



Outsourcing Community Safety: Can private prisons work for public good?

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Prisons occupy a unique place in our society. They involve a deprivation of liberty and limits on self-determination, and these restrictions are sanctioned by Government and supported by the community in the name of safety and punishment.

Freedom is not curtailed lightly – a prison term should be a sentence of last resort, designed to deter, denounce, punish, rehabilitate and protect¹. But even as a last resort, it is crucial that the imposition of a period of imprisonment is subject to strict safeguards and to ensure fair and humane treatment that is both ethical and legal.

In the past three decades there has been increased use of imprisonment across the world, and significant changes in the purpose, design and operation of prisons, including privatisation of prison services and facility management.

Private prisons have been introduced predominantly in Western countries as part of a broader economic ideology, where the private sector and its natural competitive form are seen as an alternative to Government service delivery. Nowhere is this more evident than Australia, and particularly Victoria, which holds a larger proportion of prisoners in private prisons than any other country in the world.

There has been extensive research undertaken to assess whether privatisation of prisons reaps a net benefit, but the results remain equivocal. The answer has been as varied as the contract models and monitoring levels, the costs and outcomes applied, the 'inherent' cost drivers (e.g. prisoner profile, service requirements), and the changing needs and expectations of particular prison systems over time.

This paper examines Australia's experience of prison privatisation, reflecting on the experience of other countries. It highlights the differences in approach and outcomes of the United States and Australia, and Australia's closer pathways with New Zealand and the United Kingdom. It explores available research into the outcomes of public and private prisons, and considers the influences that have led different countries to adopt a particular approach. These include political influences, as well as constitutional, ideological and human rights motivations.

In addition, the paper considers the potential practical and policy considerations for Australia, and particularly Victoria, of the high level of reliance on private prisons, including risks. Chief among these risks is that a corporate emphasis on cost reduction and profit drivers might adversely affect quality, outcome and governance standards. But there are other risks also, including that the trend towards private facilities, which can be established relatively quickly to ease any overcrowding, shifts the policy focus away from alternatives that may ultimately prove more effective than incarceration.

While the risks of outsourcing to the private sector are clear, and some may argue their mere existence is sufficient to mandate caution, it remains difficult to prove those risks have produced adverse outcomes thanks to an almost universal lack of transparency. The lack of transparency extends from the terms and incentives within contracts to details of inmate incidents and analysis of longer-term rehabilitation outcomes for a particular prison population.

It is important that this lack of transparency is addressed. In the meantime, this paper concludes that significant prudence is required in outsourcing imprisonment. The rules of operation must be clearly established, and matched by regular reporting and increasing transparency. Society, through government, must maintain the resources and experience to prescribe, monitor and review the operation of prisons run by external providers. From an operational perspective, private prisons are possible within this framework, but the responsibility of government to ensure they operate appropriately is clear and non-delegable.

Background: World view

The current estimate of the total world prison population is over 11 million people, with considerable differences in the rate of imprisonment between countries. The Seychelles and the United States (US) top the country table in imprisonment rate per 100,000 people at 799 and 698 respectively². More than half of all countries and territories have imprisonment rates below 150 per 100,000. Australia's national rate is 215 per 100,000, with the extreme of Northern Territory at 921 per 100,000 and just two states and one territory below 150 per 100,000 – Victoria (145), Tasmania (140), and the ACT (145).³

There are significant differences in resort to imprisonment evident across Australia and around

the world. The purpose, definitions and rationale for imprisonment also vary widely, but cluster around public order and community safety. They reflect differences of history, government, wealth, geographic circumstances, and systems of lore and law. Rates of imprisonment across the world appear less reflective of crime rates than of a country's appetite and capacity for imprisonment as a response to crime.

Over the past 15 years, while the world population is estimated to have grown by just over 18 per cent, the world prison population has grown by about 20 per cent. But the picture is more complex when shifts in individual countries are examined. The World Prison Population list⁴ identifies the significant differences between and within continents. South American countries' total prisoner numbers have grown by 145 per cent and central American by 80 per cent, while Europe's have decreased by 21 per cent. The US has risen 14 per cent, while in Australia the daily prisoner population has surged 66 per cent from 21,714 to 36,135.

The rise of private prisons

"The central features of privatization are usually the following: an increased role of private entities in the operation of social and economic activities; intensive collaboration between public authorities and private entities; and the application of private-market logic to the authorities' activities."⁵

The phenomenon of private prisons began around three decades ago, with the US an early starter in the 1980s, and the United Kingdom (UK), Scotland and Australia following in the 1990s. By early in the new millennium, private prisons had also appeared in New Zealand, Japan, South Africa and France. Indeed, most of the growth in prison beds across this period in these countries has been in private prisons.⁶

This growth has been particularly clear in Australia. In under 30 years all states except Tasmania and the two territories have shifted from purely government-run facilities towards the use of privately-run prisons. A total of nine private prisons, accounting for around 19 per cent of all prisoners in Australia⁷, are effectively controlled by private for-profit companies although the models differ between facilities.

And at the head of this growth is Victoria which, remarkably, appears poised to hold around 40 per cent of its prisoners in private facilities when the Ravenhall private prison opens with initially 1000 beds, and built capacity for 1300 prisoners should this be required in the future.⁸ This would be a rate of privatisation only

mirrored in two other jurisdictions in the world, both in the US: New Mexico and Montana.

