

**Western Australian Prison Officers' Union**  
**Submission to the Economic Regulation Authority**  
**Inquiry into the Efficiency and Performance of**  
**Western Australian Prisons**

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## 1. Why the Inquiry?

It is concerning no analysis of the real costs of the prison system and the underlying reasons for these was undertaken before determining an inquiry into efficiency and effectiveness was required. That being said, the absence of a fact-based substantiation for the Inquiry is perhaps clarified by the strong indications that further privatisation is the intended outcome; an implication present in the ERA's statement that the Inquiry will consider 'the rationale for government involvement in the delivery of prison services'. Remarkably, government involvement on any level appears to be a matter for debate.

The ERA has stated it will provide advice to Government on the 'efficiency and performance of prison services based upon economic, market and regulatory principles'. The notable omission of any consideration of quality, safety, or relevance to a system that deals primarily with people rather than utilities, is perhaps understandable given these fall outside the expertise and capacity of the ERA – and no expert assistance appears to be being sought.

At a minimum, the work of the 3 major reviews into the prison system undertaken in the last 10 years must be analysed by the ERA to establish history, context, and go part way to mitigating the lack of prison-specific expertise. The 2005 Mahoney Inquiry, 2005 Inspector of Custodial Services Inquiry, and the 2010 Review of Staffing by McNamara and Flynn are significant works.

While the ERA has advised WAPOU there is no need to engage independent specialist advice on prison practice and procedure (contrary to its practice when dealing with utilities) we believe this Inquiry will have no legitimacy without assistance in understanding how prisons function. Independent advice should be sought from outside the group of stakeholders providing submissions, to avoid partiality and the undermining of other contributors.

The stated principles employed by the ERA disclose a direction that will focus on costs to the exclusion of other factors, which is plainly weighted in favour of privatisation and the highly constructed arguments favoured by its proponents. Jane Andrew (Andrew 2011:209) has presented rigorous analysis of the way in which data has been manipulated to produce the appearance of 'fact-based' and cost-oriented rationales for privatisation, positioning these decisions as a responsibility to the public rather than the ideological manoeuvrings they rightly are.

This philosophy is brought forward in the ERA's claim that 'A prison system that delivers more or better services at the same cost, or the same services at a lower cost, will benefit all Western Australians'. Far from benefiting all Western Australians, more services at the same cost, or the same services at a lower cost will adversely affect workers, prisoners and community members if quality and safety are reduced. And that is assuming the 'costs',

which can easily be manipulated to present the desired picture, will in fact stand up to scrutiny. The literature on privatisation has not established evidence of genuine savings.

The ERA has asserted the Government has limited financial resources to operate the prison system and it is therefore important the resources allocated to the prison system are directed in a manner that generates the greatest public benefit. Similar logic about the responsible use of public funds can be productively applied to the question of where the ERA directs its limited resources, with a view to optimal benefit.

Given no cost-benefit analysis has been conducted with respect to the merits of this inquiry, and as Dr Toner points out – the potential savings (putting aside the possible costs in loss of quality and safety) are likely to be significantly lower in corrective services than in other areas of far greater Government spending – it appears economically shrewd to conduct an analysis before proceeding.

Some background on where large amounts of public money have been spent on inquiries into the prison system in the last 10 years is required – since we must be hopeful their outcomes will be considered, to ensure that investment is not mishandled.

In 2005 the Inquiry into the Management of Offenders in Custody and in the Community, was initiated under the Public Sector Management Act Section 11. Former President of the NSW Appeals Court and Supreme Court Judge, The Honourable Dennis Mahoney AO QC. The Terms of reference for the Mahoney Inquiry stand in stark contrast to those of the current ERA Inquiry. As noted, they were not narrowly directed at efficiency, but rather entailed the key questions of quality and safety. (See Mahoney 2005 appendix 1). Specifically, they included the direction to

“...4. To develop a plan which will include implementable strategies to:

- Improve the quality of offender management, both in custody and in the community:
- Improve and enhance community and staff safety with the corrections system ...”

The Inquiry took public evidence from 48 witnesses, 13 formal submissions from stakeholders, employed the services of a retired Supreme Court Judge at its head, a leading Perth barrister as Counsel Assisting and 18 staff including 7 Analysts to make sense of the volumes of information that needed to be assessed. The Inquiry produced detailed blueprints for the Department of Corrective Services along with recommendations for the improvement of the quality of the services being delivered. It did so in the form of a report running to 413 pages and 117 Recommendations.

