery. As such, both parties are ‘credible’ voices in a design process.
- While there are initiatives which are generally credited with increasing productivity potential, there are other initiatives/behaviours which have the opposite effect e.g. gaming behaviour which, as one instance, disguises staff augmentation as outsourcing to falsely claim increased contestability.
- There are initiatives which could be used under existing policy which are not e.g. a wider use of business process outsourcing in peripheral areas. The spur is arguably the embedding of co-design. By forcing a focus on the strategic; by including all credible stakeholder voices in design; by seeking means beyond the conventional; more effective combinations of business process outsourcing and/or agency(s)/supplier(s)/NGO(s) combinations/joint ventures are likely to arise.

The other aspect of the current state assessment is evidence of a ‘proto-solution’ i.e. the beginnings of a future ‘Justice Delivery Architecture’³⁸. Two of the building blocks are shown: CrimTrac, a data exchange mechanism which uses State police data to create a national record of criminal convictions and related information; and, Tripartite, an informal collaboration between the WA Police, DotAG and Transport agencies on shared ICT issues. Not mentioned here are other building blocks such as DotAG’s data warehouse (which partially populates a Criminal Justice data model); and, NEVDIS, which performs a similar function to Crim Trac but in relation in vehicle and driver license records. Although not expressed as such, these initiatives contain the seeds of an aspirational Justice Delivery Chain architecture which has the potential to create a shared architecture not only for LE&J agencies within WA but for all other state LE&J jurisdictions³⁹. Such an approach offers substantial scope for productivity improvement. This is not an unprecedented conclusion: the UK’s National Audit Office reached a similar conclusion in its investigation of that country’s criminal justice system⁴⁰ (on which all Australian LE&J jurisdictions are largely modelled). Its specific brief was to see how government could achieve better services for less expenditure but, rather than looking at individual agencies or programs, the Office took an end-to-end view of the offender ‘journey’. One of its conclusions was that;

*Delivery partners need to be working well together at national and local level, focusing on how best to achieve the overall objectives of the criminal justice system, rather than optimising the performance of their own organisations.*⁴¹

As part of its analysis, it included a current state mapping of criminal justice systems as the first step in thinking about ‘journey’ optimisation.

³⁷ The greatest input has probably been by ICT suppliers in regard to major Common Use Arrangements (usually through a consultation with an industry association i.e. AIIA).

³⁸ Note that the emphasis is on the criminal justice component of the Architecture in which the three major LE&J agencies are all involved. The substantial civil justice component (which mostly centres on Attorney General agencies) is excluded for the purposes of this discussion.

³⁹ Ongoing legislative harmonisation would obviously be a very useful concurrent activity but there is sufficient similarity between jurisdictions that this would not be a major dependency.

⁴⁰ National Audit Office, Criminal Justice Landscape Review, November 2010.

⁴¹ Ibid, p6.

