

**PRODUCTIVITY COMMISSION INQUIRY INTO
INTRODUCING COMPETITION AND
INFORMED USER CHOICE INTO HUMAN
SERVICES**

**WESTERN AUSTRALIAN PRISON OFFICERS'
UNION OF WORKERS SUBMISSION TO THE
PRODUCTIVITY COMMISSION**

The Western Australian Prison Officers' Union of Workers (WAPOU) welcomes the opportunity to make submissions to the Productivity Commission's Inquiry into introducing competition and informed user choice into human services. Over the last two years WAPOU has engaged in rigorous research into competition and privatisation in the prison system – in both domestic and international contexts. We will present an overview of the findings of that research as directly relevant to the purview of this Inquiry. Part of that research centred on responding to the Economic Regulation Authority (ERA) Inquiry into the Efficiency and Performance of Western Australian Prisons. The Inquiry ultimately recommended further competition be introduced to the system through commissioning, and efficiencies and standardisation be achieved through benchmarking. WAPOU made numerous submissions to the Inquiry – alongside submissions from Dr Phil Toner of the University of Sydney.

Given early indications the ERA was looking at the United Kingdom system as a model for commissioning and benchmarking, a significant element of WAPOU's work in this area has been research conducted on the ground in the UK. This research was conducted in consultation with the key stakeholders at the highest levels, including senior figures from the National Offender Management Service, the Prison Officers' Association of the UK, Professor Alison Liebling of Cambridge University's Prisons Research Centre, then Chief Inspector of Her Majesty's Prisons Nick Hardwick, Shadow Justice Minister Jo Stevens, The Prison Reform Trust, The Howard League, Professor John Podmore, and Lord Toby Harris.

The introduction of the reform strategies of benchmarking and commissioning that failed in the UK, was a recommendation never substantiated by the ERA or supported by evidence. As WAPOU has argued the evidence from the UK demonstrates the introduction of further competition through commissioning has had disastrous results. These results are inseparable from the implementation of benchmarking that occurred as a direct result of the pressures of competition, and has contributed to dangerously low staffing levels.

Last year three authoritative reports were released in the UK that not only painted a picture of a dangerous prison system spiralling out of control, but also made the link between increased competition and that outcome clear. Those reports were Her Majesty's Chief Inspector of Prisons Annual Report 2014-2015, the Ninth Report of the House of Commons Justice Committee 2014-15, and The Harris Review – the Independent Review into Self-inflicted Deaths in Custody of 18-24 years olds, conducted by Lord Toby Harris.

Commissioning and benchmarking were introduced into the UK prison system in an effort to obtain public sector efficiencies, and in the minds of some to drive improvements in quality and innovation – though sadly only the reverse has resulted. The state of the UK system demonstrates how competition can fail to produce the text book results promised by perfect market conditions, which do not exist in practicality. Basing prison policy on theory alone amounts to gambling with the welfare and safety of staff, prisoners, and the community. The Productivity Commission’s undertaking to assess international and domestic examples of public services exposed to competition is welcomed. Based on irrefutable evidence from numerous authorities, we encourage the Commission to closely consider the UK experience as a cautionary tale against increased competition.

Over recent years UK prison statistics have shown the levels of violence, self-harm, suicide, assault and homicide have been escalating at an alarming rate. The most recent figures indicate the already shocking increases on all measures are worsening rapidly. The Ministry of Justice (MoJ) has published figures for the 12 months ending June 2016, showing deaths in custody across England and Wales have increased 30 percent on the previous year, self-inflicted deaths rose 28 percent, the suicide rate amongst women has risen significantly – with women making up less than 5 percent of the population yet 10 percent of self-inflicted deaths, self-harm incidents have risen by 27 percent, and the number of assaults on prison staff has increased 40 percent. These are on top of already high increases in previous years. In addition the MoJ has named six prisons in England and Wales whose overall performance is deemed to be of ‘serious concern’, with the number of prisons awarded the worst possible rating doubling since last year.

The introduction of commissioning in the UK prison system had several consequences that may be clearly linked to the current state of crisis. The threat of selective privatisation through commissioning was theoretically intended to result in greater efficiency and innovation, from both the public and private sector. The outcome was a state of panic in the public sector, leading to the imposition of artificially low and unsustainable wages and staffing levels in order to compete.