In parallel the Inspectorate was directed to carry out a Directed Review of the Management of Offenders in Custody. This Review lasted in excess of 8 months. The terms of reference for the Directed Inquiry by the Inspector of Custodial Services were extremely broad and the findings traverse much ground in the delivery of quality services. (See Mahoney 2005 appendix 2)

In 2010 the Government engaged the services of Shane McNamara and the then Superintendent of Bunbury Regional Prison Mr Keith Flynn to head a review of the staffing of all public prisons – this review visited all prison sites and developed a series of staffing benchmarks to underpin all Departmental staffing decisions. This review cost in excess of \$1 million and ran for over 6 months. These benchmarks are crucial to maintaining safe staffing levels.

When considering the need for yet another review or inquiry, the question of the cost to the public purse and consideration of the effective application of the findings of the previous reviews and inquiries must be considered. For example, there were recommendations coming from the Mahoney Inquiry about matters as varied as the continued use of Unit and Case Management to the split of the then Super Ministry. It seems to WAPOU very strange that either the Government or the ERA would start a new review without consideration of what was and was not implemented from Mahoney’s recommendations; and indeed when implementation did not occur, why it did not?

Clearly the same would be the case for the Inspectorates’ Directed Review and the McNamara Staffing Review. WAPOU does not necessarily endorse all the findings of these reviews, but they provide a very substantial basis for any investigation of the current prison system. It must also be asked what weight the ERA will be giving to these exhaustive inquiries which are only 9 years old. These documents show many of the issues facing the Department in 2015 are similar to those of 2005.

The considerable work done collaboratively between the Department, WAPOU and Mr McNamara in the creation of robust staffing benchmarks for all public prisons, should not be lost in this process. If safety and quality have any role in the vision for all Western Australian prisons, the staffing benchmarks should be extended to the two private prisons not originally included.

## **2. Performance frameworks and benchmarks**

Further to Dr Toner’s eloquent summary of WAPOU’s broad concerns, we outline some additional matters regarding performance frameworks and benchmarks below.

The ERA quotes the productivity Commission in the Issues Paper, “Effectiveness is a measure of how well the outputs of a program or service achieve the stated objectives (desired outcomes) of that program or service.” It is hard to see how the ERA will identify efficiency and effectiveness within the corrections system, without clearly understanding what its stated goals or objectives are – given there is no agreement on these between the ERA and the Department.

Lack of knowledge of how prisons are run in practice, is a considerable obstacle to addressing questions of performance and benchmarking. There is no mention in the Issues Paper of the core managerial philosophies the Department has employed over the last 20 years. There is no expression or consideration of the roles expected of a Prison Officer in 2015. Notwithstanding the concerns about the utility of benchmarks set out by Dr Toner, it

is hard to see how any useful consideration of standards can be had without understanding these roles and philosophies.

On that basis we here provide an overview of the roles of a modern Prison Officer.

## **2.1 The Changing Role and Function of the Prison Officer**

Over the last twenty five years the role and function of the Prison Officer has undergone enormous and positive change. The key elements of a Prison Officer's role are to ensure the:

- Integrity of the Prison System.
- Safety of all Officers in the performance of their duties
- Safety and wellbeing of all prisoners within the Prison System
- Development of dynamic interactions with prisoners
- Provision of positive role modelling for prisoners

It is important to understand that the security of a prison cannot be maintained through the use of increased technology. Technology can only be an aid or a tool. It does not and cannot provide security in itself. Use of cameras and surveillance equipment is undermined without the resources to respond. There is nothing as effective in maintaining security as the well trained, skilled and interactive Prison Officer. Video footage is helpful after an event but is not a useful tool in prevention. Over-utilisation of technology at the expense of staffing has been a consistent failing among private prison operators.

Over the last 20 years there has been a significant change in expectations and objectives in relation to the provision of prison services, particularly regarding offender rehabilitation. The shift in focus to rehabilitation has been driven by several forces, including WAPOU, the Department, and a broad realignment in society at large. This has had an enormous impact on the Western Australian system, including the introduction of Unit Management in 1988 and Case Management in 2002, impacting the role and functions of Prison Officers. These changes were intended to herald major moves forward for the correctional system. Full realisation of these innovations still requires some further support and training.