Key information systems in the criminal justice system

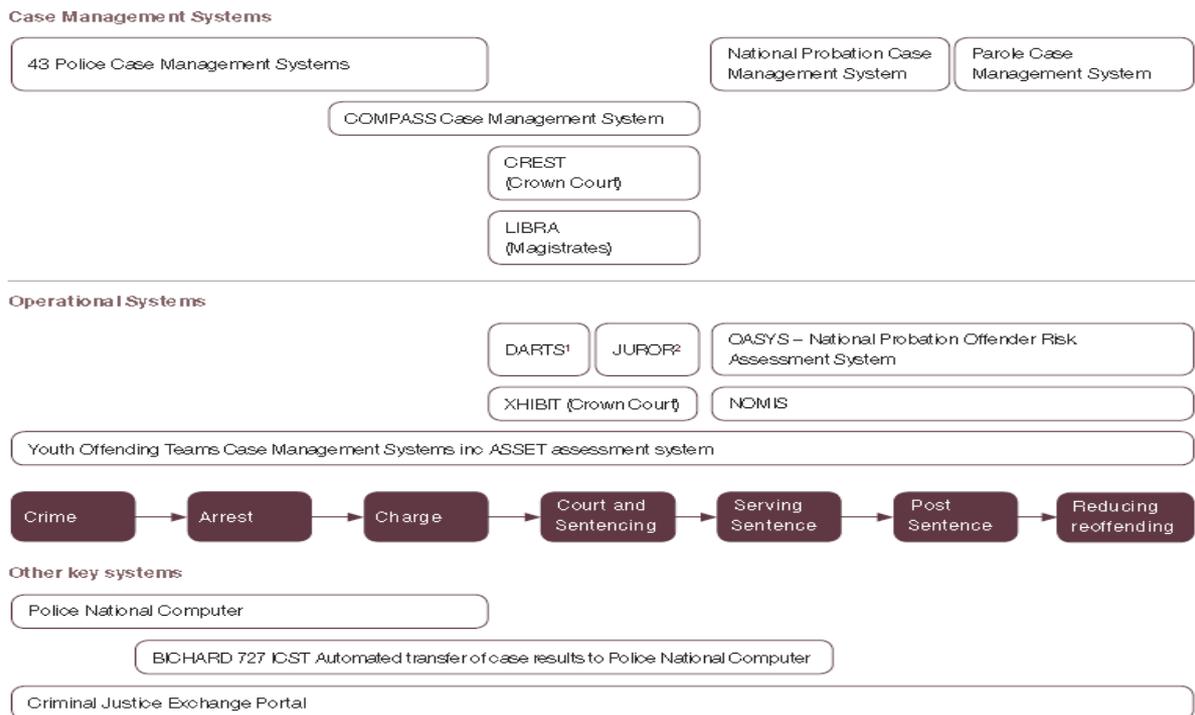


Figure 8 - UK Criminal Justice Systems

As part of our own research, we have completed the equivalent mapping of WA LE&J systems (based on common elements) and constructed a view of a possible aspirational architecture which would be portfolio rather than agency-based. A highly condensed version of this is shown below:

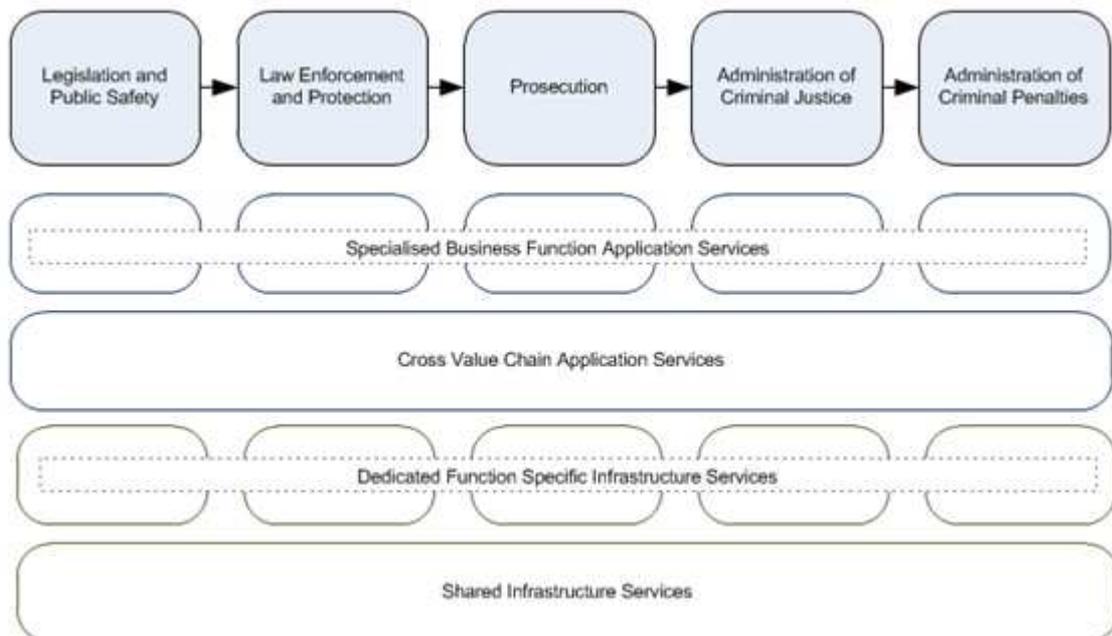


Figure 9 - Aspirational State LE&J Delivery Chain Architecture

It is not the purpose of this paper to explore this in detail, rather to make the point that not only is there a viable LE&J proto-solution in place with transformational potential but that it provides

additional advantages as a trial implementation of co-design. These advantages are validation of a similar direction by a respected external LE&J jurisdiction and the presence of a solution provider with resident expertise.