The reduced pay, conditions and staffing levels were designed to undercut the capacity of private providers to offer savings – as it is well established private providers are only able to cut costs by these means. As the Catalyst *Working Paper on Public Private Partnerships and the Public Service Workforce* concluded, ‘the evidence overwhelmingly corroborates the conclusion of the PAC in 1998, that the cheaper running costs of the private sector were almost wholly to do with different wage rates and different staffing levels, and also pension arrangements, sick leave arrangements and different lengths of the working week. And a Home Office study that found the difference in staff costs accounts for all the difference between the sectors.’ (Catalyst 2002)

The reduced pay, conditions and staffing levels had the further destructive consequence of leading to a less safe and desirable working environment. Attraction and retention of staff became so problematic prisons were not even able to meet the much reduced staffing level benchmarks. At the time of WAPOU’s first visit to the UK in May 2015 there was only one prison meeting its benchmarked staffing complement and achieving ‘steady state’.

Under the theoretical perfect market conditions that do not exist in the prison sector, market forces would have facilitated readjustment to a state of equilibrium - achieving the most efficient and effective outcome. Instead the situation has worsened and competition has seen negative consequences for both private and public service providers, with long term detriment to rehabilitation outcomes whose cost to society cannot be estimated. There is no scope for innovation in the resulting race to the bottom, and no capacity for the safety and decency intended to be enshrined in the system.

Arguably the world's leading expert on prisons, Professor Alison Liebling heads the Prison Research Centre of Cambridge University, which has contributed greatly to this debate. The Prison Research Centre has succinctly articulated the unintended consequences of introducing of competition in the UK prison system, and described the outcome we risk seeing in Australia:

‘In the early days of privatisation, the vision of proponents was that public-sector prisons would import the most positive attributes of the private sector: innovative practices, more efficient staffing and so on. In a period of hyper-efficiency, it may be the flaws of private prisons that are duplicated and the strengths of the public sector that are stripped out: safe levels of staffing, with mature and experienced officers, who use their power professionally.’ (Crewe, Liebling and Hulley 2015:334).

It is acknowledged Australia and the UK have many similarities yet also marked differences. Significantly, there are pertinent parallels between the austerity measures and pro-privatisation policies favoured by conservative governments in both the UK and Australia. Where governments seek to impose unsustainable cuts on the public sector, the above scenario is the logical conclusion of increased competition in the prison sector. A recent study from the University of Sydney, *Prison Privatisation in Australia* (Andrew, Baker, Roberts 2016), has also provided a rigorous analysis of all publicly available data to find there is no evidence to support claims prison privatisation delivers improved efficiency, quality, effectiveness and accountability.

The report states:

‘This report explores the distinct nature of prison privatisation across states and the varied nature of their accountability, costs, efficiency and performance. While there is no uniform pattern that describes the experience of all states with regard to these categories, any evidence of performance improvements and efficiency gains remains patchy and opaque; systems of accountability vary significantly; public reporting remains poor; and the total cost of private prisons remains unknown’ (Andrew et al 2016: 4).

The Productivity Commission's Issues Paper states human services are to be assessed using a set of attributes Le Grand (2007) identified as characterising good public services, those being: quality, equity, efficiency, accountability and responsiveness. There are several important points to consider in that context. Clearly accountability and transparency are inadequate among private prison operators in Australia, as referred to above. Continued assertions about private providers offering improvements in that area simply cannot be justified as they have no basis in evidence – and similarly in relation to efficiency.

With respect to the question of quality, it is important to ask how the quality of prison services can be measured? This is an extremely complex task and certainly the ERA Inquiry did not reach any solid conclusions about a deficit in quality in the West Australian prison system, but rather acknowledged the high cost of the system might also represent value for money when considered against the quality of services - and complexity of delivery over such a large state and diverse facilities. The ERA accepted there is no real prospect of solid comparability among West Australian prisons, which again leads back to how a fair assessment of the quality of the service could be made.

In the absence of robust evidence in favour of privatisation, and the presence of strong examples like the UK that warn against greater competition in the prison system, there is no basis for assuming competition will yield improved results. That assumption is a key premise of this Inquiry which we urge reconsideration of, particularly in light of the significant costs introducing increased competition may incur. This does not only refer to the costs of restructuring government departments to facilitate contract management under commissioning, or the costly and time consuming process of developing and assessing bids (both of which were acknowledged in the ERA's Final Report), it refers more broadly to the potential long term cost to society. Rehabilitation is notoriously complex and difficult to measure, but one the simple measure of recidivism Western Australia is currently performing well. On that basis, in addition to the other many points we have argued, it would appear both an unwarranted move and an unacceptable risk to introduce further competition and privatisation.