The ideology that drives Australian states' privatisation policies and their application to the delivery of imprisonment has evolved over these years, as have contract and governance structures. Initial drivers included a raw brute push to drive down costs, a need to replace 18th century infrastructure, a desire to break prison unions' hold, and a rapidly growing prisoner population. Prevailing discussion now appears to centre on the search for 'value for money' in prisons – with consideration to performance, cost, efficiency and accountability⁹ – although of course there is deep debate about how that is measured.

At the same time about a dozen countries across the world have charted their own marketised path for prisons. Others have considered and rejected for-profit operation of prisons entirely.

Private prison HQ: the United States and the rise of the prison heavyweights

Compared with global peers, Australia holds the greatest proportion of prisoners in private facilities, but in sheer numbers it is the US that has outsourced most enthusiastically, and it is here that most of the now-global corporations delivering contract prisons are headquartered. Around 30 states outsource prison operations, although there remains a significant minority of states that have either ceased use of contract prisons, or have never contracted prisons.

The US has the largest number of people imprisoned¹⁰ and the largest number held in private prisons – over 130,000 of more than 1.47 million prisoners in 2011¹¹. Indeed, people in private prisons in the US outnumber the aggregate of all people held by private prisons across the rest of the world.

A market for providing prison facilities has emerged, and several companies are now recognised as 'key players' in this market. The four companies delivering prisons in Australia (the GEO Group, G4S, Serco, and Sodexo¹²) also contract prisons in the US, the UK, Scotland, New Zealand, South Africa, France, and Brazil (and also have business models beyond prisons into immigration detention, health, court, transport and other services). In the US in 2010, GEO and Corrections Corporation of America ("CCA") – the latter which recently rebranded as CoreCivic – together accounted for over half of the private prison 'market'.¹³

United States profile in brief ¹⁴

- **Imprisonment rate: 698 per 100,000**
- **Murder rate: 42 per 1,000,000**
- **More than 1.4 million prisoners, of which 8 per cent are in private prisons**
- **1st modern privatised prison 1984**
- **No OPCAT National Preventive Mechanism**

Opponents of outsourcing imprisonment argue that one driver of prisoner numbers in the US is the presence and size of the corporations that run private prisons, and their significant power. This is discussed in more detail later in this paper.

Despite the large number of US inmates in private facilities – and the financial boon this represents for corporations operating in this area – these numbers occur in a country that has high imprisonment rates overall. Private prison inmates continue to represent a small share of the nation's total prison population, and their numbers have declined modestly in recent years.¹⁵ In Texas, for example, which is the state with the highest number of prisoners, less than 9 per cent are housed in private prisons. Florida, with the second-greatest number of inmates, secures 12.3 per cent in private facilities. A state-by-state analysis of the US situation is included in Appendix 2 of this report, which also highlights the significant reliance on private facilities in Montana and New Mexico.

Some countries have briefly flirted with private prison, most others not at all.

Canada is one of a number of countries that briefly contracted prisons then returned to public delivery. Operation of a single prison in Canada was outsourced in 2001 under a Conservative government and returned to public ownership in 2006 under a Liberal government. The return to public operation was premised on a finding of better results from the equivalent publicly-run facility, particularly in relation to security, health care and recidivism. The experience was notable because, as activists pointed out at the time, it was “the first time in the world there has been an apples-to-apples comparison of two identical facilities.”¹⁶ Canada also had an earlier experience in the 1990s when they contracted a youth facility through the private sector. The return of this facility to public operation was on the basis of public protests against the incarceration of youth for profit.

Canada profile in brief

- **Imprisonment rate: 106 per 100,000**
- **Murder rate: 16 per 1,000,000**
- **One private prison opened in 2001, returned to public operation in 2006**
- **No OPCAT National Preventive Mechanism**

The decision to desist from contracting prisons has continued through later changes of government, although Canada has contracted out some immigration detention facilities.

In Israel private prisons, while contemplated, were found by the nation's Supreme Court to be unconstitutional. Supreme Court President Beinisch reasoned:

“In a prison run by a private company, prisoners' rights are undermined by the fact that the inmates are transformed into a means of extracting profit. Efficiency is not a supreme value when the most basic and important human rights for which the state is responsible are at stake.”¹⁷

The court also found:

“When a person enters a prison he loses his liberty and freedom of movement [but he] does not lose his constitutional right to human dignity... Imprisoning persons in a privately managed prison leads to a situation in which the clearly public purposes of the imprisonment are blurred and diluted by irrelevant considerations that arise from a private economic purpose, namely the desire of the private corporation operating the prison to make a financial profit.”¹⁸

While public discourse in countries contemplating privatising prisons often centres around risks of violation of human rights and arguments such as those cited by Israel's Supreme Court, international law does not specifically preclude contracting of prisons. Nevertheless human rights are an important concern when considering the treatment of prisoners.

The United Nations Human Rights Council in 2010 noted:

“It [the Council] remains concerned as to whether such privatization, in an area where the State party is responsible for the protection of human rights of persons deprived of their liberty, effectively

meets the obligations of the State party under the Covenant and its accountability for any violations, irrespective of the safeguards in place.”¹⁹

Article 10 is the primary applicable article of the International Covenant on Civil and Political Rights, and sets out appropriate treatment of prisoners.