The penultimate condition for an environment supportive of co-design was whether there was a capacity to create a sense of urgency. Certainly the potential for this resides in the escalating productivity dividend imposed by the WA Government⁴² and which has resulted in formal reform programs by agencies such as WA Police. However, the test for the paper's purpose was whether there was evidence that the 'current state' application of enabling policies had reached diminishing returns. If we look at the area where ICT suppliers have the most capacity (within existing constraints) to influence productivity – functional outsourcing – then our own research suggests this is so.

The graphs below relate to services provided to a LE&J large managed services client over the past 4 years subsequent to the client moving from the single sourcing of its ICT to multi-source. Our component of the sourcing relates to application services. As the first graph indicates, as well as providing an entry cost lower than the prior incumbent, we were able to provide three years of diminishing per unit cost before seeing a rise in the fourth year. Relating this to productivity drivers, the client achieved a lower price through competition and, we hypothesise, our applications specialisation (i.e. our superior skills and, to an extent, innovation) provided further price reductions

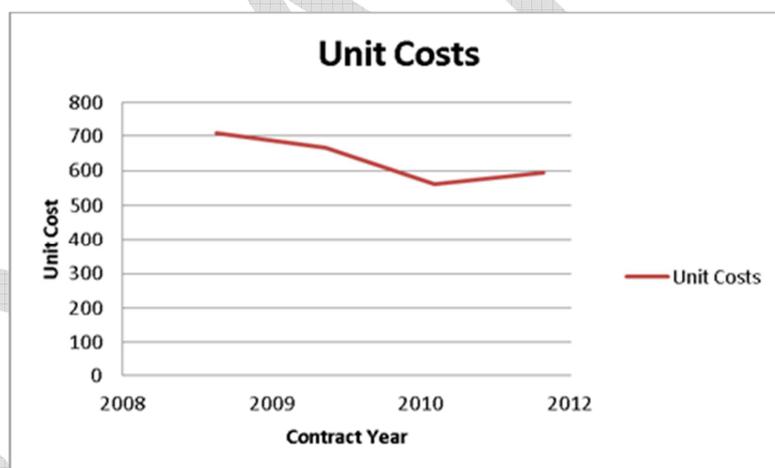


Figure 10 - Unit Cost Reductions in a selected LE&J Agency

As mentioned, however, cost reductions can come at the expense of service levels and/or productivity⁴³. While the ratio in the graph below does not purport to be a comprehensive measure of productivity (given the difficulty associated with capturing all inputs and outputs), it is indicative that this did not occur in this instance. However, as with unit cost, it shows a reversal in productivity increase in the fourth year.

⁴² 'These include a two per cent efficiency dividend across general government....This will be cumulative and increase by one percentage point per year between 2013-14 and 2015-16.' WA Chamber of Commerce & Industry, Analysis of the 2012-13 State Budget, May 2012.

⁴³ Broadly, the productivity ratio shown in the graph shows number of service incidents resolved per FTE across the period.

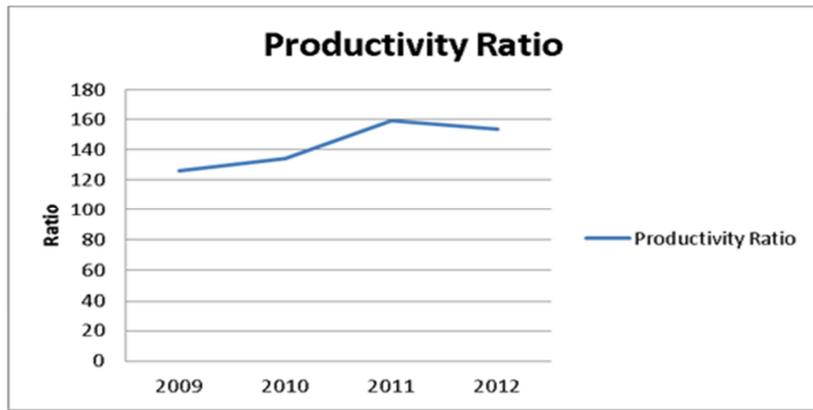


Figure 11 - Productivity Improvements in a Selected LE&J Agency

Our analysis of this fourth year ‘ceiling’ is that our capacity to enact further gain is hitting system constraints (or ‘ineffective boundaries’). That is, while we have the potential to exercise productivity drivers beyond skills (e.g. investment, innovation and enterprise), the absence of an enabling Enterprise policy allows agencies to exclude suppliers from the ‘problem framing’ that might redraw boundaries⁴⁴. As importantly, it can exclude service beneficiaries and/or their advocates.