## **2.2 Defining the role of today's Prison Officer**

The current role of the Prison Officer can be broken roughly into two categories:

1. 'Traditional roles' based around security functions such as barrier management, the use of batons, restraints, searches, observing and monitoring rules and regulations. The essential functions of security, information and management.
2. 'New roles' such as the development of dynamic and positive relationships with prisoners to promote security, rehabilitation, and the process of prisoner management. Interaction with programs such as the Violent Offenders Treatment program, the Sex Offenders Treatment Program, Education, Cognitive Skills, Counselling, Psychological Assessment and Interventions, Psychiatric/Medical liaison.

Under the banner of Unit Management there has been a significant philosophical shift in the expectation of staff managing prisoners. Officers are now expected to take an active and constructive role in prisoner correction using an interactive management model. This expansion of the role has occurred in a time of budget pressure and a requirement for increased efficiencies and effectiveness. Further key elements of Unit Management are:

- The expanded role and authority of Unit Staff
- Decentralised and delegated authority down the chain of command to Unit Managers

The system also now seeks to address more complex requirements. Examples of this include the needs of Indigenous and female prisoners, prisoner peer support, community liaison, and the multifaceted overarching process of prisoner rehabilitation.

Extreme media responses to events such as escapes and drug seizures illustrate how the wider community now also expects much higher security standards, for even the lowest risk prisoners. With the help of the media a 'zero tolerance' of problems associated with incarceration has developed, increasing pressures upon Prison Officers.

### **2.3 Implications of Rehabilitation**

With the reorientation of focus towards rehabilitation, the role of the Prison Officer has evolved beyond containment and management, to supporting the acquisition of skills and behaviours promoting successful reintegration to society.

The emphasis has correctly shifted towards 'behavioural correction' of prisoners. This has required changes to the Unit Management model as 'behavioural correction' cannot be implemented using a rigid chain of command approach.

Senior management within the Department argued a move away from 'top heavy' decision-making was necessary. This is illustrated in the policy statement 'IPR Policy Framework for the Refocus of Unit Management' (2002), and the Mahoney Inquiry findings, indicating a need for a specialised Unit Management approach aimed at Behavioural Correction, Rehabilitation and Integration.

### **2.4 Delegation Defined**

Decentralised or devolved institutional management at the unit level is the essential feature of unit management. The level of delegated authority dictates the 'strength' of the model in practice. Traditionally, a centralised hierarchal structure has been used, with a top-down chain of command for decision-making. Unit management functions to 'flatten' the 'decision-

hierarchy' by firstly, subdividing institutions into semi-autonomous management sections or units, and secondly, by giving staff managing the units delegated authority.

The process of Unit Specialisation (Disturbed and Vulnerable prisoners, Special Handling Unit, MPU, Self-Care, Close Supervision, Drug Free) was developed and continues. Therefore requiring an increase in decision making that should take place at a unit manager and unit staff level.

The IPR document of 2002 argued the Chain of Command method of management was outdated and centralization of decisions away from the front line was ineffective. Further, that Senior Officers are disempowered and merely act as messengers for decisions in their own unit. The principles behind this argument are strongly supported by WAPOU.

## **2.5 Decision-Making & Autonomy**

The Unit Manager should be empowered to act autonomously. By delegating authority to the Unit Manager, each Manager acts as a 'Unit Superintendent'. Each Unit Manager will be held responsible for running of their unit and will require:

- Communication Skills (Written and Oral)
- Skills in Personnel Management and Supervision
- People and Team Development
- Program Knowledge
- Case Management
- Leadership Ability including, Control; Analysis; Judgement; Initiative and Decisiveness

Unit Staff are to function as a team, with expanded management authority and responsibility over prisoners. Where possible, all decisions regarding the management of prisoners should be made by Unit Officers. As the primary manager of prisoners, Unit Officers are required to set an example by the personal conduct in carrying out orders and functions of the role. The Unit Staff should therefore be quite stable. One of the greatest challenges to this has been securing resources to ensure staffing levels and continuity are maintained, which is often problematic given high levels of physical and mental stress.

For example, as recently as January 2<sup>nd</sup> 2015, Casuarina Maximum security prison was running over 35 staff short after all available off duty officers were called in to cover vacant positions. This impacts continuity and the ability to plan when such shortfalls continue to be commonplace. The Government must guarantee the necessary resources, and the Department must ensure core staffing allows for the various imposts on availability - including secondments, long service leave and similar.

