

**Submission to the Economic Regulation Authority  
Western Australia**

**Inquiry into the Efficiency and Performance of  
Western Australian Prisons, Draft Report**

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This submission is divided into 3 sections.

**Section 1** addresses Chapters 2-4 of the report: the overview and scope of the inquiry, the description and assessment of the prisons of Western Australia

**Section 2:** Service Level Agreements and performance benchmarks

**Section 3:** Commissioning and Competition

**Section 1: Overview, scope and assessment**

The report states that it is : “ ***to conduct an independent examination of the Western Australian prison system, with the aim of identifying options to improve its efficiency and performance***”.

The report falls at the first hurdle by failing to examine properly the role of the prison service within the criminal justice system. There are a range of drivers in the system that incur costs and present

organisational challenges. Rather than examining and questioning them, the report tacitly accepts the status quo and attempts to provide solutions by transplanting bureaucratic methods and systems from other jurisdictions where there is no evidence of them having worked.

There are three key drivers of cost to any prison system:

**(1) The size of the prison population**

**(2) The security conditions in which individual prisoners are held**

**(3) The services and interventions that are made available to prisoners.**

Any attempt to address issues of cost and efficiency should examine them in fine detail.

**(1) The prison population:** It is stating the obvious that the more people incarcerated the greater will be the financial costs and pressures on a system aiming to treat prisoners humanely and prepare them for release. Western Australia has some of the world's highest incarceration rates, an elephant in the room which the report should have addressed. The Australian Bureau of Statistics lists the following as of June 2014<sup>1</sup>

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<sup>1</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Main%20Features~Western%20Australia~10019>

***The adult imprisonment rate was 264.6 prisoners per 100,000 adult population, an increase from 255.8 prisoners per 100,000 adult population in 2013.***

***From 30 June 2013, the male imprisonment rate increased from 461.7 to 477.6 prisoners per 100,000 male adult population.***

***The Aboriginal and Torres Strait Islander age standardised imprisonment rate was 18 times the non-indigenous age standardised imprisonment rate (3,013.4 prisoners per 100,000 Aboriginal and Torres Strait Islander adult population compared to 166.6 prisoners per 100,000 adult non-indigenous population)***

The report correctly identifies that key to a rising prison population is recidivism. Western Australia is typical of many jurisdictions internationally where recidivism rates are unacceptably high and attempts to reduce them significantly, failing. The report rightly emphasises the need to address these reoffending rates but ignores the other drivers to high incarceration rates.

There is in almost all jurisdictions a political component driving up the prison population. Political rhetoric can play a big part. Talking 'tough on crime' is seen in many jurisdictions as a vote winner. If it is backed-up with new laws, harsher and mandatory minimum sentences, jails will become ever more over-crowded. Legislative changes are significant but not always necessary to increase the prison population. A high profile offence followed by a media feeding frenzy can have a subliminal effect not just on those sentencing offenders but on those tasked with the authorisation of release. Courts will eschew cheaper community punishments and imprison for longer; parole boards become more risk averse. A

perceived public mood is followed rather than an independent evidence based approach. The report touches on the problem but fails to challenge the origins of it.

ERA report pp19

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

***<sup>25</sup> When Justice Narelle Johnson commenced as Chairperson of the Prisoners Review Board in 2009, parole decreased. Eighty five per cent of eligible prisoners were granted parole in 2007-08 and only 30 per cent in 2009-10. The Board changed again in 2012 when His Honour Judge Robert Cock QC took over as Chairperson. While parole rates have increased slightly, only 36 per cent of eligible prisoners were granted parole in 2013-14. Source: Prisoners Review Board of Western Australia Annual Reports 2007-08 to 2013-14.***

This is not to say that democratically elected governments do not have the authority and responsibility to set penal policy. The problems come when politicians absorb day to day responsibility by reacting to immediate rather than planning for long-term issues. It is worth noting that in Sweden, for example a clear distinction is made. Nils Oberg, Director of the Swedish prison Service said the following in a lecture in England in 2014<sup>2</sup>

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<sup>2</sup> [http://www.longfordtrust.org/lecture\\_details.php?id=18](http://www.longfordtrust.org/lecture_details.php?id=18)

***“It may also be worth pointing out that in Sweden, individual members of government are constitutionally prohibited from interfering with the way we as a public service carry out our work. The government, not a minister, defines our overall goals and the parliament provides the legal framework and the funds we need to do the job. How we carry out our work is, in almost every aspect not regulated by law, entirely up to us.***

***We therefore have a great deal of freedom, both in terms of how we organize ourselves, and the working strategies we develop. More importantly, it provides a clear division of labour between the political level and the public administration. In policy areas where there are strong public opinions, this has proven to be beneficial. For my service, the system secures our ability over time to implement our strategies consistently. In other words, we have the power to stick to the ideas we believe in”***

It is worthy of note that Sweden is currently closing some of its prisons as the prison population reduces significantly.

Another driver in the prison population is the use of remand. The Australian Institute of Criminology has analysed some of the issues<sup>3</sup>

***Remand practices have an impact on the size of prison populations. This impact depends upon the number of remand arrivals and the rate of remand receptions. Irregular flows of remand prisoners, with large variations in their arrival rates, may have a noticeable impact on the size of the total prison population or imprisonment rate at a given point in time.***

***The average length that remand prisoners spend in prison is another factor that affects imprisonment rates.***

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<sup>3</sup> [http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi172.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi172.pdf)

According to the Australian Bureau of Statistics as of June 2014<sup>4</sup>

***Remand prisoners comprised 23% (1,179 prisoners) of the adult prisoner population.***

***The median aggregate sentence length of sentenced prisoners was 2.4 years.***

Although figures are not available it is important to analyse what happens to those remand prisoners and in particular what the conviction rates are. In some jurisdictions conviction rates can be very low implying remand is used as an unofficial punishment rather than to support the legal process and protect the public. It can also be the case that those on remand subsequently receive only very short sentences, are released time served or receive non-custodial sentences. There is also the perverse incentive for individuals to stay on remand rather than seek bail in order to receive essential drug treatment that would be unavailable on the outside as reported in the Western Australian on 18 August <sup>5</sup>

***“Some parents left adult children in jail rather than bail them out because they could not get them into detox programs and saw jails as a safer option”***

***[Former drug counsellor Tabitha Corser said]***

***“The parents of former AFL player Daniel Kerr, who refused to bail him out of jail for five days, are not the only family facing this sort of predicament,” she said.***

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<sup>4</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Main%20Features~Western%20Australia~10019>

<sup>5</sup> <https://au.news.yahoo.com/thewest/wa/a/29283901/more-inmates-seek-jail-detox/>

***“Jail might seem like a hardcore option, but sometimes it’s the only option for families.”***

Given that nearly one quarter of the prison population is on remand at any one time and the numbers have increased over the last decade, it would have been appropriate for the report to question whether remand was being used appropriately.