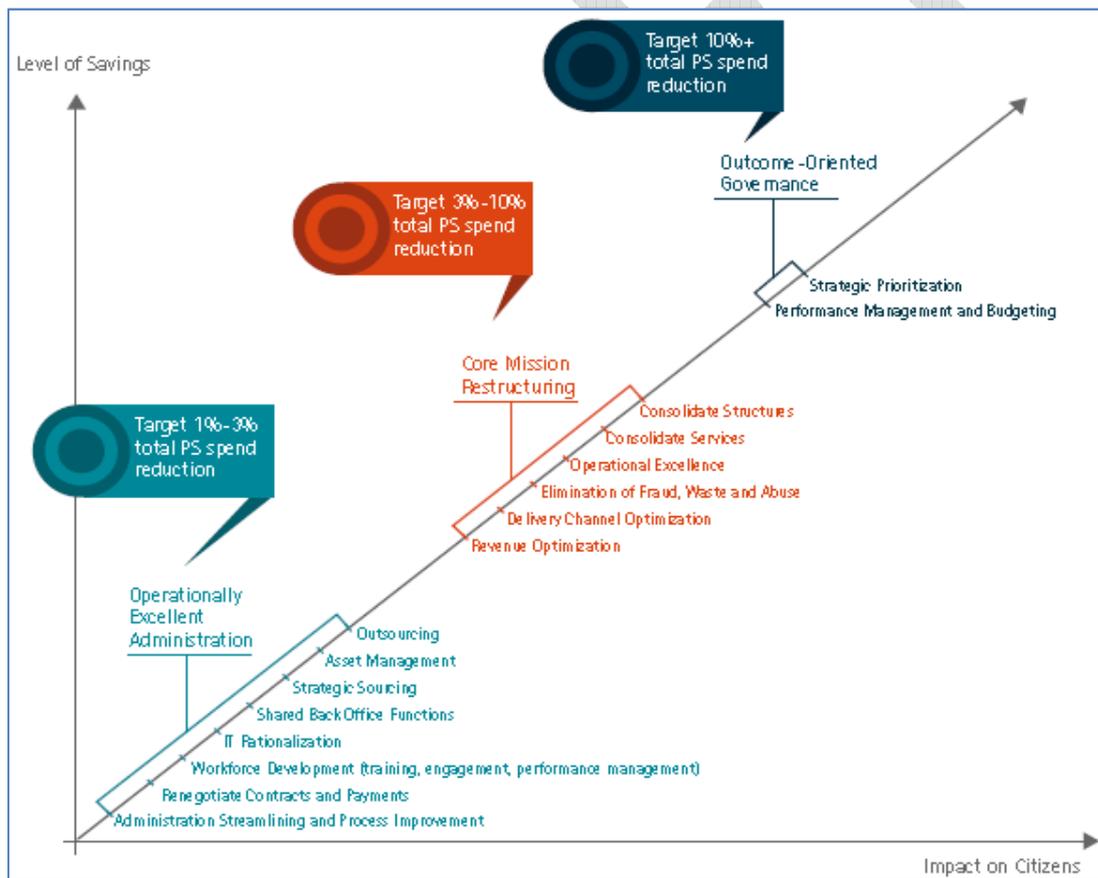


Figure 12 - Avenues for Reducing Public Service Expenditure⁴⁵

⁴⁴ ‘...For example;’...simply privatising or outsourcing these functions will not increase the range of service models by very much.’ P19, Suggess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012

⁴⁵ Rohleder S, Moran B, Delivering Public Service for the Future: Navigating the Shifts, Accenture 2012, p22

Of course, an alternative explanation might be that the existing boundaries are fine and that a return to productivity and cost improvement could be secured by a further market test. Reference to the preceding graph (which consolidates research from across a number of OECD public sectors) supports this view provided agencies are still pursuing lower order strategies as part of a move to ‘Operationally Excellent Administration’. If (as in the case of the client in question⁴⁶), an agency is moving to ‘Core Mission Restructuring’ and beyond (where the greatest returns reside), then boundaries need to be reimagined. This requires Step 3 design thinking and a co-design approach involving non-traditional participants. Assuming that, in respect to the nominated client, the existing regime (the constraints of which are more cultural than regulatory) are impeding further productivity gain, then the conditions of ‘urgency’ are met as the penultimate requirement for Stage 3 thinking.