If Unit Managers are to negotiate outcomes daily, making multiple decisions affecting all aspects of the running of the Unit, they must be provided with adequate training. Based on



the experience and knowledge of our members, we believe the role of the Prison Officer should be centred on interaction, as the key to a dynamic approach to relationships and security. The system should provide the training and staffing resources to allow for officers to constantly interact with prisoners. The role of the officer is often about the simple management of human relationships which provide the information to create a secure environment. If the Prison Officer is to gainfully play a role in the reduction of recidivism and aid rehabilitation, positive interaction is integral. Interaction also facilitates awareness of security, welfare, and interpersonal issues.

"Staff-prisoner relationships are at the heart of the prison system and a stable prison life depends to a large extent on getting these relationships right" (Liebling et al 1999:71).

Our experience informs the belief a well-run prison depends on the officer's ability to adapt techniques or styles as the situation changes. If officers exert high levels of overt control acting on nearly all rule infractions, rather than weaken the prisoner's will and leading to greater compliance, there is generally a fairly rapid deterioration of cooperation from inmates. This in turn leads to reduced intelligence, increased tension and heightened risk of unrest.

At the other end of the spectrum, the appeasement style is as undermining to the realisation of order as is the over use of power. In the UK the mass escape from the Whitemore Special Security Unit was a direct result of an appeasing regime. The Management of the Prison curtailed cell searches in response to a request from inmates. This gave the prisoners the opportunity to manufacture and conceal a variety of escape implements including firearms. It is our experience that the failing prison will often rely upon the appeasement model.

Worryingly, members at Serco-operated Acacia Prison have indicated appeasement is employed by management to enable operation with low staffing levels. An example occurred in October 2013 following the discovery a hole had been cut in an internal fence. A cell search was scheduled to look for the tools that were used, amid fears of a planned escape. Inexplicably, management wrote to prisoners advising them of a search the next day - thereby providing plenty of time to get rid of any contraband.

It is worth noting actions like this drastically skew outcomes on performance benchmarks related to contraband discovery, and there will be examples on other indicators. Where practices like this exist it will rarely be known externally, but the distorted comparisons to public prisons will be held aloft as evidence of superiority. The permitted secrecy of private prisons is not predisposed to fair assessment.

It is clear that within the wider world of corrections the models of Unit and Case management are seen as central to prison management. Any consideration of benchmarks must therefore first understand the way these structures and systems work, and conceptualise the role of Prison Officers within them.

We are concerned about what the ERA believes should be measured to provide the basis for the benchmarks it is directed to develop, and how this will be done. Many of the key roles and functions of Prison Officers are either very hard or impossible to measure. For example, the interaction between staff and prisoners is central to security - and also to the establishment of an environment that promotes rehabilitation and works to reduce recidivism. No verifiable means of measuring these interactions, by time, quality, or self-report, could be considered reflective. Yet those interactions and relationships define the role of the modern Prison Officer, without which the function regresses to the archaic role of gaoler or key-turner.

The development of a performance framework along the lines set out by the ERA has intractable problems in its application to the prison system. In this submission Dr. Toner has articulated a cogent argument against the logic and feasibility of this proposal. It is agreed by the ERA that rehabilitation is a key objective of the system, and also that this is not measurable in terms of performance, and finally that any performance framework that benchmarks and evaluates certain objectives over others would be fundamentally distorted. Even were this not the case, the ERA states service standards and performance monitoring will have limited effect without incentives. The corrupting outcomes of incentives outlined by Dr Toner are essentially irreconcilable problems, which inevitably lead to the conclusion that the performance framework model proposed by the ERA cannot work in practice.

### **3. Rehabilitation, recidivism and the objectives of the prison system**

Although the ERA has curiously identified different objectives for the prison system than those articulated by the Department of Corrective Services, both acknowledge rehabilitation to be an undisputed goal. Notably the West Australian Government, as the legitimate source of authority in setting those objectives, has not done so.

Any serious assessment of performance and costs in the prison system must closely consider the objective of rehabilitation, as an ideal in itself, a means of future cost reduction, and also as the most effective strategy for promoting long term public safety.