International Covenant on Civil and Political Rights: Article 10

1. **All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.**
2. **(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.**
3. **The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.’**

Israel and Canada are just two examples of countries that have stepped away from privatisation of prisons, while the overwhelming majority of countries have never engaged with the concept. Norway, for example, has rejected a marketised approach and retained direct State responsibility for delivery of prisons, with none outsourced to the private sector. Norway boasts enviable criminal justice statistics with an imprisonment rate of 75 per 100,000, a recidivism rate (returns to prison within 2 years) of 20 per cent and a murder rate of 5.93 per million – providing a stark contrast to Australia, the country with the highest proportion of prisoners within private prisons, where the comparable figures are: an imprisonment rate of 215 per 100,000, recidivism rate of 44 per cent, and a murder rate of 10.4 per million.

Nevertheless in any league tables of recidivism the countries that privatise both lead and lag in rates of imprisonment and crime. Privatisation of prisons has not necessarily led to a race to the bottom on outcomes, nor a race to the top.

A little bit private

To this point we have considered implications and comparisons of prison privatisation that might be termed ‘full privatisation’. This is privatisation where decision rights, management, design, operation and services and facility ownership lie with a private operator and which then provides comprehensive services under contract to the State. Often, however, only some elements of service, such as facility management, medical services, education and the like have been outsourced. These models of ‘hybrid service delivery’ have been much less contentious, perhaps because they often include not-for-profits as well as for-profits, and the State retains ownership and overall management of the prison.

Cabral and Saussier²⁰ provide an illustration of this continuum. In their study they compared privatisation in Brazil, France and the US. The extent of outsourcing of service, operational and decision rights vary significantly between these jurisdictions, with France a hybrid service delivery with very limited services outsourced (food, cleaning services, medical care, reintegration services, facilities management); Brazil with significantly more services within the prison outsourced (essentially everything except external security and the senior management of the facility) but ownership of the facility and its land with the State; and the US with what they call ‘full privatisation’ where decision rights typically sit with the private provider (prison design, operation, services, ownership of the facility and its land).

Brazil profile in brief

- **Imprisonment rate: 301 per 100,000**
- **Murder rate: 209 per 1,000,000**
- **607,731 prisoners**
- **First hybrid privatised prison opened in 2013**
- **OPCAT National Preventive Mechanism (early stages)**

The study found that in the US the fully privatised system led to “cost-quality trade off”²¹, suggesting the arrangement had a clear downside. In France hybrid prisons were generally more costly than comparable public prisons with evidence of better quality outcomes. In Brazil, with a prison system with recent history of significant prisoner disorder and poor recidivism outcomes (and a country murder rate of 209 per million), the evidence across the decade with their hybrid model of privatization suggested that this

system, working from an existing run-down and poorly administered State system, delivered reduced costs and improved quality.

Referring to a 2010 study, Cabral and Saussier note the authors:

*"highlight in their conclusions the role of public supervisors in guaranteeing the quality standards in the private provision of correctional services, which attenuates the cost-quality dilemma. They argue that State-appointed wardens may have implicit incentives to enforce quality. In addition, press and NGOs seem to mitigate the odds of collusion between private operators and public officials."*²²

The same authors conclude:

"the achievement of appropriate governance structure ... (relies) on the way incentives, contractual design, decision rights, and the nexus of institutions interact... Private operation with public supervision might enable the viability and the legitimacy of public and private agreements in prison services, while at the same time assuring that private sector capabilities will be driven to address the interests of the society."

Individual countries' systems around prison governance, standards and supervision (including by the State, media and NGOs), are seen as important drivers of quality of both public and private prison delivery. Differences in these systems appear to affect outcomes.

Some examples of hybrid models

The single private prison in South Australia is Mt Gambier Prison, a hybrid model somewhat like the Brazil model, as is the current interim arrangement at MDFC (Mt Eden) in New Zealand. Mt Gambier prison is owned and maintained by the State and the senior management of the prison is employed by the State, while the balance of prison operations are delivered by a private provider. This model was a consequence of the inability of the government to pass legislation in 1994 to privatise control of the facility. The hybrid approach has been maintained since.

In New Zealand the hybrid arrangement arose in the context of the State stepping through a significant performance-related contract default process, and exercising an option in their existing contract as an interim measure whilst preparing for end-of-contract period (and potential end-of-contract for the provider).

Management of the prison is by senior New Zealand corrections staff.

A further hybrid model is where the build and facility management is privately contracted, but the facility is operated by the State. (Examples of this model include both the Metropolitan Remand Centre and Marnongneet in Victoria).

It is likely that most comparisons of public and private prisons are actually comparisons of hybrid models with differences in the proportion and elements contracted. The term 'full privatisation' generally indicates the contracting-out of decision rights and management of the facility, while ownership of the facility varies from case to case.

Easy and quick access to increased capacity through outsourcing is a justification used by governments looking to grow their prison systems. A recent example is the Ravenhall Prison Project in Victoria, where the Project Summary at the tender stage identified a key procurement driver as "the timeliness and certainty of operational commencement", rating a full privatisation approach higher than hybrid privatisation models due to the "operational efficiencies (that) would arise from the removal of the operational interfaces with the State."²³

Evidence on outcomes

The premise and promise of privatisation is that competition, or a market, can deliver savings, required outcomes and innovation:

*"Private prisons are premised on the belief that the private sector can manage enterprises more efficiently than the public sector, and that competition will allow for innovation."*²⁴

For a variety of reasons, the jury is still out on this matter. These relate primarily to lack of transparency of data, difficulty in finding 'like' public and private prisons to compare, and a failure to take the full context of 'successful' imprisonment into account, including balancing short and long term consequences and considering both price and product. Privatisation expert and academic Sasha Volokh puts it this way:

"One should be fairly dismayed at the state of comparative public-private prisons research. In fact, it gets worse. An overarching problem is that most studies don't simultaneously compare both cost and quality. It is hard to draw strong conclusions from

such studies, even if they are state-of-the-art at what they are examining.”²⁵

An assessment of outcomes must examine relative cost, conditions, rehabilitation success and impact on policy and innovation, among other things.