In the absence of a government-wide move to inculcate Step 3 design thinking, the final condition for co-design to thrive was possession by the LE&J portfolio of the means to act on its own initiative⁴⁷. This presupposes –as argued – that there is no regulatory impediment. Partial illustration of means is the portfolio’s relative immunity from MoG change; the special status of the Judiciary and the Police; and, evidence of a proto-solution (an integrated Justice Delivery Chain architecture). However, scale and ‘visibility’ within government is also important i.e. it is more likely that a large, respected and successful agency will have greater means than a smaller, less ‘visible’ agency. A major indication of portfolio ‘visibility’ is investment and, as indicated below⁴⁸, the WA investment in LE&J (i.e. Policing) is relatively significant.



Source: Department of Treasury, Annual Report on State Finances, 2011/12.

Figure 13 - WA Government Infrastructure Expenditure, 2011/12 (%)

⁴⁶ This conclusion is partially based on observation but, in respect to our direct contribution to the client’s business, on empirical proof. For example, we are consistently achieving near 100% or 100% SLA scores.

⁴⁷ There is a counter view: ‘In large parts of the public service economy, managers have been denied permission to experiment with new service models...’ P7 Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012

⁴⁸ P22, Economic Regulation Authority, Inquiry into Microeconomic Reform in Western Australia (Issues Paper), 2013

This combination of factors suggests that the portfolio has the means to act on its own initiative and, as importantly, over a period long enough to draw and measure benefit from co-design.

Notwithstanding the evidence presented of ICT suppliers' capacity to deliver productivity gain, there will be resistance to the notion that suppliers should be involved in policy design. Obvious examples relate to perceptions of vested interest and notions of what is 'inherently governmental'. Without seeking to address these in detail, the following offers some rebuttal:

- 'Problem-framing' is intrinsic to the business of ICT service providers and this is understood by agencies prepared to engage providers on a true outcome basis (rather than disguised staff augmentation). However, even with these agencies, the skillset is underutilised. Additional benefit could be secured by widening the public sector notion of 'user' and by viewing (in appropriate situations) suppliers as stakeholders in the policy dimension of 'problem framing'. This requires no fundamental change in established procurement frameworks but rather a reformulation of roles and accountabilities.
- As indicated by the following quote, adoption of a methodology (such as co-design) by the public sector is not evidence of capability:

.....we see little sign of lessons learnt in the public sector. The evidence to date is that the public sector is not managing ICT-enabled projects effectively, as demonstrated by the current difficulties that Victoria is facing in this area and the increasingly adverse public comment about major ICT-enabled projects. A new and more disciplined approach is required if the government is to avoid being faced with continuing cost overruns and failures to deliver.⁴⁹

In this case, the failures occurred notwithstanding widespread adoption of project management methodologies by Victorian agencies. What the agencies were unable to change were the cultural factors which impede effective project management (principally public sector governance structures at odds with good project management). Although there are a number of senior public servants and academics working to address these factors through prosecuting a case for instilling Step 2 capability⁵⁰ in the public sector, this is only occurring in pockets. Engaging ICT suppliers around an expanded notion of outcome provides immediate access to this capability. It is embedded in core business analysis and change management competencies and can be boosted further through the incorporation of co-design approaches. This aligns with;

'.....the trend...to make both the policy process and service delivery more 'bottom-up' or collaborative.'⁵¹

This is implicit in the following diagram⁵² which illustrates the main components which prompt 'design-led innovation'.

⁴⁹ Victorian Ombudsman (in consultation with the Victorian Auditor General), Own motion investigation into ICT-enabled projects November 2011, page 3

⁵⁰ See, for example, Bason C, Leading Public Sector Innovation;Co-creating for a better society, The Policy Press, University of Bristol, 2010.

⁵¹ Lenihan D, Briggs L Co-Design: Toward a New Service Vision for Australia?, Public Policy Forum, January-March 2011, p43.