Quantifying Service Need

The prison population in Western Australia continues to grow at a rapid rate. The current prison population as of 2 August is 6326. This compares with 5550 on 2 August 2015, which equates to a 14% increase. In 2011 the population was only 4601, amounting to an extraordinary 37% increase in the period up to today. The growth in the prison population is expected to continue.

It is our understanding all the states are facing overcrowding pressures to varying degrees. Although New South Wales closed cells and prisons only three years ago due to the prison population dropping to 9000, it is now at a muster of 12,700 and growing.

South Australia also faces major overcrowding. Our equivalent union in South Australia has indicated its 2926 beds (including 88 surge beds) are almost continuously full, with no movement in the numbers of women's beds available. The number of remand prisoners is one of the reasons for this. Mobilong Prison for sentenced prisoners, as an example, is now made up of 50% remandees. We understand the near gridlock in the system means the prisoner mix is volatile, as outlaw motor cycle gang members, prisoners with mental health issues, protection prisoners and remandees are no longer able to be completely separated.

Similarly, Victoria's muster is now over 6,100 and growing with 2,000 prisoners on remand. As a result many remandees are now placed in sentenced prisons as there is no longer room at Melbourne Remand Centre. This problem is exacerbated due to the prison not being fully operational after the riot last year.

Tasmania's situation is made more difficult to manage due to there being only one prison in the state (Risdon), which is experiencing considerable muster pressure.

The branches of our union in each state are indicating the infrastructure of many facilities cannot cope with the numbers of prisoners coming in. The problems are exacerbated by the extended duration of the average sentence, but also the inappropriate mix of prisoner classification

Transparency

Proponents of privatisation have argued greater transparency is enabled through the contracting out or privatisation of services. However, as Aman has noted, the privatisation of a service means the Freedom of Information Act does not apply, and 'More important, market incentives and the profit motive may too easily be substituted for the public interest as well as form primary markers of programmatic success' (Aman 2005:514).

Legislative changes can further limit transparency, such as in the *Freedom of Information (Amendment) Act 1993 (VIC)*, which was partly crafted to limit public access to information about public-private partnerships, and was specifically amended to include private prison providers (Sands 2006).

Aman (2005:516) argues the transfer of public sector services to the private sector, can create a 'democracy deficit' precluding transparency and public engagement; with the delegation of public functions to private bodies, in such sectors as the prison industry, also potentially removing protections against human rights violations. Aman states shifts from the state to the international arena can retain a role for the domestic public sector – but often primarily in a 'rubber stamp' capacity. The commissioning of prison services to multinational corporations represents such a move. As we have argued before, this leads to the public being excluded from information and meaningful participation in questions about what is ultimately a core public service.

We have noted before that the direction of the Inquiry towards commissioning appears predetermined and ideological. That interpretation is echoed by Aman's comments on this trend (Aman 2005:518):

'Markets and market approaches can cut costs in ways that politically accountable officials usually wish to avoid. Privatisation of some governmental services may make it easier to cut budgets or eliminate unions. Moreover, a preference for markets by politicians can signal not only an ideological preference, but a kind of toughness as well. Markets can imply a degree of harshness that appears to be neutral and simply the logical consequence of processes over which we really have no individual control.

For example, the idea of bringing market processes to bear not only in the management of prisons or welfare eligibility but, by implication, on prisoners and welfare recipients as well, may resonate with a political goal of ensuring that certain individuals in society do not benefit unduly at the public's expense.'

In a privatised context the public is 'usually excluded from regular information about the treatment of inmates in prison. Publicly-available information about cost and the contractual provisions is likely to replace a broader, political discourse in a privatised setting' (Aman 2005:531). The claim that having a private provider's contract publicly available can compensate for that level of openness and debate, accountability and access to the Freedom of Information Act, in the face of 'commercial in confidence' barriers, is exceedingly thin.