There is certainly evidence that private prisons can deliver a cheaper prison, at least in the short term, although potentially at the cost of quality. Metropolitan Women's Correctional Centre (see case study) was an early example for Victoria of the risks to outcomes where there is insufficient value in the contract for the private provider to deliver to State standards. In stepping in and remediating MWCC the government saw the cost of women's imprisonment in Victoria grow significantly.

Outsourcing opponents argue that one risk is that the State, under budget pressure, uses prison privatisation as a mechanism not just to reduce the cost of imprisonment, but also to attempt to stand at arms' length from the results. An escape, a death or a riot in a private facility is thus likely to be attributed by the

community and media to the corporation, rather than to the contract, or the government.

Other concerns relate to: the profit motive of private operators (and how this might influence conditions and policy); the level of influence of the large prison operators; and the fact that the ease of contracting out a new prison facility to a private operator may stifle reforms that might have resulted in better community outcomes over the longer term. These issues will now be examined in more detail.

The profit motive and the potential for 'perverse incentives'

The profit motivation of private operators was a key concern for Israel's constitutional court in its ruling against prison privatisation. The court found it was incompatible with prisoners' rights and the public purposes of imprisonment. But other countries have been prepared to accept that profiting from incarceration does not automatically have adverse outcomes for prisoners and the State. This view has come under sustained attack from privatisation critics

Case study: Metropolitan Women's Correctional Centre

In the earliest stages of privatisation in Victoria, a women's prison – the Metropolitan Women's Correctional Centre – was competitively tendered and opened in 1996. The facility was designed, built and operated by a Corrections Corporation of Australia, an affiliate of the US giant now known as CoreCivic. In 2000, the State took back control of the operation of the facility on the basis that the company was not able to remediate default notices around fundamental issues with the adequacy of the physical infrastructure, the delivery of services including health services, and the safety and security of the prison. The prison returned to public ownership in what was seen as a failure of the private sector to deliver on fundamental requirements.

MWCC was one of three private prisons that were tendered, contracted, built and commenced operations in the late 1990s. The government's move to retake control of MWCC occurred shortly after the release of the "Independent Investigation into the Management and Operations of Victoria's Private Prisons"²⁶, an investigation authorised by the government in response to a Coroner's report on five prisoner deaths at another private prison – Port Phillip Prison – in its early period of operation.

That report identified problems in Victoria's approach to private prisons, in the:

- limitations of the contractual and legislative framework;
- inadequacies in the performance monitoring model;
- fragmenting of the corrections system at all levels;
- limited provision of health services, particularly in country prisons;
- inadequate prison programs, particularly for preparation for release;
- inadequacies in the competency-based model of staff training for the corrections system;
- variable interpretation of case management;
- information management systems; and
- resourcing of the Office of the Correctional Services Commissioner.

The report made 54 recommendations covering contractual arrangements, performance monitoring, staffing, prisoner management, health services and prison system integration – all accepted by Government.²⁷

Private prison contracts are premised and costed on risk allocation and for a private prison the successful strategy is delivery of the contract – delivery of what is measured, monitored and validated, moderated by a cost/risk judgement. Does the penalty cost of an escape outweigh the infrastructure or technology cost to prevent that escape? Does the investment in prisoner training programs aimed at rehabilitation have a positive or negative financial impact, given that reduced recidivism levels translate to lower future income for a prison operator?²⁸

Such questions highlight the different perspective of a private operator compared with the State and the conflicts that, without close monitoring and management, could lead to undesirable outcomes for a State no matter what the short-term cost savings. As the US's National Council on Crime and Delinquency noted, publicly-listed prison operators such as GEO and CCA are "beholden as much to their boards of directors and stakeholders as to the needs of the prison inmates, prison staff, and the general public."²⁹ This different accountability structure means government monitoring is imperative.

Over the past twenty years there have been many audits, government reviews and research studies into private prisons. Perhaps because of the differences already discussed between private prison models, and the consequent difficulty in drawing direct comparisons, these reviews and studies have not produced a consistent and conclusive view on the relative merits of private and public prisons.³⁰ Several have, however, highlighted areas of potential concern or cast doubt on the assertion that private prisons offer better value for money. A 2012 US study, for example, found:

"Results vary somewhat, but when inconsistencies and research errors are adjusted the savings associated with investing in private prisons appear dubious...Even if private prisons can manage to hold down costs, this success often comes at the detriment of services provided...private prisons make cuts in important high-cost areas such as staff, training and programming to create savings."³¹

And another US study,³² this time focused on costs and recidivism in Minnesota, concluded:

"The daily per-prisoner costs to the State and private State run institutions were very similar. However, given the higher re-conviction rates for those who spent time in the private prisons, it would appear

there were higher costs, ultimately, to the State if the prisoner went to a private prison."³³

Further, it seems initial cost-savings are sometimes outweighed by subsequent developments. A 2012 UK study noted that:

"Cost related concerns have centred on the fact that PFI contracts lack sufficient flexibility to accommodate changing policy requirements...amending the service specification is burdensome and costly, and can often undermine any initial cost savings that may have been achieved."³⁴

Expressing an alternate view, the Queensland Audit Office stated:

"The private provision of public services in the state's prison system is realising significant cost savings while providing a level of service commensurate with publicly run systems...Private operators can deliver prison operations at lower costs than the public sector because their costs for labour, medical and overheads are lower. Their labour costs are lower because they do not employ as many staff as the public sector would to operate the prisons and they do not require as many relief staff."³⁵

Questions can be asked, however, as to whether the lower labour and medical costs ultimately undermine standards.

