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INQUIRY INTO THE EFFICIENCY AND PERFORMANCE OF WESTERN AUSTRALIAN PRISONS

Thank you for your letter dated 12 November 2014 inviting me to make a submission into the Economic Regulation Authority's (ERA) Inquiry into the Efficiency and Performance of Western Australian Prisons (the Inquiry). The purpose of this submission is to provide you with information in relation to the public sector governance arrangements applicable to the Commissioner for Corrective Services (Commissioner) and his staff which may be of assistance to the Inquiry.

As you will be aware, the *Prisons Act 1981* (Prisons Act) is the primary statute providing for the establishment, management, control and security of the prisons system within Western Australia. While the Minister retains responsibility for the establishment and declaration of prisons under Part II of the Prisons Act, other functions fall largely within the remit of the CEO, the Commissioner, who is charged with responsibility for the management, control and security of prisons and for the welfare and safe custody of all prisoners. The Commissioner is also responsible to the Minister for the proper operation of prisons and is required to notify the Minister concerning any escapes, accidents, serious irregularities or other unusual events which affect the good order or security of prisons.

Although the Prisons Act sets out functions and responsibilities applicable to the CEO, establishment of that office is not specifically provided for under the Prisons Act. Instead, as a department of the public service, creation of the office occurs pursuant to sections 44 and 45 of the *Public Sector Management Act 1994* (PSM Act).

The PSM Act is predicated on a model that emphasises devolved management and responsibility. Section 29 of the PSM Act sets out the functions of CEOs and chief employees, which includes the provision of leadership, strategic direction and a focus on results in the departments or organisations they manage, and to ensure the appropriate deployment and redeployment of resources under their control. Section 29 also empowers CEOs to do all things necessary or convenient in connection with the performance of those functions.

Amendments to the PSM Act in 2010 were aimed at providing CEOs with greater flexibilities in carrying out certain processes under the Act, such as in relation to discipline and recruitment. I note that the Prisons Act was recently amended to adopt the more contemporary disciplinary processes outlined under Part 5 of the PSM Act in relation to prison officers. Loss of confidence powers exercisable by the Commissioner were also introduced, which the second reading speech for the Bill indicates can be utilised in relation to corrupt or disruptive employees.

Importantly, while the PSM Act clearly contemplates the delivery of results, it also emphasises a public sector culture focused on accountability. The duties set out under section 30 of the PSM Act are applicable in this regard, and in addition to performance targets, also require CEOs to comply with Commissioner's instructions, public sector standards, codes of ethics and relevant codes of conduct, as well as the Public Sector Principles provided under Part 2 of the PSM Act. In particular, section 7 sets out the principles relating to public administration and management which are to be observed in and in relation to the public sector, and among other considerations, include that:

- the public sector is to be administered in a manner which emphasises the importance of service to the community
- the public sector is to be structured and organised so as to achieve and maintain operational effectiveness and responsiveness and flexibility, enabling it to adapt quickly and effectively to changes in government policies and priorities.
- public sector bodies are to be structured and administered to enable decisions to be made, and actions taken, without excessive formality and with a minimum of delay
- administrative responsibilities are to be clearly defined and authority is to be delegated sufficiently to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities
- public sector bodies should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in mind
- resources are to be deployed so as to ensure their most efficient and effective use.

In addition to the principles noted above, section 9 provides further principles relating to the conduct of public sector bodies and employees, requiring them to comply with the PSM Act and any other Act governing their conduct and to act with integrity in the performance of official duties. As with the Commissioner, Officers engaged under the Prisons Act or the *Young Offenders Act 1994* form part of the public sector and are

required to comply with these conduct principles. Their conduct is also subject to oversight by the Corruption and Crime Commission.

As part of the public sector, the Commissioner therefore has an obligation to discharge not only the specific functions and responsibilities relevant to the position as set out by the Prisons Act but is also subject to the general functions and responsibilities applicable to all public sector CEOs under the PSM Act.

In my view, it is important to ensure that any initiatives aimed at improving the efficiency and performance of the WA prison system are balanced by effective checks on the powers available, such as those currently provided for in the Prisons Act and PSM Act, to help ensure the good governance of prisons.

I trust that this contextual information is of assistance to the ERA's inquiry. Should you require further information regarding any of the matters I have discussed, please contact Mr Lindsay Warner, Acting Deputy Commissioner Accountability Policy and Performance on 6552 8670 or by email at Lindsay.Warner@psc.wa.gov.au.

Yours sincerely


PUBLIC SECTOR COMMISSIONER