If genuine transparency is really sought, then the Government should follow Kentucky's lead in stipulating that private providers such as Serco, must develop a strategy for dissemination of info to government, the public and the media, with **all** documents and records (other than financial ones) being deemed public records (Aman 2005:538).

Incentives

The use of financial incentives as a means to achieving greater efficiency has been suggested as a way to enhance outcomes. For example the possibility of prisons retaining a portion of profits from their prison industries or bonuses in relation to specific outputs or outcomes. There are numerous potential problems with such strategies, already borne out in the experience of private prisons that continue to open industries no matter how low staffing levels are, as a result of financial carrots and sticks.

McElligott also explains how this perverse incentive decreased safety in one Canadian private prison:

'Because searches (for weapons and contraband) are time intensive and labor intensive, they tend to interfere with work programs and other prison activities. Any manager might be annoyed with such disruptions, but the operator of this privately run jail was paid extra for every hour of programming it ran, and so there was a material incentive to minimize searches. Persistent understaffing made searches still more disruptive, so the private managers had some powerful inducements to ignore "problems and complaints" – but this would involve trampling on practices traditionally used by CO's (corrections officers) to ensure their own safety.

Even after guards at the private jail won union rights, they faced an uphill battle to introduce the kind of safety-based struggles that had transformed CO unions in the public sector. Conditions in the privately run jail produced very high turnover rates and undermined the solidarity, confidence, and experience necessary to refuse unsafe work.' (McElligott 2007-8:86).

Lean staffing and resulting safety breaches

One of the impacts of privatisation and commissioning has been the reduction in staffing levels within the sector both here and in other jurisdictions. It has been argued the introduction of privatisation has led to cost reduction due to innovation which does not appear to be borne out by the facts.

The experience of our members at Acacia and Wandoo is that cost savings come from reductions in staff numbers and in their terms and conditions. The recent response by Serco to cost reduction in their latest contract with the State of WA for the management of Acacia is illustrative of this. Instead of innovation they intend to introduce a new lower grade of prison officer with reduced remuneration. In relation to the UK experience Sachdev argued “Productivity improvements are thus primarily an increase in workloads through longer hours (at lower pay rates) and shorter holidays, that is, at the expense of terms and conditions.” (Sachdev 2004:24)

McElligott has argued understaffing leads to incidents of compromised safety when prisoners do not receive adequate services and hours of unlock; providing the following example from a private Canadian prison with a lean staffing model: ‘In the jail’s first year of operation, food complaints sparked a major riot in which a five-foot long concrete ledge was pried loose and used to batter through windows and doors. By the time the riot was contained, about 100 inmates were within reach of the central control bubble and the grounds outside the pod.’ (McElligott 2007-8:92).

The failures of the UK prison reforms – primarily commissioning, benchmarking, and resultant staffing reductions, have been writ large in numerous reports. One tangible example that encapsulated the issues was the event of the ‘Mackerel Mutiny’, in not dissimilar circumstances to those in the Canadian private prison described by McElligott. Eleven inmates in Highdown Prison barricaded themselves in a cell and refused to come out in protest of their dismal conditions, resulting from government cuts and reductions to staffing levels through benchmarking and reduced pay and conditions for officers. The prisoners explained they were not getting enough food, exercise, showers, and time for association – later stating they would come out for mackerel and dumplings.

The then Justice Secretary Chris Grayling’s (appearing) decision to have the Crown Prosecution charge the 11 men with the very rare and serious charge of mutiny, is an indication of the desperation the administration felt towards gagging similar complaints - that could draw further attention to the dramatic failings of its brutally austere prison policies. Yet the men were acquitted, as the trial made clear how much staffing cuts had eroded the decency of their treatment. As one headline read ‘Grayling’s prison regime goes on trial – and is found guilty’. One of the barristers stated: ‘This not guilty verdict was not only a victory for the defendants but a resounding demonstration of the danger caused by the cuts to the safe and humane running of the prison service.’

With respect to the importance of purposeful activity and hours of unlock, this example of the consequences of lean staffing models brings home the salient point that any move to reduce the hours of unlock in the prison regime should be fiercely resisted.