Theoretically incarceration should achieve a reduction in crime, however this does not appear to be borne out in practice - and in fact the deterrent function of prison sentences is not known for its effectiveness (Fleming et al 2011, Criminal Justice Alliance 2012). It is now widely understood that once reaching a certain level, increases in incarceration have significant diminishing returns with respect to community safety, and often cost more to the taxpayers than the value of the crime (VERA 2012:13). The overarching principle of community safety is potentially best served by rehabilitation, as the most effective means of protection against recidivism.

Rehabilitation is unarguably the most desirable outcome leading to improved quality of life for the individual, improved safety for the community, reduced cost to the state with respect to future incarceration and potentially Government benefits, and economic and social value in raising the number of productive members of society. The total cost of failure

in rehabilitation cannot be quantified. However, the cost of recidivism – of which there is a high incidence where rehabilitation does not occur – can be estimated to some extent.

The recent report on the cost of recidivism by the Office of the Inspector of Custodial Services, estimates an annual average of \$120,000 can be saved for every prisoner who does not return to prison. The report also projects that over \$1 million could be saved every year, per 10 prisoners not returning to incarceration. This would obviously be multiplied many times if incarceration never reoccurs (OICS 2014).

A concern WAPOU has regarding the prospect of benchmarks to measure performance, is that given rehabilitation is unmeasurable – the vital interactions with prisoners that contribute to that process will be overridden by the need to meet other benchmarks. As the interactions that go towards relationship building and mentoring do not have a clearly definable utility, there is a serious risk they will be attributed little value if the ERA's planned performance framework is established. As Dr Toner states, 'effort' cannot be measured in this context either. The logical conclusion of this would be the destruction of years of investment and cultural progress.

Benchmarking recidivism rates cannot be fairly done to produce accurate outcomes, as Dr Toner further explains. We know from the research on recidivism that factors such as maintained family connection, engagement in work or having access to accommodation after release play a great part determining recidivism rates. Recidivism rates will be affected by these elements, which lie outside the control of Prison Officers, Superintendents or the Department of Corrective Services in general. Dr Toner's arguments on the impossibility of benchmarking in this area are cogent and conclusive.

However, when considering rehabilitation and recidivism, it is important the ERA look not only at the factors that might lead to a rehabilitative culture within the prison system - but also at the need for Government to fund transition and post-release services. Ensuring the funding of a through-care model which connects those issues known to impact upon recidivism, is pivotal to achieving the best outcomes for society.

Promoting rehabilitation, and therefore also promoting a reduction in the financial and social costs of recidivism, will now be addressed in connection with mental illness and addiction, and also overcrowding. These issues are discussed in the context of the question of public versus private prison operation.

### **3.1 Key Factors in Recovery and Rehabilitation – Mental Illness and Addiction**

Given that staffing has been identified as the chief means of cutting costs under privatisation, it follows that staff to prisoner ratios, training, hours of work and pay and conditions, would be targeted in the event of further privatisation. The safety and service ramifications of this false economy have particularly distinct implications for the high proportion of prisoners with mental illness, and drug and alcohol dependencies. It is worth noting that the 52% portion of annual expenditure on staff benefits in the West Australian

prison system quoted by the ERA, is contextually low. Labour costs in prisons regularly fall between 60 and 70% - and reductions of rates in that ballpark through privatisation have been found to reduce services and safety (Mason 2012:10).

With high rates of comorbidity, mental illness and drug and alcohol abuse are often inseparable, and stand among the largest barriers to rehabilitation for prisoners. The persistence of these problems also predisposes offenders to recidivism. Edith Cowan University has conducted research on mental health in Western Australian maximum security prisons, which found one in five participants were currently receiving treatment for mental health issues - and over half of the prisoners had previously received treatment (Fleming et al 2011).

Research from New South Wales has indicated up to 67% of prisoners will reoffend within five years of release, with recidivism greatest for prisoners with co-morbid substance abuse and non-substance mental health disorders (Fleming et al 2011:3). The prevalence of mental health problems, alongside alcohol and/or drug abuse is undeniably rife within the prison system. The Inspector of Custodial Services' report on recidivism identifies problematic substance use as in the top three precursors for repeated incarceration – which is known to regularly accompany mental illness (OICS 2014).

Where ongoing and untreated, these factors impede the ability of individuals to rebuild positive relationships in the community, make positive changes in their lives and gain employment. It is essential that adequate treatment and support is provided within the prison system in order to promote the wellbeing and safety of both prisoners and Prison Officers, but also to enhance longer term prospects of recovery and rehabilitation.