⁵² P23, UK Design Council et al Design for Public Good, 2013

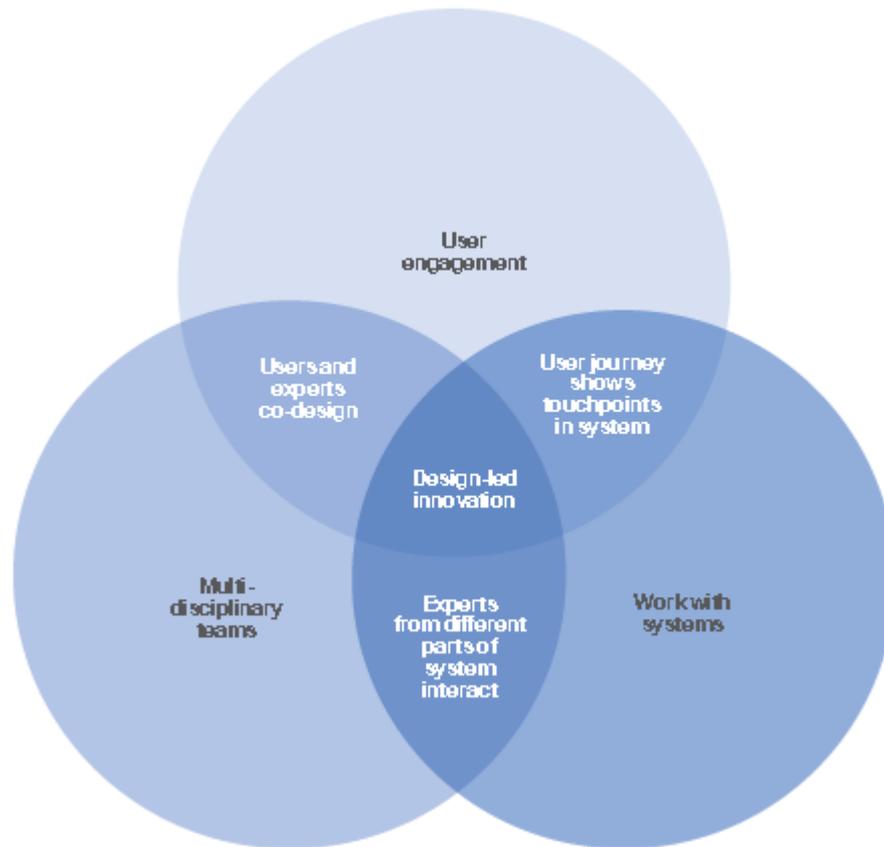


Figure 14 - Design Led Innovation

Unfortunately, while suppliers have the competencies to work in such an environment, their involvement in the 'User engagement' bubble (and its three points of intersection with the bottom two bubbles) is rare.

- As the Design Council suggests, to separate analysis (problem framing) from execution is 'inefficient'. Those ICT suppliers which implement effectively (a key component of their commercial success) have an implicit understanding of the escalating interconnectedness/complexity which pervades constructs such as the LE&J delivery chain. Their expertise in 'execution' is only enhanced by drawing them more deeply into the analysis phase.
- ICT suppliers with clients across the LE&J delivery chain often have a view of the underlying structure which exceeds that of a single agency. This unique perspective provides a valuable insight into alternative means of analysing a problem (and executing a solution) and one that, culturally, is often more attuned to how citizens believe government service provision should work:

*'...citizens usually pay little attention to jurisdictional boundaries. Nor do they want to be engaged two or three times by different orders of government on issues they see as interconnected.'*⁵³

⁵³ Ibid, p44.

Supposing an active (rather than resistant) interest in a LE&J portfolio to embark on a Stage 3 journey, the role of ICT suppliers (and others) may prove critical in establishing the coalition of interest necessary to reimagine service provision (and secure wider support). There is precedent for this in past reforms which have taken as a given; '... that markets, given sound regulatory frameworks, and social aspirations can be mutually supportive.'⁵⁴ The same source argues that, in fact, successful public sector reform is only made possible by the involvement of business organisations and their employees, not simply through consultation but through co-production⁵⁵.