Commissioning

It is suggested by the proponents of privatization that the apparent benefits of competition can allegedly be reaped through commissioning. As Dr Toner has identified in his submission to the Inquiry, the degree of competitiveness in the private prison industry is highly debatable. In the United States the industry is very concentrated, in 1998 over 76% of the private prison business was controlled by two companies, Wackenhut Corrections Corporation (WCC) and CCA, which is a former subsidiary of WCC . It's necessary for decision makers to understand that the market-like effects they hope to achieve will be concentrated in the period before a contract is struck, not substantially afterwards as: "the distinctive feature of contracting out is the element of *ex ante* competition – competition *for* the market as opposed to competition *in* it" (Domberger & Jensen in Aman 2005:536). The lack of competitiveness is a feature too of the Australian experience of privatization with a small number of market participants. Serco is the largest player currently in the field with GEO and G4s having a foothold. Latterly Sodexo have returned to the market place after being awarded the contract for the Melaleuca Women's facility in WA. The cost of entering the market place is largely prohibitive for smaller companies and it is hard to see any significant new players having the capacity to enter the field.

The House of Commons Justice Committee has also commented on the lack of a level playing field under commissioning:

'...they (private companies) also benefit from greater ability to make capital investments in the hope of recouping the benefit over the lifetime of the contract, while public sector processes restrain such investment.' (HoC 2015:70).

The Justice Committee goes on to report to the House of Commons some further concerns about the impacts of commissioning:

'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. As well as effectively becoming contract managers for provision of services for which they used to be directly responsible, they are constrained in their operational decisions when dirigiste decisions are taken from the centre on such matters as the Incentives and earned privileges scheme, the 'lights out' policy and release on temporary license. We conclude that relegating governors to an oversight and partnership management role with much reduced discretion undermines their control over the performance and safety of the establishment and their ability to govern their prisons using their professional judgment, as they are trained at public expense to do.' (HoC 2015:72).

The Committee goes on to discuss an additional issue:

'There is a risk that the proliferation of partner organisations providing services to prisons could distract prison management teams from their core role. This potential effect is all the more important when resources are such that reduced staffing levels are impinging on the safety of prisoners and staff for which governors have ultimate responsibility'.

With respect to delegations to the market via privatisation (or commissioning of public services to private companies if preferred) Aman raises the following concern about the result of competitive pressure:

‘This encourages such delegations on the part of the state and it raises concerns over whether the cost savings that result from such public delegations to private entities occur at the expense of democratic processes, legitimacy, and individual justice.

...privatisation, in this global context, tends to reduce the democratic public sphere in favour of other arrangements that are likely to be less transparent and accountable to the public, and less exposed to competing value regimes.’ (Aman 2005:524)

On the topic of commissioning and the need for the state to retain the knowledge and capacity to intervene where needed, Aman makes the following point:

‘The ability of a state to step-in can be ensured, at least in part, through a “contestability” process where public providers are able to bid against private providers for contracts. Such a procedure, however, risks the removal of a governmental check on the dominance of economic concerns over human rights issues, insofar as the public providers are subjected to the same dominance of economic issues over noneconomic values in the provision of services.’ (Aman 2005:535).

This is a key danger of commissioning.

Human Rights

As WAPOU objects to the privileging of cost savings over rehabilitation and safety imperatives, we restate the case for keeping profit out of punishment. As Aman has pointed out:

‘While it can be argued that there would be little point in privatising if some savings were not anticipated, as the cost-savings requirement gets larger, there is an increasing danger that private prisons would need to sacrifice prisoners’ rights to meet the standard.’ (Aman 2005:529)

In the United States there is great variance from one state to another in terms of the statutes on privatisation. The Colorado statute (and many others) require that ‘privatisation of government services not result in diminished quality in order to save money’, however, that quality can be hard to measure and monitor (Aman 2005:530).

Where quality is not protected then human rights may not be either. Aman explains that the potential for human rights abuses in private prisons (or prisons that are contracting-out key prison services) is that the ‘relatively strong relationship between democratic forms of government and the protection of human rights’ breaks down in the prison context’ (Aman 2005:531).

Voluntary Sector/NGO Service delivery

As noted elsewhere, the notion robust competition will partly be enacted by involvement from the voluntary sector, is misguided. Not only are the costs prohibitive for all but the largest, but evidence from the commissioning experience of the UK shows they are more likely to be forced out of the sector altogether.