It is fundamentally important the ERA Inquiry acknowledges provision of these services as imperative to the objectives of both safe containment and rehabilitation, and takes full consideration of how high standards in these areas are attained and maintained. While insurmountable challenges prevent the accurate collection and analysis of data on the complex question of rehabilitation, the reality that it cannot be quantified and used in a performance assessment process does not preclude its primacy.

Identifying the link to recidivism, research by Edith Cowan University (Fleming et al 2011:4) makes a strong case for robust health services and programs within prisons as part of the rehabilitation process, highlighting the considerable savings that can be made.

The Stokes Review found that 40% of the 1000 prisoners at Acacia Prison at the time of assessment had a mental illness, with 10% being in a state of psychosis at any given time. With only 2 full time GP's covering all health issues, 3 full time mental health nurses and only 3 sessions of psychiatric consultation per week – this inadequacy depicts the likely indicative failure of a private provider to meet a priority need.

Hakea is the receiving prison responsible for the initial intake and treatment of prisoners with mental health disorders - and highly prevalent comorbid conditions. Comparing the mental health service and associated cost burden between Hakea and Acacia provides important context. Acacia will not receive any prisoners with critical psychiatric conditions

and associated physical problems, until they have been physically and mentally stabilised through treatment at Hakea. Hakea provides twice the number of psychiatric consults Acacia does, at an entirely different level of severity.

The financial cost and workload involved in remedying acute conditions falls to the public system. This is not dissimilar to the situation in the United States where the most unwell and problematic prisoners are not accepted by private prisons.

Further privatisation within the prison system would create substantial barriers to the successful management of mental illness and addiction among prisoners, and accordingly undermine safety and rehabilitation efforts.

Private providers cannot offer the same service with respect to the following elements that promote rehabilitation:

- Staff experience, knowledge and role modelling
- Contact and interaction with staff
- Safety through adequate staffing levels and experience
- Provision of health services
- Access to drug and alcohol support programs

Where corners are cut on staffing ratios and training, experience is lost in the recruitment of new staff, and access to support programs and healthcare is reduced due to staffing cuts, the outcomes for prisoners and Prison Officers alike are detrimental. Unmanaged mental illness and addiction can lead to a greater number of incidents between prisoners and with Prison Officers, it can also result in greater incidence of self-harm and suicide.

With the benefit of rigorous training and tested policies and procedures, public sector Prison Officers have a wealth of experience which is not matched in the private sector. This experience and knowledge is integral to understanding mental illness and addiction, knowing how to manage the associated behaviours and issues, and having the regular and consistent interactions that help promote rehabilitation through continuity, clear parameters, and the provision of a safe environment.

Research from the United Kingdom surveying the views of prisoners supports this conclusion. Surprising findings comparing attitudes between private and public prisons revealed prisoners preferred the public prison environment because the Prison Officers were more experienced, knowledgeable and mature, understood the appropriate use of power, and were therefore able to provide a safer environment along with more effective mentoring and guidance (Crewe et al 2011).

Having the experience and judgment to manage and discipline prisoners appropriately was found to create a safer environment for both staff and prisoners, but also one in which prisoners felt more able to resist urges to engage in destructive behaviours. This has significant relevance for the many experiencing mental health problems, as safety, security, consistency, guidance, and protection from trauma are fundamental. Many of the same

factors apply to those with alcohol and drug abuse problems, particularly with respect to creating an environment where rules and boundaries are established and appropriately enforced.

In order to achieve the objectives of safe containment and rehabilitation, and to reduce costs by lowering recidivism rates, a strong and well-staffed public prison system with adequate health programs is vital. The prevalence of mental illness and substance dependency within the system undeniably implies a significant workload increase for Prison Officers; ensuring quality of service is maintained also requires ongoing training and sufficient staffing. WAPOU has also long advocated for the establishment of a discrete forensic mental health facility for those prisoners whose needs cannot be met within the existing system; we believe this to be essential.

#### **4. Overcrowding and its impacts on the costs and objectives of the prison system**

The cost of incarceration in Western Australia has grown significantly. However, the context and composition of that increase has not been explored in any meaningful way that might illuminate the rationale for this Inquiry. The costs referred to cannot in fact be fairly examined by the public or other stakeholders, as adequate information is not available to do so.