## **(2) Securitisation - are individual prisoners held in facilities of appropriate security?**

While the actual size of the prison population is the primary driver in prison costs and efficiency the way in which individuals are categorised in terms of security is the second most significant factor. Whatever the security classification system in a jurisdiction there is a direct correlation between the cost of incarceration and the security conditions in which a prisoner is held. High security prisons are expensive while minimum and low security prisons are significantly cheaper to operate. It should be the basic tenet of a prison system that prisoners are held in the lowest most appropriate security conditions for reasons of both cost and decent and humane treatment. The report highlights this fact but fails to develop this vital issue further

pp 24. ***The Office of the Inspector of Custodial Services considers that there is poor alignment between the security rating of prisoners and the available accommodation. For example, there are over 2,500 maximum-security beds for fewer than 1,000 prisoners, while there is an under provision of beds for medium and minimum-security prisoners.***

Such a mismatch is often exacerbated with the establishment of large prisons such as Acacia. Jurisdictions tend to build new prisons with a capacity in excess of 1,000 beds and to at least medium-high security standard on the basis that it gives them 'flexibility'. However this is usually flexibility upwards rather than downwards. It means that if there are insufficient prisoners of the appropriate standard of security then beds will be filled with those of lower security thus incurring unnecessary costs. It is also argued that large prisons can operate on a zonal basis. In other words running parts of a prison within the same security perimeter under different functions. This may involve there being a high secure, 'prison within a prison' with elsewhere a less secure 'open unit'. The reality is that such a facility will operate to the highest common denominator, i.e. to that of those prisoners requiring the greatest level of security, which is frequently the minority with the majority held inappropriately securely.

While the prevention of escapes is vital to the safe running of a prison system and to ensure the public's confidence in it, an over-emphasis on security and high levels of risk aversity can dramatically increase costs and reduce efficiency. Security classification systems should be regularly reviewed to ensure they reflect a modern approach to crime and sentencing. They should also reflect a proper balance between security and control. There is also an irony in that classification systems reflect the physical security of establishments and ignore the key routes of escape namely in transfer between prisons. Prisoners are held in establishments often with all the trappings of modern physical and



technological security systems but move between prisons and court or hospitals in insecure vehicles. This was acknowledged by the prisons inspector Neil Morgan who went on to describe some of the effects of an inappropriate, over-emphasis on security.<sup>6</sup>

***“A report by the Inspector of Custodial Services, Neil Morgan, found the majority of escapes occurred when prisoners were at work camps, courts or being transferred between prisons.***

***There have been 70 escapes since 2008, which Professor Morgan said was reasonable considering every day about 260 prisoners were transported to court, hospital or other facilities.”***

***Professor Morgan is quoted further:***

***“..it would be possible to "harden" prisons to virtually eliminate escapes, but that would elevate other risks such as riots, violence and disorder.***

***"It would also reduce the capacity of the system to achieve its goal of improving community safety, and reducing costs, by reducing recidivism," he said.***

***"It is important not to allow a handful of escapes to lead to the system becoming so risk averse that it compromises its ability to achieve the critical outcome of preparing people for release."***

***He said some "blanket" policies imposed since a spate of escapes in 2013 and 2014 were concerning.***

***"Some of the policies that were developed have created unnecessary costs and operational complexity, and some have created unfairness to prisoners who had shown they did respond to trust," the report said.***

***"For example, prisoners who have been trusted to leave a prison on a daily basis to undertake work in the community, and have ample opportunity to escape if they wish, have required a two-officer escort, in restraints, if they have needed to go to hospital."***

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<sup>6</sup> <http://www.abc.net.au/news/2015-04-07/prisoner-escapes-low-inspector-says/6375310>

The ERA report touches upon the illogicality of high secure escorts of prisoners to hospital after they have been regularly and successfully involved in working-out schemes but fails to develop the issue of over-securitisation as a driver of inefficiency and unnecessary costs.

As Neil Morgan makes clear, reactions to absconds from minimum security facilities, work camps and working out programmes can also skew policies and procedures and drive inefficiencies. There is little research into why such actions are taken by prisoners. The illogicality of a long-term prisoner absconding towards the end of his time in custody with the high likelihood of recapture and subsequent further increased incarceration in high secure conditions is in urgent need of research. Anecdotally absconders cite pressures on them in terms of illicit drug cultures and domestic issues as reasons for absconding. The fleeing of custody per se is rarely mentioned. The implications are that it is the management of the day-to-day regime that is at fault rather than the nature of physical security. The public tend to regard absconds as breaches of security rather than trust and the police always respond by describing absconders as dangerous when an entire prison system, by placing them in such conditions, has established their risk to the public as low.

Where even further additional analysis is needed is around the escape and abscond of indigenous prisoners. Separate figures for security breaches around this group are not available and as Professor Morgan has said the actions of the minority can skew

the policy reactions to the majority. It is likely that figures for and drivers to escape and abscond are very different amongst indigenous prisoners and that policies on prisons housing primarily indigenous prisoners should reflect that fact or unnecessary costs may be incurred.

### **(3) Interventions**

The third key driver to costs and efficiencies in a prison system is interventions, those elements of a prison regime designed to tackle physical and mental health, drug and alcohol addiction, education and training as well as resettlement through family contact, housing and employment on release. Fig 6. p39 of the report illustrates a breakdown of the costs of the Department of Corrective Services. 31% of expenditure is shown as being for supplies and services. It is assumed that this covers the kinds of intervention listed above. However it is vital to know in detail how much is spent in these areas. Such information however is only the first step in understanding how efficient a system is, or is attempting to be. It is common in many jurisdictions across the world for interventions to be menu led. This means that central bodies rather than individual establishments determine what should be provided. This might include certain offending behaviour treatment or different kinds of education and training. However what is provided for prisoners should reflect two things: an identified need; appropriateness and evidence of effectiveness.

Offending behaviour programmes provide a good example of how inefficiencies can be bred into the system. Firstly, as the report

acknowledges on p94 when it describes possible metrics:

***“Participation in clinical intervention programs is a KPI in all prisons, but does not take into account the programs being in accordance with an assessed need”***

The starting point for any intervention or treatment in a prison system should be a comprehensive assessment of prisoner need and such assessments should be regularly repeated to reflect the changing nature of the population. If there is a high incidence of sexually transmitted infections across a population then it makes sense to have comprehensive treatment programs for such issues not least because the vast majority of prisoners go back into society ( we should talk not of prison health, but community health in prison). Likewise for tuberculosis, HIV Aids and other key health issues common to prisoner populations. Efficacy and appropriateness of such interventions rests in long-standing comprehensive, research and testing both nationally and internationally.