The UK Centre for Crime and Justice Studies reported the prospect of participating in a ‘market for punishment’ through commissioning, was thought too morally objectionable by some organisations, and amounted to services being privatised ‘by the back door’ (Silvestri 2009). One of the other major themes The Centre goes to is the question of eliminating diversity, independent advocacy, and competition through commissioning. As smaller players are forced out, and those advocates drawn in lose their independence and capacity to criticise the system, the pool shrinks and the sector concentrates and homogenizes – rather than strengthening through competition.

Our experience in talking with key stakeholders in the UK in 2015 and 2016 was that in fact the involvement of the NGO sector was receding. The cost of being able to bid and compete was simply too much for many small players and certainly for NGO’s.

The Risks of Further Contracting out to the Private Sector through Commissioning

The most respected academics writing in the field of corrective services, have acknowledged the risks of further contracting-out to the private sector as commissioning proposes; and indeed – warn against the reality that commissioning may force the public sector to drop its standards to unacceptable levels, as in the UK experience:

‘...despite the high quality of some private-sector prisons and persisting cultural problems in the public sector, there are serious risks in the private-sector staffing model of low pay and thin levels of officer deployment – a model that is increasingly being emulated by the public sector and that may characterise privatised areas of public service more widely.’ (Crewe, Liebling & Hulley 2015:314).

Commissioning and the threat of privatisation was used in the UK to force public sector workers to accept cuts to pay and conditions along with staffing levels. This aligns with the statement on the poor staffing model of the private sector operators being mirrored by the public sector, with disastrous results. The imposition of this model upon the public prison system in the UK, on pain of death, accounts for the degradation of safety and service delivery documented in recent authoritative reports from the UK including the Harris Review (2015), The House of Commons Justice Committee report Prisons: planning and policies (2015), and HM Chief Inspector of Prisons for England and Wales Annual Report 2014-15.

According to a highly regarded study of the difference between public and private prisons by Crewe, Liebling & Hulley:

‘...the domains of security and policing were areas where the high-performing private-sector prisons were least impressive in relative terms compared to the public establishments. Thus, even in private prisons with relatively experienced staff, the thin staffing levels that characterise profit-making institutions, a relative absence of jailcraft, and a workforce that is less bonded to its occupation, seem to limit quality levels in certain areas.’

‘A lack of experience, capability, and expertise among staff, thin staffing levels, and high turnover typically lead to weaknesses in private prisons in areas such as policing and control, organisation and consistency, and staff professionalism. These weaknesses, even when relative, are identifiable even in the best private-sector prisons.’

Thus, while our study shows that there is considerable variation in quality within the private sector, it also suggests that there are some general and significant risks in contracting out prisons based on a model in which staffing is lean and staff are relatively expendable.

...Given the current financial climate and a political culture of economic rationalism, this is a worrying observation. Cost was the primary consideration in the recent award of two new private prisons in the United Kingdom and, as Harding (2001, 299) notes, evaluations of cost have “played a disproportionate role” in both debates and research about prison privatisation or, we could argue, prison life. A “race to the bottom” (Gaes 2005, 86) on cost is risky for both sectors. Likewise, there are considerable dangers in emulating the private-sector model in the public sector.’ (Crewe, Liebling & Hulley 2015: pp332-333).

The marketization of prison services and exposure to greater competition on cost can cause private interests and economic concerns to prevail over the public interest (Aman 2015). As numerous observers and theorists have asserted, preoccupation with cost has played too great a role and this is only worsening in the West Australian context.

Addressing Indigenous over-representation and other alternatives for improvement of services

When considering the ability to effect reforms in relation to the quality and efficiency of Human Services it is important to be mindful that this cannot be done in a vacuum. Therefore we must consider as part of this process the shocking over representation of Aboriginal people in the justice system.

We note that the Issues paper explicitly identifies that the Aboriginal population may have differing service needs and these should be properly considered. Indeed given that WA imprisons Aboriginal people at nine times the rate of Apartheid South Africa (John Podmore 2015), it would be negligent not to even consider this crisis of over representation in any review of the Human Services and corrections within that.

It is hard to see how the specific needs of Aboriginal people within the corrections environment can be properly met by the four companies currently in the marketplace. None of these companies have any significant history or experience in the delivery of services in Australia. All of the companies are multi nationals based in the USA, the UK or France. It is our contention that they simply do not have experience of the specific needs, culture or history of Aboriginal people. Neither do they have the relationships with communities that are so vitally important.