Public operation of prisons received a recent endorsement in Australia with the announcement that the NSW corrections service had been selected as preferred bidder, above three private contenders, to run the John Morony Corrections Centre, a 430-bed medium to maximum security prison. The corrections service indicated a formal agreement on the prison would have a focus on rehabilitation, security, health and good value for money.³⁶

In the US, one recent study concluded:

"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, organization and consistency, and staff professionalism."³⁷

There are ample examples, such as the recent report from the US on Federal contract prisons and the earlier example of MWCC in Victoria, that suggest gaps in contractual benchmarks and monitoring can

create particular risks, unintended consequences and 'perverse incentives' for private prisons.

In Mississippi, where around 21 per cent of prisoners are held in private prisons, a recent study³⁸ illustrates the significance of contract and payment structures in private prisons. Study author Anne Mukherjee noted:

"The underlying tension is that private prison operators are typically paid a diem for each occupied bed with few other conditions, creating a potentially perverse incentive for them to maximise the number of occupied beds."³⁹

Demonstrating this conflict, Mukherjee's research found that:

"Private prison inmates serve up to 90 additional days, which represents seven percent of the average time served. The mechanism for delayed release appears linked to the widespread use of conduct violations in private prisons."⁴⁰

A significant factor in parole (early release) decisions is conduct violations whilst in prison – where conduct violations are much higher, as they were in the Mississippi private prisons, this translates to longer imprisonment. This finding was consistent across each category of sentence length and offence.

It may be that the driver of conduct violations was a poorer level of safety, security and stability in the private prisons in Mississippi, or it may be a reflection of increased discipline levels. Either way, whether an outcome of a more disordered prison, or of a greater willingness to prosecute, the resulting longer time in prison and boost to operator income (based on occupancy levels) is an incentive that conflicts with desirable outcomes from a State and community perspective. It is a perverse incentive such as this one that many critics of commercial prisons find deeply concerning.

The Mississippi study gives great insight into the importance of contract incentive structure, and of monitoring to reduce the opportunity for twisted incentives that encourage profit-taking at the expense of community safety outcomes. Mukherjee very moderately suggests the need for closer monitoring of the conduct violation hearing process. A stronger response is desirable – at the very least, the research should be replicated in other jurisdictions as such outcomes, if widespread, would indicate a deep flaw in the privatisation model.⁴¹

A second specific reflection is around the risk of delegating disciplinary responsibility to private operators. In most countries that contract prisons, the detection, investigation, prosecution and adjudication power for conduct violations are a function of the private prison operator.

In the UK, the Howard League for Prison Reform has been vigilant in monitoring the prisoner adjudication system and in late 2015 released a report *Punishment in Prison: The World of Prison Discipline*.⁴² The UK's system of adjudications includes internal adjudications conducted by the prison (private or public) which can result in extra days added into the release licence period, as well as external adjudications by visiting judges.

Unlike the Mississippi research, this UK report demonstrated no evidence of difference in resort to adjudications nor in extra days overall between private versus public prisons. There were, however, very large differences between institutions, with over 22 days per average prisoner in one publicly-run prison, while the average across all prisons was around two days. Publicly-available Ministry of Justice data allows direct scrutiny of basic adjudication outcome information in the UK and the inspections by HM Inspector of Prisons includes a sample of adjudications. It may be that oversight and contract incentive mechanisms are the differences that mitigated against experiencing similar outcomes to Mississippi.

As discussed later, Australian states have variable oversight, data and contract incentive mechanisms. Australian data and a study on prisoner disciplinary hearings or adjudications (similar to the Mississippi one) are simply not available. Given the risk of perverse or unintended consequences of contracting out, there is a need for greater transparency, particularly in relation to outcomes that are entirely administered within a private prison.

In 2010 the UK introduced payment-by-results contracts and social impact bonds to further shift responsibility for performance outcomes, and is now extending this from prisons into other areas. In 2010, the then Lord Chancellor and Secretary of State for Justice said:

"We will base our plans on the same insights that are driving reform across Government: increasing competition; decentralising controls; enhancing transparency; strengthening accountability; and paying by results."⁴³

And further, in a House of Commons debate in 2012 the government approach was articulated thus:

"Developing a diverse market of potential providers of offender services is vital to improving our outcomes. The market must be capable of attracting sustained investment and properly incentivising providers to drive efficiencies and innovation. Government has a key role in promoting a functioning market which recognises the different strengths of different providers, whether they are from the public, private or voluntary and community sector."^{44 45}

United Kingdom profile in brief

- **Imprisonment rate: 148 per 100,000**
- **Murder rate 12 per 1,000,000**
- **85,843 prisoners, of which 17 per cent are in private prisons**
- **14 private prisons, 105 public prisons**
- **First privatised prison opened in 1992**
- **OPCAT compliant: National Preventive Mechanism (coordinated by HM Inspector for Prisons)**

Impact bonds aside, justice advocates remain cautious about investment by the private sector in prison operations. The Prison Reform Trust considered private and public facilities and found:

"Mixed results – some private prisons have proved innovative and effective but others have been criticised by the Chief Inspector for high staff turnover, tendency to cut corners and weaknesses in security. From official facts and figures, it is almost impossible to compare the performances of one establishment with another, partly because prisons hold different categories of offenders and also because prisoners often serve their sentences in a number of different jails."⁴⁶

Competition for operation of prisons now has nearly 30 years of track record with very different approaches and results amongst the participating countries.