Offending behaviour programmes however are more problematic. They are rarely culturally specific or reflect the educational or language levels of the prisoner population. The evidence base is also highly dubious but rarely properly challenged. While there is a better basis for drug and alcohol treatment programmes cultural specificity remains a problem and something which the high rates of indigenous incarceration in Western Australia will exacerbate.

A top-down approach to education can also be inefficient. If a need for basic and key skills is identified, its efficacy should be reviewed

if it is found recidivist prisoners are receiving the repetition of a course which has clearly failed. It is also essential that interventions are integrated, continuous across the prison system and into the community. It is clearly demoralising for prisoners and a waste of money for the taxpayer if a prisoner repeats the same course in two different prisons simply because it is the only one on offer.

In terms of interventions there are also clear issues for benchmarking and commissioning which are dealt with in section 3.

## **Section 2 : Service Level Agreements and performance benchmarks.**

The report lists a number of cogent arguments for the development of SLAs for prisons. Importantly, it also raises some of the very real problems both past and present in setting them up and what should be in a good SLA. It is incumbent on a professional prison service to set out clearly what the role and function of individual prisons are to determine to what extent they are meeting those requirements. It is essential however that such documents are not just inward looking but outward facing. They should not only reflect the needs of the prison system, they should also reflect the needs of the communities they serve and in the context of Western Australia the need for cultural specificity should be a high priority. The process of setting up an SLA should also involve the

Superintendent and his staff and be flexible enough to be amended over time as circumstances and priorities change.

SLAs should not exist simply for their own sake. An SLA should represent a sub-set of an overall integrated plan for the entire prison service and indeed a wider plan for the criminal justice system. It should be set against government priorities and the key drivers to cost and efficiency as set out in the opening section of this submission.

Pp 69 of the report states: “**Service Level Agreements should be informed by robust cost information**” but acknowledges that as such information is not available it should replicate the English and Welsh specification, costing and benchmarking program. The report outlines the essence of the programme which delineated 61 categories with each category having its own sub-set of individual elements, some 14 in the case of services to visitors.

The British Government announced this strategy for achieving efficiencies across the prison estate in November 2012 . A separate benchmark was designated for each type of prison and for each prisoner type. During Phase 1 of the project, the public sector benchmark was applied in full to 50 prisons from October 2013. Phase 2, from March 2014 to April 2015, involved applying and then implementing benchmarks in 51 prisons including the high security estate, women's prisons, open prisons and prisons holding young adults.

In recommending that the Department undertake a similar programme it should have examined the wider implications of doing so. Firstly the programme is highly complex and has taken a number of years to roll out. The programme is still in its final stages of completion so there has been no opportunity to evaluate its effectiveness. There is also no data to show what the process itself cost, how many staff were involved or what the resource implication on the operational component of the prison system was in establishing some of the data. There has been no examination of the accuracy of the data or its relevance across various components of the service. England and Wales has 136 prisons across which there are a number of broad groupings: high secure prisons, local prisons, training prisons and open prisons. However within even these broad groupings there are distinct difference in age, design and geographical location that make cost comparisons across them extremely difficult. That there have been significant cost savings across the service is widely accepted but as the programme is only at the final stages of implementation there is no evidence to say that it is the result of this complex process as opposed to simply the massive cuts in staffing levels that have and continue to cause such grave concern with regard to the safety and effectiveness of the prison system.

A report by the UK House of Commons Justice Committee: Prisons; planning and policies, published in March this year, 2015, states: <sup>7</sup>

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<sup>7</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf>

***The benchmarking process seeks to ensure that public prisons are run in the most efficient way possible, while maintaining safety, decency, security and order. The rationale of benchmarking as a means of reducing public expenditure was widely supported, and we conclude that it is in principle an effective way of reducing expenditure more rapidly than would be possible through prison-by-prison competition.***

***Evidence from HM Inspectorate of Prisons, the Government's own performance data, Independent Monitoring Boards, and the Prisons and Probation Ombudsman all indicate a deterioration in standards of safety and performance across the prison estate over the last two years, [author's emphasis] with fewer opportunities for prisoners to undertake purposeful work or educational activities. The decrease in safety is particularly troubling, with an increase in assaults and self-inflicted deaths. We considered it improbable that there is no link between estate reconfiguration, benchmarking, and changes in operational policy, including the Incentives and Earned Privileges scheme, and the shift in safety across the prison estate. [author's emphasis ] In particular, we conclude that the fall in staffing levels stemming from redundancies and increased turnover, which at their most acute have resulted in severely restricted regimes, are bound to have reduced the consistency of relationships between officers and prisoners, and in turn affected safety.***

The Committee also highlighted specific concerns on behalf of prison officers and the way in which they would be expected to have to work: <sup>8</sup>

***“We heard that under benchmarking prison officers would no longer permanently be assigned to one wing. Instead, they would become ‘troubleshooters’ and would go to wherever a difficulty arose, which could be three different wings on one day, for example. Knowledge of prisoners on the wing is vital in maintaining safety as officers can sense***

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<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf>



***when a prisoner might be prone to violence and can calm them down, or identify signs of self-harming”***

They added further on the effects of implementing benchmarking: <sup>9</sup>

***“We believe that the key explanatory factor for the obvious deterioration in standards over the last year is that a significant number of prisons have been operating at staffing levels below what is necessary to maintain reasonable, safe and rehabilitative regimes. Having fewer prison officers can tip the power balance, leading to less safety and more intimidation and violence on wings”***

Another report into the English and Welsh Prison Service was published in July of this year by Lord Toby Harris: Changing Prisons, Saving Lives

Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds. One of its many damning conclusions was: <sup>10</sup>

***‘In practice, it is clear that young adults in prison are not sufficiently engaged in purposeful activity and their time is not spent in a constructive and valuable way. Current restricted regimes do not even allow for the delivery of planned core day activities that might help with rehabilitation. Our evidence demonstrates that young adults do not have enough activities, such as education or work, which will enable them to live purposeful lives. Additionally, we heard frequent examples of medical and mental health appointments being missed because there are not sufficient staff available to escort the patient. Clearly this is something that needs to be tackled before prisons can start to satisfactorily address the needs of vulnerable young adults. The Review***

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<sup>9</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf>

<sup>10</sup> <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf>

***concluded that overall the experience of living in a prison or a Young Offender's Institution is not conducive to rehabilitation"***