In addition to the general overrepresentation of Aboriginal people in the system, it is also a fact that the recidivism rate for young Aboriginal people is 25 percentage points higher than the non-Aboriginal recidivism rate. In 2014 only 26 percent of Aboriginal prisoners less than 24 years old were in prison for the first time, compared to 74 percent of non-Aboriginal prisoners in the same age group (OICS 2014:ii). The Inspector of Custodial Services states in his 2014 report:

‘This Office has noted numerous times that service provision in mainstream prisons does not meet the needs of young adults, particularly Aboriginal young adults. There are no specific strategies in place to target and engage this cohort.’

With further comments made:

‘Research has found that education and training programs are generally a cost-effective method to reduce recidivism’ (OICS 2014:12).

This reference to training programs is clearly only one element where consideration needs to be given on how best to respond to the crisis in Aboriginal over-representation and recidivism rates.

In submissions to the ACT Standing Committee on Justice and Community Safety’s, Inquiry into Sentencing – the ACT Human Rights and Discrimination Commissioner has stated that she has ‘continued to progress our recommendations regarding a Justice Reinvestment strategy’ in the ACT, which had been motivated by ‘the continued over-representation of Aboriginal and Torres Strait Islander young people and adults in the justice system and more specifically, in detention.’ (Standing Committee on Justice and Community Safety 2015:386).

The Inquiry into Sentencing looked at a wide range of progressive alternatives and undertook extensive expert and professional consultation. In addition to strategies such as justice reinvestment, Restorative Justice was also considered. The Attorney-General told the Committee that:

‘...restorative justice conferences are likely to reduce the frequency and costs of future crime. The review found that the average effect of restorative justice when compared with conventional justice procedures, usually through the court, is beneficial.’

And additionally that:

‘...restorative justice conferences are even more effective with repeat adult offenders rather than juveniles and for serious violent crime rather than less serious non-crimes against the person.’

Significantly, he also stated that:

‘...we know that in relation to offenders the evidence demonstrates they are less likely to offend again in that circumstance and it is cheaper than the conventional justice process. For all of those reasons, there is good evidence to highlight why these matters should be pursued further.’ (Standing Committee on Justice and Community Safety 2015:348-350).

Even if the Productivity Commission refuses to look at approaches such as restorative justice on the basis that they involve change to a separate part of the justice system, it cannot be ignored that restorative justice (RJ) could be employed alongside (rather than in place of) traditional approaches and indeed prison sentences.

The WA Attorney-General stated:

‘What I want the justice reform strategy to look at is not just RJ as a stand-alone but in what circumstances an expanded RJ program should sit alongside the conventional sentencing process in court. For some crimes it would be appropriate still to face that as well as participate in RJ.’ (Standing Committee on Justice and Community Safety 2015:353).

In the words of the Victims of Crime Commissioner (ACT) on restorative justice:

‘Our restorative justice scheme... also allows offenders to be referred to restorative justice while they are serving a sentence. I think our scheme is the broadest scheme I have encountered. I do not have an exhaustive knowledge of restorative justice but I see we are missing an opportunity. We are looking around for strategies to avoid people going to prison, and we have got one looking us right in the face, and we do not seem to be able to grasp the nettle and say, “This has got real potential”.’ (Standing Committee on Justice and Community Safety 2015:351).

Benchmarking

Benchmarking has been proposed as a suggested way for the Public Sector to mirror the processes of the private sector to deliver improved efficiency and standards. It is our contention that there are very serious concerns about its ability to do either.

In relation to benchmarking Kevin Lockyer, former Regional Director for the National Offender Management Service, UK, stated to the House of Commons Justice Select Committee:

‘...if you have a prison estate with structural inefficiencies built in...you are still left with those structural inefficiencies, and fewer staff. Putting all of your eggs in the benchmarking basket, therefore, is not necessarily a long-term solution to an estate that has those kinds of structural inefficiencies built in’ (HoC 2014:65).

Mr Lockyer’s comments reinforce the argument benchmarking is not a magic bullet, that structural issues and concerns such as inappropriate retro-fitting need to be considered, but also acknowledges that benchmarking can result in unworkable cuts to staffing levels that do not adequately account for all factors.