While it is difficult to analyse the veracity of the costs referred to by the ERA, any increase that may have occurred must be assessed in its potential relationship to overcrowding - and factors such as the ad hoc retro-fitting of facilities beyond their original design capacity. Where retro-fitting occurs, the unplanned nature of these changes may lead to disproportionate staffing increases due to consequent poor design issues.

In the ERA's consideration of the costs associated with overcrowding, it is also important to recognise there may be significant indirect costs arising from the consequent impact on rehabilitation, and reduced potential to avert recidivism.

The overcrowding crisis in West Australian prisons is indivisible from questions of safety and effective service provision - including the promotion of rehabilitation. Overcrowding has deleterious impacts on mental health, addiction cessation, dignity and quality of life.

There are a number of additional cost drivers which are known to be relevant, and certainly increased security risks that must also be given due weight. Cramped conditions, frequent lockdowns, and reduced staff ratios can result in increased incidence of violence, increased costs in workers' compensation due to stress and violence, increased staff turnover and use of personal leave, and increased demand for health services among the cohort. The broad potential for increased costs arising from safety breaches and escapes also cannot be ignored.

Overcrowding poses great detriment to the rehabilitation objective by reducing the capacity for interaction and mentoring by Prison Officers, reducing safety and exposing prisoners and

Prison Officers to increased stress, anxiety and risk, reducing access to education, training, health services and support programs. The consequences of failure in prisoner rehabilitation include the cost of recidivism.

In the recent report on recidivism, the Inspector of Custodial Services states there is a 'serious risk that increasing prisoner numbers without increasing supporting infrastructure and services will trigger a higher rate of return to prison' (OICS 2014:ii).

Placing prisoners in cramped confines where they have no ability to retreat from cell mates who often have significant behavioural, mental, or drug and alcohol related complications is problematic. The inescapable proximity issue is clearly obstructive if an individual is attempting to address drug, alcohol or mental health problems when the prevalence of these issues is so extreme among the cohort, as we know it to be.

References to design capacity have quietly disappeared from publicly available data on prison populations in Western Australia, to be replaced by the euphemism of 'operational capacity', which refers to the number of prisoners capable of being warehoused in a facility once ad hoc modifications have been made to well exceed the original intention. In light of broad agreement on the importance of safety, and the objective of rehabilitation, design capacity must be considered by the ERA in this Inquiry - in preference to the misleading notion of operational capacity.

Overcrowding is often referenced as one of the factors that led to privatisation in the United States. However, the profit motive and incentive to cut costs wherever possible, has frequently resulted in immense problems with overcrowding in private prisons. This has caused major concerns on many fronts including safety, sanitation and hygiene. The risk of accepting overcrowding in prisons is that this will become the norm, with disastrous results. The fact the Department historically published data showing the design capacity against the operational capacity, seemed to at least acknowledge this was not the ideal or recommended scenario. The retreat from this to referring to operational capacity as the only legitimate metric is deeply concerning.

As the ERA itself, and Dr Toner in this submission, have acknowledged that rehabilitation cannot accurately be measured and benchmarked for performance assessment, it is vitally important care be taken in determining how to monitor factors that influence the quality of service and promote rehabilitation - such as staffing ratios and appropriate accommodation.

The costs of the prison system and the explosion in the prison population which has led to overcrowding cannot be considered in isolation from public policy. Mandatory sentencing, legislative changes and parole practices have vast impacts – the profound influence of the Government of the day must be taken into account. Julia Sadbury has commented on the United States' experience that, "the mutually profitable relationship between private corporations and public criminal justice systems enables politicians to mask the enormous cost of their tough on crime policies" (Aviram 2014:23).

The masking of cost, and in fact the masking of a great deal, is one of the disquieting hallmarks of notoriously secretive and guarded private providers. Using arguments around

security and commercial confidentiality, private providers in the prison system are able to evade scrutiny - creating a scenario where the public has no knowledge of a key public service. As Dr Toner has articulated, there is also a high level of secrecy regarding innovation, and a general disincentive towards it. These outcomes would erode a strong system which though not without its flaws, delivers a very valuable service to society.