The Harris Review commented further, specifically in relation to Benchmarking, its effect on staff numbers and the consequences for staff-prisoner relationships: <sup>11</sup>

***3.82. When representatives for the IMBs gave evidence to the Review they suggested that benchmarking and the 'Fair and Sustainable' programme were having an impact on all prisoners. They explained that this is because there are fewer officers on the wings and prisoners are spending more time locked in cells, resulting in heightened stress levels and that it also means that there are not enough staff to support young adults and respond to their issues.***

***3.83. The qualitative study that the Harris Review commissioned to get a better understanding of the perspective of staff also reported that staff felt that their capacity to form and sustain high quality staff-prisoner relationships that were needed to support vulnerable young adults had been adversely affected by Benchmarking and the 'New Ways of Working'. However, it was felt that the problem was not just too few staff on wings but that the staff who were present were less effective than they could be because of inconsistent detailing, the use of agency and detached duty staff coupled with low staff morale. Staff felt that they were managing risk more reactively than proactively as a result"***

The third and most authoritative and comprehensive report into the English and Welsh Prison Service was published in July of this year: HM Chief Inspector of Prisons for England and Wales Annual Report 2014–15: <sup>12</sup> He stated:

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<sup>11</sup> <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf>

<sup>12</sup> [https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2015/07/HMIP-AR\\_2014-15\\_TSO\\_Final1.pdf](https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf)

***“Our own assessments about safety were consistent with data that the national offender management service (Noms) itself produced. You were more likely to die in prison than five years ago. More prisoners were murdered, killed themselves, self-harmed and were victims of assaults than five years ago,”***

***“It cannot go on like this. The cost is unsustainable. The profound effects on rehabilitation outcomes are unsustainable.”***

Benchmarking is in essence an attempt to standardise a system which consists of highly complex variables. The prison system in WA is unique in many ways and although small in terms of numbers of prisoners it holds, its complexity is enormous. Many of the 16 prisons could not be more different. It ranges from Cassurina: <sup>13</sup>

***main maximum-security prison for male prisoners providing state-wide services in housing prisoners who are extremely violent, pose a high risk of escape, require a high level of protection (convicted police officers or prison officers), prisoners who are too infirm for mainstream accommodation and those requiring a high level of supervision due to mental health crises.***

to West Kimberley Regional Prison: <sup>14</sup>

***“a new facility (opened in late 2012) that houses male and female prisoners of medium and minimum-security...designed and operated in accordance with a philosophy premised upon Aboriginal culture and values and houses mostly Aboriginal prisoners (typically 90 to 95 per cent of prisoners)”***

And from Pardelup Prison Farm, an 85 bed farm breeding cattle to the privately run purpose built 1400 bed Acacia prison.

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<sup>13</sup> ERA report pp 29

<sup>14</sup> ERA report pp 31

While it might be possible to standardise some components across two or three of WA prisons it would be better to concentrate on the uniqueness of each establishment, to manage and monitor it accordingly with a view to developing the positive elements that make it so.

There is a real danger that needs to be examined and researched; namely that benchmarking not only generates a whole new bureaucracy of its own but that the costs of it do not feature in any financial analysis. There is a further danger that it develops and promotes the mediocre rather than develop the exceptional. There is certainly no evidence of the transfer of best practice in such an approach rather a culture of self-protection in the world of tick-box and league table comparison.

The concept of the 'weighting' of scores in the process is highly subjective and with no scientific basis. There is no research to suggest it improves safety, security or rehabilitation. It emphasises outputs rather than outcomes and is susceptible to corrupt influences.

An examination of any one of the suggested metrics can reveal the pitfalls. Random drug testing for example does not test for legal highs, is highly susceptible to corruption and can result in a switch to the use of drugs such as heroin that do not remain in the system for long in favour of less harmful drugs such as cannabis which stay in the system for 14 days. There is no evidence to suggest that random drug testing is a true measure of drug use and harm in a prison setting although it is regularly used a tool for such. True measures of illicit drug use are important but need to be

underpinned by a range of measures including many outside of the influence of the establishment itself such as a comprehensive anti-corruption policy encompassing the tackling of serious and organised crime in prisons.

The one metric mentioned that does have a sound statistical and evidence base is MQPL, the measurement of the quality of prisoner life and its equivalent for prison staff. The report is dismissive of it as something which should be regularly monitored:<sup>15</sup>

***“The survey is time consuming and resource intensive, requiring a team of researchers to enter a prison and then assess their findings. Thus, if it is included, it may not be reasonable to conduct it for every period. Due to the resource intensive nature of the survey, this would likely be a periodic indicator (that is, it would not be measured every period)”***

The report fails to appreciate that MQPL is an exceptionally good tool for comparing prisons, components within prisons and all of them over time. It seems incongruous not to regularly, analytically and strategically seek the views of those incarcerated and those who look after them.

The examination of the concept of benchmarking also fails to examine the role of the Office of Inspector of Custodial Services in assessing the efficiency and performance of Western Australian Prisons. The OICS describes itself accordingly: <sup>16</sup> [with author’s emphasis]

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<sup>15</sup> ERA report pp 96

<sup>16</sup> [http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912222ab0f527946ed0218948257d6300111e57/\\$file/2222.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912222ab0f527946ed0218948257d6300111e57/$file/2222.pdf)

***The Office is an independent statutory body with a strong focus on performance standards in custodial facilities and the rights of staff and people in detention. It reports to Parliament, providing a high level of transparency and accountability.***

***The Office's responsibilities include:***

- Inspecting adult custodial facilities, juvenile detention centres, court custody centres and custodial transport services.***
- Conducting reviews of specific aspects of a custodial service or a specific custodial experience of individuals or groups.***
- Managing the Independent Visitors Scheme.***
- Carrying out thematic reviews of system-wide prison services.***

***Purpose and Mission***

***The Office aims to contribute directly and indirectly to:***

- Improving public confidence in the justice system;***
- Reducing re-offending in Western Australia, and***
- Ensuring the justice system provides value for money.***

The implication of the report is that the OICS remain in its current form as a completely independent body with a new benchmarking process being added to the performance management of prisons as an 'in-house' process. It is necessary for the report to explain such a rationale which has not only additional costs but places additional burden on prison staff as establishments seek to shine or defend themselves to two 'auditors'. The issues exists in the UK where the rationale has also not been examined. Both Her Majesty's Inspectorate of Prisons (HMCIP) and the National Offender Management Service (NOMS ) have their own

performance scoring system. The NOMS has its PRS: (prison rating system) which it describes as follows: <sup>17</sup>