It is clear what governments hope to achieve through privatising prisons, and equally clear that the combined cost, quality and outcome evidence remains equivocal.

Nor is it appropriate for those developing policy in Australia to rely on international studies. The same global firms may deliver into a number of countries, but

the contractual and regulatory environments differ by jurisdiction, meaning significant variances in the nature of the outcome sought, the standards required and the level of monitoring and oversight. These are not benign and minor differences, but are a reflection of the general intent of a government for their prison system, as well as their capacity to fund that system.

Ultimately, the lack of a clear picture of the performance of public and private prisons comes down to a lack of transparency. Publicly available data simply does not allow robust comparison of the two systems, particularly around areas such as security breaches, costs and recidivism levels. An Australian research paper published last year stated:

"There is not sufficient evidence to support claims in favour of prison privatisation in Australia... a genuine comparison in terms of performance, cost and efficiency will only be possible once all private prisons are subject to similar levels of public accountability and this will require a genuine commitment to evidence-based prison policy reform."⁴⁷

Influence of private operators

In those US states that are the heaviest adopters of privatisation, there is evidence of global corporations being active lobbyists and donors, providing funds to politicians, think tanks and the media in order to influence policy and public opinion. Of greatest concern are cases involving apparently corrupt government officials, where influence results in policy that increases imprisonment or the profitability of managing prisons at the expense of more desirable outcomes.⁴⁸

Hartney and Glesmann argue that the private prison industry has been 'pivotal' in shaping and promoting criminal justice policies in the United States that favour incarceration as well as working to keep pro-privatisation politicians in office.⁴⁹ There has also been criticism that while companies have worked to promote incarceration policy, they have not matched this with appropriate conditions. A report from the National Council on Crime and Delinquency (US) stated:

"A steady flow of inmates has meant huge profits for these companies. Just as steady have been the reports of abuse and neglect, poor management of inmate needs, and poor governmental oversight. Low pay, limited staff training, and other cost-cutting measures – the primary ways private prisons sustain their profits – can lead to unmet needs and security issues, heightening the inherent dangers to staff and inmates in secure settings."⁵⁰

Private prison operators are global, competing for and delivering prisons in the dozen countries that have taken to the model, including Australia. As of 2015, there were only three private contractors responsible for managing custodial services in Australia – GEO Group (GEO), G4S and Serco⁵¹ – while in 2016 Sodexo was selected preferred operator of a new women's prison being established in Western Australia. Political and other influence is not limited to the United States. And while the context may differ between countries, many decisions are made at corporate head office level – to argue that what happens in other countries could never happen in Australia appears naïve.

Private corporations also reflect commercial imperatives in their responses to market changes. Several United States jurisdictions have been working to turn around imprisonment rates in recent years, achieving reduction in prisoner growth albeit with significant variability state to state. This challenge of a slowing and perhaps shrinking market for private prisons has drawn some remarkable responses.

For example, CCA in 2012 wrote to 48 states with an offer to buy up public prisons and operate them, likely at a competitive rate, on the proviso of a 20 year contract and 90 percent occupancy. In the absence of prisoner growth, market share becomes the pressing priority. Yet a contract that actively aims to keep incarceration rates high surely conflicts with the aims of a successful justice policy.

In 2016 the then Obama administration announced its intention to cease use of private prisons at the Federal level. Private federal prisons account for around 12 per cent of prisoners held in contract prisons in the United States and also include significant numbers of immigration detainees. The decision was in response to a review of the Federal Bureau's monitoring of contract prisons.⁵²

That review found: "In most key areas, contract prisons incurred more safety and security incidents per capita than comparable BOP [Bureau of Prisons] institutions". and "the BOP needs to improve how it monitors contract prisons in several areas".⁵³ Further, that:

*The BOP still must improve its oversight of contract prisons to ensure that federal inmates' rights and needs are not placed at risk when they are housed in contract prisons.*⁵⁴

Responses from prison operators CCA, GEO, and Management and Training Corporation (MTC) included within the report itself reprised the sort of arguments

often heard in the public/private prisons debate. MTC bluntly said "the comparison of two sets of prisons is comparing apples and oranges"⁵⁵ and similarly GEO said, "The differences in the population demographics are critical to the understanding of the collected data."⁵⁶

A specific concern of the Inspector-General, found in more than one of the contracted prisons, was that new prisoners were being held in units and under regimes for 'Special Handling'. Special Handling Units were actually designed and operated for prisoners who were separated for disciplinary reasons, not new prisoners.

The Inspector-General's review itself did not (and likely could not) recommend cessation of contract prisons. Its recommendations were for a working group for improvement and improved monitoring and oversight.