## **5. Factors Affecting Cost**

WA's prisons are geographically and physically diverse. They were built at different times and to different designs. The difference in design philosophies employed at each prison have disparate consequences for required staffing levels. For example, Acacia is a very modern facility using many new approaches to prison design and with a high utilisation of technology; whilst Eastern Goldfields Regional Prison was built by the Kalgoorlie local Council. Its service delivery is impeded by very poor design and the inability to properly retro fit new technologies. These differences will clearly have a major impact on staffing levels and costs generally.

We know too that attracting staff to some regional prisons has been very challenging for Government. These costs such as Regional Allowances, Incentives or the cost of accommodation, drive up the overall figures for regional prisons – yet are necessary as the required labour cannot be recruited in certain locations such as the Kimberley. This adds a series of justifiable costs associated with the provision of this labour that are specific to Western Australia.

Central to comparing costs is the ability to ensure the data is accurate and reflective of expenditure. It is clear the Department has had difficulty in the provision of accurate data around costings.

### **5.1 Indigenous Incarceration**

With respect to the implication that the cost of incarceration in Western Australia is unjustifiably high due to inefficiency, it is important the rate of indigenous incarceration is taken into account. According to the latest ABS data, Western Australia has the highest Aboriginal and Torres Strait Islander imprisonment rate, the largest decrease in persons serving community service orders, and the third largest number of Aboriginal and Torres Strait Islander persons in community-based corrections.

It is undisputed that these indigenous groups are already grossly overrepresented within the prison system. There are increased cost implications associated with this, including health care, given the chronic health issues prevalent among the indigenous population – and the fact these often go untreated in the community. There is also the case of the purpose-built West Kimberley Regional Prison (WGRP). WGRP was designed to be culturally appropriate and to foster an ethos that recognises the specific needs and differences of indigenous people.



Higher operating costs are associated with this model which represents a progressive investment focused on quality of service and rehabilitation. Research by Edith Cowan University has indicated that for indigenous people incarceration alone is not a deterrent and the reasons for their offending are not effectively being addressed (Fleming et al 2011:6).

Any consideration of privatising WKRP based on an assessment derived purely from 'economic, market and regulatory principles' as a cost cutting exercise, would represent a backwards step of vast proportions and a disastrous blow to the indigenous community. The prospect of such a decision being made demonstrates the lack of logic present in applying these principles to a system that centres on people, and is directed toward social outcomes. WAPOU's position is echoed by the Inspector of Custodial Services, who states in his recent report on recidivism that, "it would be a false economy to drive financial saving in prisons at the cost of strategies related to reducing recidivism" (OICS 2014:ii).

## **6. Privatisation of Prison Services**

Australia now has the highest percentage of prisoners in privately run facilities around the world. Around 19% of prisoners are currently placed in private prisons, which represents a 95% increase over the past 15 years. The prison population in general has tripled since privatisation began in this country.

Given that one of the key aims of the prison system is rehabilitation, there is a glaring conflict of interest for private service providers who will ultimately profit from recidivism, and as such have a vested interest contrary to rehabilitation. Combatting recidivism is key to public safety, which begs the question how privatisation can conceivably be considered a logical or ethical option.

Powerful multinational companies have considerable political and corporate influence. The potential for such companies to use their leverage either directly or indirectly, to influence policy and legislative changes is undeniable. The extensive intersecting of board memberships and investments notoriously facilitates the ability to influence, and to profit, from arm's length with some degree of superficial separation.

As Dr Toner has discussed, in the United States there have been instances in which private prison operators have been found lobbying government for harsh penalties, and against decriminalisation of certain offences. Profiting from crime has very obvious and dubious implications, which are well demonstrated in the Correction Corporation of America's 2010 Annual Report:

'Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in

conviction or parole standards and sentencing practices or through the decriminalisation of certain activities that are currently proscribed by our criminal laws.’ (Mason 2012:12).

The experience of public Prison Officers is of immeasurable value to all the objectives of the prison system – however defined. The illusory merit of privatisation does not take account of the vast institutional knowledge which would be lost. Any potential reduction in staffing costs would be far out-weighed by the consequent loss in terms of human capital, and related costs arising from reductions in safety and quality.

It is also important to remember that when any organisation removes itself from operations by contracting-out, it ultimately loses the requisite knowledge to continue to prescribe the contractual terms. This is particularly relevant to the prison system, as the level of detail needed to ensure safety and service standards are maintained is considerable; and the risks associated with private providers’ mercenary adherence to only the stipulations of the contract are severe.

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