***The Key Performance Areas in the PRS***

***1. The four key areas that the PRS looks at in rating prison performance are:***

***☒ Public Protection***

***☒ Reducing Re-offending***

***☒ Decency***

***☒ Resource Management and Operational Effectiveness***

***2. The four performance areas above are referred to as the 'Domains'.***

***3. The four key Domains are broken down into 'Drivers', which are shown in figure 2 below. The performance of each domain is driven by the performance of its drivers.***

***4. In order to determine performance against these Drivers, the Drivers are further broken down to a series of 'Measures'. The performance for each measure is directly measurable.***

***5. The domain, driver and measure relationship can be thought of as a performance tree. Figure 3 shows how measure performance directly feeds back into the overall domain performance.***

HMCIP has a different approach. For many years it avoided a numerical system but now after each full prison inspection it scores prisons 1-5 accordingly: <sup>18</sup>

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<sup>17</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218344/prison-rating-system-technical-note.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218344/prison-rating-system-technical-note.pdf)

<sup>18</sup> <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/1.-INSPECTION-FRAMEWORK-April-2014-02.pdf>

## **Definition**

### **4 Outcomes for prisoners are good.**

***There is no evidence that outcomes for detainees are being adversely affected in any significant areas.***

### **3 Outcomes for prisoners are reasonably good.**

***There is evidence of adverse outcomes for detainees in only a small number of areas. For the majority there are no significant concerns.***

### **2 Outcomes for prisoners are not sufficiently good.**

***There is evidence that outcomes for detainees are being adversely affected in many areas or particularly in those areas of greatest importance to the well being of detainees. Problems/concerns, if left unattended, are likely to become areas of serious concern.***

### **1 Outcomes for prisoners are poor.**

***There is evidence that the outcomes for detainees are seriously affected by current practice. There is a failure to ensure even adequate treatment of and/or conditions for detainees. Immediate remedial action is required.***

In addition HMCIP in England and Wales has embraced OPCAT ( Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ), as well as the National Preventative Mechanism (NPM).It states: <sup>19</sup>

***The UK is a party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2003. OPCAT is an international human rights treaty designed to strengthen the protection of persons deprived of their liberty. Acknowledging that such persons are particularly vulnerable to ill-treatment and believing that efforts to end ill-treatment should focus on prevention, OPCAT provides for a system***

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<sup>19</sup> <http://www.justiceinspectores.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/1.-INSPECTION-FRAMEWORK-April-2014-02.pdf>



*of international and national visits to all places of detention. At a national level, OPCAT requires state parties to:*

*‘set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture, inhuman or degrading treatment or punishment... These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment’.*

*These visiting bodies are known as the National Preventative Mechanism (NPM). Unusually, the UK has designated 20 bodies as its NPM. HM Inspectorate of Prisons coordinates the UK NPM.*

*At a minimum, OPCAT requires that NPMs:*

*are functionally independent with independent personnel*

*have sufficient expertise, a gender balance and adequate representation of ethnic and other minorities*

*are provided with the necessary resources and have the powers to:*

*regularly examine the treatment of persons deprived of their liberty in places of detention*

*make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detainees (the State is required to examine such recommendations and enter into dialogue with the NPM with regard to implementation)*

## *2. Operating context*

*submit proposals and observations concerning existing or draft legislation*

*access all information concerning the number, location and treatment of all persons deprived of their liberty*

*access all places of detention*

*have private interviews with all persons deprived of their liberty as well as any other*

*person who may supply relevant information*

*choose the places they want to visit and the persons they want to interview*

*contact the Subcommittee on Prevention of Torture (the international body established by OPCAT to carry out visits to places of detention and to engage with NPMs)*

*have information collected by it regarded as privileged.*

OPCAT and the NPM are important, internationally recognised systems, processes and amalgamation of relevant bodies specifically tasked with measuring the performance of prisons. Clearly they place primary emphasis on human rights and the treatment of and conditions for, prisoners. Financial components are implicit rather than explicit. The Australian Human Rights Commission outlines Australia's position on the matter: <sup>20</sup>

***“Australia is a party to the CAT. The Australian Government signed the OPCAT on 19 May 2009, but has not yet ratified the agreement.***

***In signing the OPCAT, the Australian Government has taken a significant step towards establishing greater oversight and inspection of its places of detention. Once Australia ratifies the OPCAT and becomes a full party, it will be required to establish a National Preventive Mechanism – a national system of inspections of all places of detention.***

***In May 2009, when announcing that Australia had signed the OPCAT, the federal Attorney-General, Robert McClelland, noted that a National Preventive Mechanism would be established in consultation with the states and territories. The Commission understands that a proposal for ratifying the OPCAT is under consideration by the Australian***

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<sup>20</sup> <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/optional-protocol-convention-against-torture-opcat>

***Government, and consultations are continuing with the states and territories on necessary steps to implement the obligations under OPCAT.***

***On 28 February 2012, OPCAT was tabled in the Commonwealth Parliament. The treaty was referred to the Joint Standing Committee on Treaties for consideration. The Commission made a submission to the Committee recommending that the Australian Government should ratify OPCAT and work promptly towards its full implementation in Australia. On 21 June, the Committee tabled its report which supported OPCAT and recommended that binding treaty action be taken”***

There is clearly a danger that prison superintendents and their staff may be inundated by measures of performance, scoring systems and all under the umbrella of saving money, reducing reoffending and protecting human rights as part of the nation’s international commitments. It is not an easy circle to square but it is complex issue which a report such as this needs to pay considerable attention to. There is a real risk that Superintendents and their staff spend all their time being measured and not dealing with prisoners. It has been said that inspectors and auditors are the equivalent of persons coming onto the battlefield to bayonet the wounded. There is much in the ERA report to support such a view.

### ***(3) Commissioning and competition***

The report argues that there are four main benefits to competition within the system: choice; better quality; innovation; reduced cost. There is no evidence internationally to prove the benefits of any of

these components and consideration of one key component: the transfer of risk, is ignored completely.

**Choice:** the introduction of choice is one of the underlying principles behind the introduction of competition. The idea is that the purchaser ( the Government ) will be inundated by a range of 'providers' across the private and charitable sectors, bidding to supply prisons with its full range of goods and services. However international evidence suggests that one of the key drivers in the process is economies of scale. 'Purchasers' in an attempt to drive down price tend to make contracts as large as possible. So for example instead of providing education to one prison the contract brings together education in all, or clusters of prisons. Even where the competition involves a whole prison, plans have developed to involve the clustering of prisons either on adjacent sites or where there is a degree of co-terminosity in terms of either function or geography. If there is a contract to build a new prison then the emphasis will be on building one as large as possible. In the UK they have been christened 'Titan' prisons and one is planned in Wales to hold over 2,500 prisoners. Arguments for such behemoths of incarceration focus on reduced unit costs of imprisonment and having flexibility of function within the perimeter. These arguments are addressed in section 1.