The Obama administration could have acknowledged the review by choosing to continue operating these prisons under a strengthened contract regime, so the choice to step away from contract prisons was possibly, at its heart, an ideological shift. The report provided the means, the politics provided the will. In announcing the decision, then Deputy Attorney-General Sally Yates wrote:

*"Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector-General, they do not maintain the same level of safety and security."*⁵⁷

Despite this, and the BOP's scathing assessment, President Donald Trump moved swiftly to reverse his predecessor's policy.⁵⁸ In fact, US advocacy group The Sentencing Project believes private facility contracting will increase in response to expected longer sentences and expanded prosecutions under the Trump government.⁵⁹

One point the Inspector-General's report makes clear is the deep and comprehensive vigilance that is required in monitoring contract prisons. These prisons had direct on-site monitoring, checklists and outcome reporting. The report identified the risks in what *wasn't* specified, what *wasn't* monitored and what *wasn't* validated. The Special Handling Unit illustrates this – use of these units for purposes other than segregation was not specifically prohibited or monitored.

The Mandela Rules and very big prisons

One specific dimension that has become synonymous with prison cost reduction is the growing size of prisons.

In 1991, Lord Woolf in an analysis of the prison system in the UK and potential improvements, concluded optimal size for a prison was 400 prisoners, with units of no more than 50 to 70 prisoners.⁶⁰

The past 20 years have seen the redevelopment of existing prisons and the building of new, much bigger, prisons. Countries and states have tended to progressively grow the size of their prisons as they have designed stronger and larger built forms with technologies that enable remote or bulk management of prisoners.

Private providers, with their considerable footprints in the US where larger prisons were their earliest and then continuing forms, built their cost models through the efficiencies of larger prisons. This became their primary model of operation.

In Australia and the other countries with private prisons, public prisons have, in essence, been competing with private prisons to retain current operations as well as to secure management of the next prison. With rising prisoner numbers often leading to crowding, large new prison facilities became a pragmatic and cost-efficient response, and a new norm of around 1000 bed prisons has emerged.⁶¹

The UK announced Titan (2,500–3000 bed) prisons as the next step to rapidly move from some of their small local and ageing infrastructure. They appear to have stepped back from this, perhaps influenced by advice that:

*"The additional risk, novelty and complexity in building 2,500-place prisons is likely to increase costs... they are unlikely to provide the correct environment to rehabilitate offenders."*⁶²

HM Chief Inspector of Prisons has also found that small prisons generally perform better than large prisons.⁶³ Inspections in the UK cover the spectrum of services and processes within a prison, from safety and security to rehabilitation and resettlement. On balance smaller has proved better.

The UK, somewhat like Norway and the NSW (Australia) prison system, has persisted with not simply

smaller prisons, but smaller regional prisons, as the predominant model for much of their prison estate.

The weight of research evidence finds:

*"The smaller the facility size, the greater the chances for program administrators and facility personnel to get to know many of the inmates personally, their stories, needs, deficits and strengths and thus better identify effective ways of dealing with them...large crowded places increase an offender's sense of isolation and anxiety."*⁶⁴

Alison Liebbling emphasises that:

*"Efficiency is one important value. It should be balanced against others like the building and safeguarding of the justice institution."*⁶⁵

In 1955, the United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted by the Vienna Crime Commission as universal benchmarks for the treatment of prisoners. In 2015, a significant revision of the rules, now called the Mandela Rules, was adopted by the United Nations General Assembly.

The Mandela Rules provide a universal set of guidelines for prisons. On size of prison they distil the argument to a proposition and a principle:

Rule 88 (1) states:

The treatment of prisoners should emphasize not their exclusion from the community but their continuing part of it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.

Rule 89 (3) states:

It is desirable that the number of prisoners in closed prisons should not be so large that the individualisation of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible.

Rule 89 (3) nudges rather than prescribes. Those drafting this Rule would have had clear visibility of the changes across the world in the size of prisons, including gargantuan or titan prisons on the horizon, and of the countervailing research and practice in some countries – and left some scope for flexibility, simply laying down two guidelines:

1. Emphasise the continued part of prisoners in the community by enlisting community agencies; and
2. Make sure the prison is not so large that the treatment of each individual prisoner is hindered.

In Australia, imprisonment rates and re-offence rates have continued to rise. If prisons are to play their part in community safety there is a need to re-examine the drive to size in the private prison model. This means looking at the general growth in size of prisons and ways to connect prisoners back into the community, and stepping back from the drive to cost reduction at the expense of safety, security, rehabilitation and reintegration. It means challenging Australian states' current thinking on productivity and efficiency of imprisonment itself and, where imprisonment is truly necessary, focusing that service on rehabilitation and community safety.

Suppressing reform

There has been much discussion on the relative merits of private versus public prisons, a body of research to which this report also adds. A valid concern is that this narrow focus in fact diverts attention from a far more important and pressing issue – is incarceration the most effective and appropriate sanction, or would the community as a whole benefit from different approaches? Addressing overcrowding through the establishment of new, private facilities may lead to more appropriate conditions for inmates, but removes the incentive to find innovative solutions to reduce reliance on imprisonment. It also discourages investment in programs that ultimately have greater chance of rehabilitating offenders and creating a safer community (likely also saving taxpayer funds at the same time).⁶⁶

Ideology and politics

Privatisation of prisons has been part of broader government policies that marketised public services and utilities. We note, however, it has unique features. US legal expert Professor Ahmed White, writing in 2001, put it this way:

"No prison in the contemporary world can be fully private. Every prison remains intimately connected to the State, incarcerating inmates arrested, prosecuted and sentenced by the State for violating the very public criminal laws. In this sense the privatisation of prisons is much unlike, say, the privatisation of steel mills or utilities or even schools which may be mandatory and relatively coercive, but to a much more limited degree

*than prisons. Another dynamic that keeps the private prison public is that private prisons operate exclusively on revenues derived from the State."*⁶⁷

Private prisons have not become the dominant form of prison delivery in any country or state in the world, with countries tending instead to privatise a small proportion of prisons – even in the US where the numbers imprisoned reach into the millions, around eight percent of those prisoners are in private prisons, and in the UK just 14 of over 100 prisons are contracted. As noted already, the Australian state of Victoria is the jurisdiction that has committed to privatisation most whole-heartedly.