6. What might be the starting conditions for co-design in LE&J?

Stage 3 thinking does not seek to displace competition and contracting but rather to do it better. In a mature setting, it does this by preceding procurement with 'commissioning'. In the Australian context, this is described as follows;

*Commissioning involves decisions about the outcomes which public services are expected to deliver, the level at which they will be procured and delivered (local, state or national), the system through which they will be obtained (competition, contestability or monopoly), and whether or not they will be purchased within a single agency or commissioned across departmental boundaries.'*⁵⁶

In this regard, some of the new technology service/product classifications being set up in recently revised ICT procurement frameworks⁵⁷ (such as PaaS or SaaS⁵⁸) provide no automatic entry into productivity improvement or even cost improvement. As with all such potential purchases, they need to be weighed against the outcomes sought (although, as is not unusual, they are often marketed as ends in themselves).

Rather than 'more of the same', commissioning means that those implementing choice and competition in the public sector need to; '...make a mental shift from being in direct control of a policy to stewarding markets and enabling them to function.'⁵⁹ This potentially leads to new forms of collaboration and recompense such as Foundation Trusts, Social Benefit Bonds (where providers assume responsibility for service outcomes such as a reduction in recidivism) and Public/Private/Voluntary partnerships. It also leads to consideration of new areas for the entrance of private and Third Sector suppliers such as criminal record checks; enforcement of traffic infringements; court registries; and crime prevention programs. On the basis of their use in other LE&J portfolios, these are all areas which might be considered for use in the WA portfolio.

Given that the required 'mental shift' is substantial what, realistically, might be some first steps?

⁵⁴ P45, Committee for Economic Development of Australia, Setting Public Policy, August 2013

⁵⁵ Ibid, p47.

⁵⁶ P78, Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012

⁵⁷ For example, see p21 Department of Finance & Services, NSW Government ICT Strategy 2012.

⁵⁸ Platform as a Service and Software as a Service.

⁵⁹ P79, Surgess, G L Diversity and Contestability in the Public Service Economy, NSW Business Chamber 2012

1. Build on the conditions identified in this paper – specifically, elevate the operational investment in a fully integrated Justice Delivery Chain business and information architecture⁶⁰ to a strategic one.
2. Support step 1 with complementary activity – this includes building internal co-design capability (and trialling it’s application); measuring productivity and requiring it as an output for all major initiatives; and, within existing cultural constraints, moving suppliers and other non-traditional stakeholders deeper into the design/policy process.
3. ‘Imagine’ the portfolio and community benefit – the potential gains are considerable. For example, reduced system contact/effort for defendants/offenders (through better use of unique identifiers, common case management etc.); reduced court waiting times; earlier disclosure of briefs; reduced administrative effort and better intelligence for frontline police officers; the smoothing of unanticipated consequences (such as the impact on prison capacity of extra police); and reduced offending (through the reinvestment of cost savings in preventative and diversionary programs).
4. Establish the ‘Vision’, identify a champion and build a coalition – this is not a role that could be taken by a senior judicial officer but such a person(s) could certainly form part of a coalition led by the Commissioner of Police or a DotAG or DCS CEO. The coalition should also include other actors such as the Law Society, the Aboriginal Legal Service, WA Legal Aid, Treasury, affected human service agencies, relevant NGOs, service recipient representatives and key suppliers.
5. Translate the foregoing into a commissioning brief – this will likely require consideration of procurement approaches not contemplated by WA’s existing ICT or other contracting and competitive tendering arrangements (but not specifically excluded by them). As much as anything, this is the point. Having reached their own ‘ceiling’ of benefit, contracting and competitive tendering arrangements need to be included in any ‘reimagining. In respect to the suggested Justice Delivery Chain architecture it is likely, at minimum, to require procurement instruments (EOIs, RFPs etc.) to be issued jointly by LE&J agencies. Ideally, whatever ensues will be leavened by thinking which elevates the importance of ‘Enterprise’ as a productivity driver⁶¹.

While the focus has been on public sector agencies, implicit in the suggested approach is significant change on the part of ICT suppliers. Although suppliers often have complementary co-design competencies and cultural constraints might be less, it will require their investment in new approaches. It means more than a superficial understanding of the purpose of the public sector and the legislation, regulation, policy, systems and processes that underpin it. It also means consideration of new types of partner (such as the Third Sector); a greater preparedness to co-invest; and, extending its willingness to take responsibility for outcomes to those which have a public good component e.g. reduced recidivism. Most importantly – and this applies equally to public sector agencies – it means the entrenched incorporation of service recipient/beneficiary’ views into the service design process.

⁶⁰ Note that this does not imply a homogeneous product or monolithic system environment.

⁶¹ In the best case, supported by a Cabinet-endorsed enabling policy.