The net result is the compilation of large, multi-million dollar contracts that rule out all but the largest players in the market. The problem becomes compounded as the larger and more complex the contract the greater will be the costs of actually tendering for

the work. Estimates in the UK for the costs of tendering for either whole prison or clustered prison contracts run into millions of pounds. Precise costs are kept behind the curtain of commercial confidentiality.

Attempts have been made by Government in the UK to increase the participation in prison contracts of smaller, charitable organisations by devising contracts that consist of tiered consortia. In the recent competitive tendering for the newly restructured probation service, contracts for the new CRCs ( Community Rehabilitation Companies ) involved 3 tiers of providers: Tier 1: large multi-national companies ; Tier 2: larger national service providers of such things as education and drug services. These may be charities or stand-alone companies; Tier 3: smaller, local, charitable organisations. The new CRCs have only just come into existence and have yet to be evaluated. The service has been rolled out nationally in one hit and has never been trialled elsewhere. It is in the eyes of many, a multi-billion pound programme based on ideology rather than evidence.

The UK probation competition is however based on an earlier 'Work Programme' designed to support the unemployed back to work. It has faced fierce criticism and has been charged with driving smaller charities to the wall. The BBC in an investigation reported a number of concerns: <sup>21</sup>

***“Several charities that have closed in recent months believe a government work scheme is partly to blame for their demise, a BBC investigation has found.***

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<sup>21</sup> <http://www.bbc.co.uk/news/uk-19822669>

***The Work Programme makes payments to organisations which help the long-term unemployed find a job.***

***But some charities said it had created severe cash flow problems for them.***

***In a survey released on Thursday by the National Council of Voluntary Organisations (NCVO), almost three quarters of respondents said their Work Programme contract was unsustainable. And nearly half said their contract could fail within six months.***

***"They think it's a walking disaster," said Sir Stuart Etherington, chief executive of the NCVO.***

***"I've heard no positive feedback from voluntary organisations. Some have gone bust, some have withdrawn from the programme. They have a real problem with the way the contracts are structured."***

***The programme is run on behalf of the government by 18 prime contractors, usually large private companies"***

***It is not only charities that are struggling.***

***The local council in Barnsley is a Work Programme sub-contractor - but probably not for much longer, said council leader Steve Houghton.***

***"We are simply not getting the numbers through on the Work Programme to make our contract viable, and it's getting to the point where we think we can no longer maintain that contract," he said. Other organisations have already decided to pull out of the programme. St Mungo's, the largest homelessness charity in London, withdrew in April. Not a single person was referred to them by the main contractors - a situation St Mungo's chief executive Charles Fraser finds incredible.***

Many have argued that such competition places an emphasis on price rather than quality and large multi-nationals have been accused of using 'loss leader' tactics to gain market share, drive

competitors out and increase costs as they move towards monopoly provision.

It can also be argued that such large contracts drive out the involvement of local providers and that the value of through-the-gate provision of services is lost. Education in all London Prisons for example is now delivered by Manchester College, the equivalent of education services in Western Australian prisons being provided by a Sydney based college.

Another component of choice lost in the UK is in the involvement of Charitable Trusts and Foundations. There are number of endowed charities in the UK that have funded as part of the requirements of their legacy a range of prison interventions to support the social welfare components of the Trusts. They have a history of supporting innovative projects which would otherwise have been ignored. They are also supportive of local delivery and the involvement of communities. Such endowed charities however cannot and will not, subsidise commercial government contracts and this has been a further factor in the removal of a range of smaller providers in the process.

Yet another factor which militates against choice is the 'revolving door of knowledge'. There is considerable evidence to show that Government employees involved in the setting, letting and managing of contracts and key components of the choice process are recruited to the large multi-nationals bidding for them who can afford tempting remuneration packages. This is true not only of prisons but of the wider government procurement sector not least in the UK in defence contracting. While most sensible

governments will have policies in place to prevent or place restrictions on government knowledge and expertise effectively going to potential providers those safeguards are never more than nugatory. Defence contracting in the UK has received particular criticism <sup>22</sup>

***“Senior military officers and Ministry of Defence officials have taken up more than 3,500 jobs in arms companies over the past 16 years, according to figures that reveal the extent of the "revolving door" between the public and private sector.***

***The data, compiled by the Guardian from freedom of information requests, shows how the industry swoops on former officials and military personnel once they have left service, with hundreds of senior officers being given jobs every year.***

***The figures for 2011-12 show 231 jobs went to former officials and military personnel – a rise from the previous year's total of 101. Another 93 have been approved since January. In total 3,572 jobs have been approved since 1996”***

**Quality:** ensuring high quality service provision is paramount. It is however simplistic to suggest that competition is a miraculous component. It is right and proper that the quality of service should be measured whoever the provider and whatever the size of the contract. Getting it right involves accurately setting the initial contract ensuring that data on need has been gathered, budgets have been considered and affordability and departmental priorities fully explored. That contract then needs to be let out to tender with a whole range of complex legal and financial risks accounted for.

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<sup>22</sup> <http://www.theguardian.com/uk/2012/oct/15/mod-military-arms-firms>



Even then, when a contract is finally awarded there needs to be careful management of its delivery. A high level of competence, experience and length of tenure in the role by government employees is therefore needed not least because such competences are inherent in successful multinational organisations. It is not pejorative to suggest that in any contractual relationship, the purchaser will want the most for least and the provider the reverse. It is for the competition process to ensure that government gets a good service and the provider makes a reasonable profit, if indeed the concept of profit within a criminal justice system is accepted.