One of the shortcomings of applying benchmarking in any meaningful and consistent way is that WA’s prisons are very diverse, and the proposals for how to accommodate for that are insufficient. Our concerns echo those expressed by the House of Commons Justice Select Committee in the UK, where commissioning and benchmarking have already been implemented:

‘A key question is whether making savings in the prison estate inevitably results in a one-size-fits-all approach to prisons policy’ (HoC 2015:68).

What is clear is that there are enormous differences between prisons themselves and diverse prison populations. This is easily understood when considering the differences between a large maximum security prison in the Perth metropolitan area that holds prisoners from throughout the state and a Medium security prison in the Kimberley which has a prison population that is almost exclusively aboriginal and from the surrounding region.

Dangerously reduced staffing levels is one of the key elements of the crisis in the UK prison system. WAPOU urges the Productivity Commission to be mindful of the dangers of attempting to derive savings or efficiencies through cuts to staffing levels and/or pay and conditions. The effect of either of these may impact the quality of staff who can be recruited

and retained along with safety. The Justice Select Committee's (JSC) report to the House of Commons (HoC) again has words of warning to heed:

‘A quarter of the staff who have left the Prison Service in the year to September 2014 resigned. NOMS ought to have foreseen that major reductions in staffing, less favourable pay and conditions of employment, and significant changes to prison regimes, would lead to a rise in people opting to leave the Prison Service, regardless of the buoyancy of the external labour market. This underlines the importance of retention as well as recruitment. As NOMS is highly dependent on its staff to run well-functioning prisons, and it is important the Service acts rapidly on the evidence of recent surveys to ensure that staff feel valued and are given appropriate support to work in circumstances which are challenging at the best of times, but currently particularly pressured. Given the importance of relationships between prisoners and prison staff we do not believe that making further detrimental changes to terms and conditions of staff is sustainable as a means of controlling costs.’ (HoC:2015:70).

The HoC Justice Select Committee stated on short staffing in the UK system:

‘interim measures such as restricted regimes... have been adopted as a necessary means of minimising the risks of operating with insufficient staff, but these measures themselves have an adverse impact on the ability of the prison system to achieve rehabilitation and reduce reoffending.’ (HoC 2015:71).

To be clear, contracting out to private providers almost invariably results in lowered staffing levels as this is the key place that (unsustainable) savings can be made, and benchmarking is evidently another means to cut staffing levels – as has been established by the UK experience. WA prisons are already regularly running restricted regimes which consequently impacts rehabilitation prospects, further cuts can only exacerbate this.

It is the common currency amongst State Governments that they are seeking to press down hard on expenditure. Where benchmarking is implemented as it is being in NSW (and has been recommended in WA), there is a real danger the objective of ‘efficiency’ and dollar savings will be privileged over safety and rehabilitation. This is a circumstance echoed in the UK, as the House of Commons Justice Committee observed:

‘Given the size of the prison population, and the likely need to continue to make financial savings in the medium term, there is a real danger that savings and rehabilitation could become two contradictory policy agendas. The question of the sustainability of the system cannot be ignored.’ (HoC 2015:66).

Throughout the research WAPOU conducted in the UK, we heard repeatedly that the staffing level benchmarks applied to each prison did not reflect a neutral and scientific assessment process. Instead they were weighted towards a preference for high security prisons (anecdotally a result of NOMS senior officials all hailing from that background themselves); and prisons with very active local staff succeeded in negotiating higher staffing levels, through leverage as opposed to a real difference in need. This strikes at the heart of the assumption that benchmarking is in essence as ‘fair’ and even handed system.

The Justice Committee expressed criticism of benchmarking in the following statement:

‘We are not convinced that the Ministry has considered sufficiently, or valued highly enough, the complicated and difficult nature of the work undertaken by frontline prison staff under its benchmarking programme.’ (HoC Justice Committee 2015:72-73).

It is clear where efficiency and savings are the primary goal, the value of Officers’ work may easily be over simplified to justify staffing reductions. This is an obvious concern in the current climate.

Following Serco’s recent success in having the contract for Acacia Prison renewed for another five years, the company has set about finding the savings to meet its commitment to take more prisoners for less money. Serco’s apparent strategy to achieve this is through further reducing staffing numbers - and attempting to replace some Prison Officer positions with lower paid and less skilled Operational Support Officers. This is an example of precisely the negative trends discussed in this submission, which must be avoided if we do not wish to face the sort of consequences experienced in the UK system.

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