It is necessary to examine, when developing a commissioning model, whether or not those skills exist. In January 2013 in a BBC radio interview, Lord Gus O'Donnel, former head of the UK Civil Service admitted that civil servants lacked skills in commissioning and procurement. Any government department anywhere across the world undertaking such a commitment in terms of service delivery should ensure a comprehensive skills audit of its staff charged with the task is undertaken before doing so. Without careful control of the process there can be catastrophic results. Controversy still exists in the UK around tagging contracts issued to G4S and SERCO. The BBC reported as follows:<sup>23</sup>

***Private security firms G4S and Serco have been stripped of responsibility for tagging criminals in the UK.***

***It follows allegations they charged the government for tagging people who were either dead or in jail.***

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<sup>23</sup> <http://www.bbc.co.uk/news/uk-25348086>

***Ashley Almanza, chief executive of G4S told a committee of MPs last month his company had failed to "tell the difference between right and wrong" when dealing with the contracts.***

***Serco chairman Alistair Lyons said it was "ethically wrong" to overcharge the government.***

***In summer, the MoJ revealed that the private security firms had overcharged the government by "tens of millions of pounds". The figure emerged following an audit by accountants PricewaterhouseCoopers. It found that overcharging began at least as early as 2005 when the current contracts began.***

***The Serious Fraud Office has launched an investigation and both firms have said they are "co-operating fully".***

The matter did not however end there: in a recent Guardian report:

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***"The Ministry of Justice is still paying security firms G4S and Serco millions of pounds every month for supplying electronic tagging equipment, more than a year after both companies were barred from running the contract.***

***Both companies faced criminal investigations by the Serious Fraud Office over allegations of overcharging that led to them repaying nearly £180m.***

***The continuing monthly payments to the two companies were uncovered by an analysis of Ministry of Justice (MoJ) data by the Centre for Crime and Justice Studies which shows that G4S was paid a total of £8.7m between March 2014 – when it lost the tagging contract – and February 2015. Serco was paid £4.5m over the same period"***

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<sup>24</sup> <http://www.theguardian.com/society/2015/jun/25/government-still-paying-g4s-and-serco-millions-for-tagging-despite-ban>

In the ongoing controversy much has been made of allegations of impropriety by G4S and SERCO but much less has been said about government officials' competency in the day-to-day management of the contract to ensure government money was not paid for tagging dead prisoners.

The problem has not been confined to the UK. New Zealand has had its own problems: <sup>25</sup>

***The operator of Mt Eden Corrections Facility, Serco, has been fined \$300,000 over its private prison operation in New Zealand.***

***Serco has been officially put on notice by the Corrections Minister over concerns about safety and security at the remand prison.***

***And it's not guaranteed to have its contract renewed either.***

***Under questioning in the House by Green MP David Clendon this afternoon, the minister Peta Simons said in the 2014/2015 financial year, the company had been fined a \$300,000 performance-related fee.***

***"Some of the incidents include insufficient staff levels, mixing accused prisoners with other prisoners, minimum entitlements and incident notification," Mr Simons said.<sup>26</sup>***

How quality is achieved is highly complex and based more on local conditions than national ideology. Ironically in the UK a recent independent report highlighted that smaller charitable

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<sup>25</sup> <http://www.3news.co.nz/nznews/minister-puts-serco-on-notice-over-prison-2015072314#axzz3j4wlbiii>

<sup>26</sup> <http://www.3news.co.nz/nznews/minister-puts-serco-on-notice-over-prison-2015072314#axzz3ghZaRt5m>

organisations which are increasingly forced to of the process do show evidence of being more effective.

A recent report in the UK: “Data – charities and working with offenders”, examined the preliminary findings of the Justice Data Lab, a pilot project set up in 2013 by the Ministry of Justice to support the evaluation of rehabilitation programmes in England and Wales. The MoJ pilot examined 125 interventions – involving 24,665 prisoners – from charities, private contractors, public bodies, or educational institutions against control groups to show reoffending levels in the first year after an ex-offender’s release. Analysis in the NPC report shows projects run by charities did 9% better than those run by private companies <sup>27</sup>

It is also necessary to examine what might happen when quality is such that a provider is required to relinquish the contract, in other words the company placed in default. It is also necessary to examine what might happen when a company finds the contract unprofitable and either walks away or goes bankrupt ( see section on risk transfer ). There can be considerable financial cost and serious disruption to services if such problems occur. Bringing in an alternative provider may be difficult, take some time and require considerable resource input from Government which is rarely accounted for.

A less high profile but regular occurrence when providers change is in the re-tendering process. All contracts will have a finite life. It

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<sup>27</sup> <http://www.thinknpc.org/publications/under-the-microscope/>

may be three years in the UK in terms of an education or drug services contract or it may be 25 years in the case of a whole prison, design, construct, manage and finance contract. Governments are loathe to interfere with high value long-term contracts because the logistics and politics are more complex and the corporate memory of government employees relatively short. Evidence in the UK with such contracts is that they are rarely revised or even provision for such action built in. This makes no sense when the criminal justice environment changes so rapidly. With shorter contracts, considerable time, money and emotion is spent on the process, be that bedding in as a new supplier or getting ready to compete in the re-tendering process. Some practitioners complain that no sooner is a new contract let than energy goes into preparing for the re-tendering. The impact on employees at the ground level dealing with clients/prisoners can be profound. Instead of concentrating on the very difficult job in hand it is only natural for them to worry not only who their employer will be but also whether or not they will have a job at all as every re-tender demands ever more staff reductions and cost-cutting. High percentages of workforces in such a competitive environment have been shown not to have ever applied to join their current employer but to be in their employ merely because of contract and staff transfer after a re-tendering process. There is little doubt that this will have an impact on the quality of delivery of the service.

**Innovation:** Innovation is the holy grail of any prison system. The report makes much of technological innovation at Acacia Prison. It should be the fundamental requirement of any new prison that technological innovation be built in at the design and construct stages. It is debatable however just how innovative some new prisons have been given such a low base in many jurisdictions and particularly when comparisons are drawn to the outside world especially in the context of education, employment and outside contact. On-line learning, employment in a modern environment and communication with families over the internet are obvious innovations that scare public and private providers alike. This is not to say that terrorists and serial killers should have their own web sites but it is to say for example that prisoners on short sentences or coming to the end of long sentences, in very remote rural communities should not be able to have 'Skype visits'. And where families themselves might not possess such technology the prison system works with local communities to provide them in convenient, community settings. Language and culture in WA present particular problems and the State has shown innovation in culturally specific areas. West Kimberley Regional Prison demonstrates such a development: ERA report pp 31

***“West Kimberley is a new facility (opened in late 2012) that houses male and female prisoners of medium and minimum-security. West Kimberley is designed and operated in accordance with a philosophy premised upon Aboriginal culture and values and houses mostly Aboriginal prisoners (typically 90 to 95 per cent of prisoners).”***

It can be argued that better drivers to innovation come locally, emanate from state-sponsored research and a policy of seeking and rolling out best practice. Key to such processes will be Superintendents and prison officers who can be easily ignored when it comes to innovation. Within a Superintendent and his staff are years of practical experience and local knowledge. Harnessing that knowledge could prove far more fruitful than leaving things to competition. Improved training will also be a key component as it provides an environment for innovation by valuing staff and allowing them to reach their full potential.

Great concern over the evolving role of prison governors (Superintendents) in the new environment of competition, specification and benchmarking was expressed by the UK's Justice Select Committee in its recent report into prison policy and planning.<sup>28</sup>

***“Prison governors in public sector prisons and some private sector prisons are no longer responsible for the sum total of everything that happens within their prison walls. There is a risk that the proliferation of partner organisations providing services to prisons could distract prison management teams from their core role. They are also constrained in their operational decisions when decisions are taken from the centre”***

**Costs:** that competition reduces costs is a typical clarion call of the advocates for it. However a full and transparent analysis of costs

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<sup>28</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf>

where competition has been implemented in a prison setting has yet to be carried out. ERA Report pp140:

***“Reduced costs – Between 2009 and 2011, the National Offender Management Service in the United Kingdom ran a competitive process for the right to operate four prisons, three established and one new build, with the public sector successfully tendering for one of the established prisons. The result of this competitive process is that the National Offender Management Service EXPECTS [author’s emphasis] the combined operational costs of the three established prisons to fall by 16 per cent (£200 million, approximately AUD \$400 million) over the life of the contracts “***

Much of the information of costs, profit and loss between governments and commercial providers is shielded by commercial confidentiality and it is likely to remain so. It is necessary however for the ERA report to examine more closely, some of the associated costs in the delivery of services. This report has already examined the unintended consequences of smaller providers being forced out of the market place and the potential for monopolies or oligopolies to develop: much more research is needed. Again as already examined in this report, is the financial and human costs of the process itself. In the UK the cost of pension provision has proved problematic as have the costs of redundancy and voluntary early retirement not to mention the costs of re-recruitment when staffing numbers have to be recalculated. There is also clear evidence in the UK that in the process of marketisation of the probation service, it is the government that has funded the early retirement of experienced probation officers



with the new Community Rehabilitation Companies replacing them with less experienced, less well-trained trained and poorly paid workers. This is likely to have serious consequence for the quality of their their work with offenders. Some professionals in the probation sector anticipate that there will be a default to custody by offender licences being breached in the case of more problematic offenders being monitored by poorly qualified, inexperienced staff. This will have a direct result on overall prison numbers and the consequent cost to the public purse.

It is argued that costs can be reduced through competition by encouraging prisons to be entrepreneurial and generate income. It is appropriate that prisoners should be employed with real work, real wages and with that the responsibility of paying taxes and towards the living costs of themselves and their families. It also has the benefit of allowing individuals to save for release and therefore depend less on the public purse. It is also vital that employment in prison provides education, training and above all transferable skills. In any such process there obviously needs to be careful consideration to employment and remuneration opportunities for the members of the community who are not incarcerated.

Yet again however, there is little evidence to suggest that competition has provided such opportunities. In some extremes the reverse has been demonstrated and accusations of exploitation made. The Centre for Research on Globalisation has reported: <sup>29</sup>

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<sup>29</sup> <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>

***Human rights organizations, as well as political and social ones, are condemning what they are calling a new form of inhumane exploitation in the United States, where they say a prison population of up to 2 million – mostly Black and Hispanic – are working for various industries for a pittance. For the tycoons who have invested in the prison industry, it has been like finding a pot of gold. They don't have to worry about strikes or paying unemployment insurance, vacations or comp time. All of their workers are full-time, and never arrive late or are absent because of family problems; moreover, if they don't like the pay of 25 cents an hour and refuse to work, they are locked up in isolation cells.***

***“The private contracting of prisoners for work fosters incentives to lock people up. Prisons depend on this income. Corporate stockholders who make money off prisoners' work lobby for longer sentences, in order to expand their workforce. The system feeds itself,” says a study by the Progressive Labor Party, which accuses the prison industry of being “an imitation of Nazi Germany with respect to forced slave labor and concentration camps.”***

There are alternatives to globalisation and marketisation and they centre around institutions themselves where Superintendents and their staff have the skills, competencies and support to generate income in partnership with communities and for the benefit of the taxpayer rather than the shareholder. Reducing reoffending is explicit in the process rather than company profit.

The costs of a prison system cannot be ignored and reducing them is a national imperative. As the beginning of this report demonstrated the starting point should be the basic principles of numbers, security and interventions. Other components play a part

but they must be dealt with strategically as part of wider national objectives.

**The transfer of risk:** with competition and marketisation should also come the transfer of risk to the provider. If a government purchases goods or services for a prison system the profits of supplying them rightly go to the provider. However the costs to the government of a failure to supply should be fully met by the provider. This should be inherent in the contract as well as to the evaluation of any tender for services. The question must be asked as to the financial backing and probity of an organisation. With competition comes an inevitable desire to drive down price, bringing with it the question of how viable a contract actually is. A company may bid low to get the work and increase its share of the market but the question of whether it can deliver at a particular price for the full term of the contract must be fully evaluated.

In a worse-case scenario, a fully privatised prison could be burned to the ground in a disturbance. This will incur not only the costs of rebuilding the prison but the associated costs of dealing with the original disturbance. There will be substantial costs involving prison, police and community resources such as health, but also the temporary housing of the prison population while the facility is rebuilt. In a true competitive setting the government should receive full cost recovery with the entire financial burden placed on the supplier. It is highly unlikely that insurance companies would provide such cover and there is no evidence internationally that they do.

There is evidence however that international companies can offset their risk by the provision of SPVs: Special Purpose Vehicles.

They are also referred to as a "bankruptcy-remote entity" whose operations are limited to the acquisition and financing of specific assets. The SPV is usually a subsidiary company with an asset/liability structure and legal status that makes its obligations secure even if the parent company goes bankrupt.

A corporation can use such a vehicle to finance a large project without putting the entire firm at risk. They can also be a way of hiding corporate debt and hiding the true costs of competition.

When things go wrong the results can be devastating and have a very high economic and social consequence.

## **Conclusion**

All prison systems need careful and regular scrutiny to examine not only whether they are efficient and economic but also whether they are fair, just and protect the communities that fund them and that they are there to protect.

Any such analysis needs to be balanced and above all begin by asking it who it incarcerates and why. A failure to do so ignores the one primary driver of prison costs and efficiency: prison numbers. Having systems in place to determine what is provided, by whom and to what quality, is also essential. But the world of prisons is ever more complex with constant friction between government policy, financial imperative and the upholding of human rights in a fair and just society.

There are no easy solutions and one size does not fit all. A simple managerial solution will not suffice. Prisons are the 'people business' and there are many players on the field with competing priorities. Future success depends on strategies to bring them all together for the benefit of wider society rather than any individual component. It is vital not to seek a magic bullet or quick fix and ignore the many fundamental issues that are at the very heart of the problem.

John Podmore

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