The approach to privatisation by countries and states is, not surprisingly, linked to the ideology of the government of the day, as demonstrated by the situation in New Zealand. New Zealand first privatised a prison in 2000 under the then National Party government. This was an existing public prison – Mt Eden. The approach swung with a change of government:

*"In July 2005, under a Labour-led government which had repealed the private prisons legislation, [the prison] returned to State operations. However, the re-elected National government reintroduced private prisons legislation in March 2009."*⁶⁸

With Mt Eden once again in private hands, the prison reached the top of New Zealand's publicly-available performance scorecard (for all NZ public and private prisons). But then, in the context of significant publicity around incidents at Mount Eden, and a significant slide down the performance score-card, the State stepped in once again to manage it under an available contract mandate. The private provider continued to deliver the contract services under direct management of a State-appointed Director and senior staff until a breakpoint in March 2017 at which point management returned fully to the State.⁶⁹ In 2016, Corrections chief executive Ray Smith described Serco's management as "willy-nilly" with failures on a large scale.⁷⁰ The same private provider, Serco, has recently built and is operating New Zealand's second private prison.

Similarly, in Victoria, the decision to contract three private prisons in the 1990s was under a Liberal government, and the decision to default the contract at the private MWCC – plus commit to all subsequently-built prisons being State operated – was made by a Labor government. The most recent decision for a fully-privatised Victorian prison was made in 2012 by a Liberal government.

Most recently, at contract-end for the two 1990s Victorian private prisons (Fulham and Port Phillip Prison), a Labor government revised and extended these contracts for around 20 years without public consultation. Given the substantial proportion of the prison system that these prisons comprise, and their prisoner and staffing size, the alternative of a return of such prisons to public ownership and operation (except perhaps through a hybrid such as the South Australian or New Zealand models) might have been difficult to achieve. This only demonstrates, however, the dangers in outsourcing and how difficult it can be to reverse at a later time. The result, with the third private prison being built, has locked Victoria into over 3000 beds in private prisons, close to 40 per cent of total prison built capacity by 2018.

New Zealand profile in brief

- **Imprisonment rate: 194 per 100,000**
- **Murder rate: 10.5 per 1,000,000**
- **9,495 prisoners, of which 20 per cent are in private prisons**
- **Two private prisons, 16 public prisons**
- **First privatised prison opened in 2000**
- **OPCAT compliant: National Preventive Mechanism (coordinated by NZ Human Rights Commission)**

This is not a uniquely Australian and New Zealand mix of privatisation ideology, capability and politics. The US Department of Justice decision regarding Federal prisons has that appearance too. The opportunity for the policy shift back to State-delivered services, based on the Inspector-General's report, has been taken to reflect the then Federal Government's ideology. President Trump, meanwhile, expressed support for privatisation of prisons soon after taking power.

In the UK:

*"The contracting out of imprisonment to the private sector remains controversial. Some argue that the involvement of the private sector has created a diverse market, driving up standards and promoting efficiencies, while others argue that imprisonment is a function which the State should not delegate and prisons should not be for profit. Debate about whether contracted prisons perform better or worse or represent better value for money than their counterparts in the public sector continue apace."*⁷¹

In this context, the NSW government has announced funding for a further 7,000 beds that appears to include reopening of some mothballed prisons, expansion of existing jails and probably other facilities.

In 2016 NSW Corrections Minister Elliot confirmed the government's policy stance, saying "competition between public and private sectors would raise the standards." For public prisons that means:

*"Only prisons that did not meet performance targets would be vulnerable to market testing. The new performance targets are designed to improve jail productivity by increasing out-of-cell hours, and greater prisoner access to employment, education and programs."*⁷²

Unpacking the limits of capacity for a public prison to compete, where the infrastructure, size, capability, budget, industrial awards, standards, policies and practice are set by government, might reveal this as sleight of hand. Given ample evidence that it is these factors that drive costs and outcomes, it may be that the degrees of freedom for individual prisons and their staff and service providers to demonstrate performance on the relevant measures are limited. The ability for a private prison to deliver more within many of the same constraints, is likely similarly limited.

*"If neo-liberalism constitutes the triumph of a particular ideology, and has become the dominant logic of policy-makers globally, then in prioritising the private prison model the NSW government is, it could be argued, simply following this dominant logic. The paradigmatic dominance of neo-liberalism would help explain why the government is seemingly blind to the lack of evidence which informs its decision."*⁷³

Australia's performance

It is 27 years since the first private prison opened in Australia. Borellan prison opened in 1990 in South East Queensland and a further nine prisons across Australia have since been contracted out. Two further new prisons, one in Victoria (Ravenhall), another in Western Australia (Women's Remand and Reintegration Facility) are currently contracted and under construction.

This growth has occurred in the context of significant advances in legislation, regulation, governance, infrastructure and operations of prisons, and changes in economic and social circumstance. Independent oversight has also increased, with mechanisms such

as the Ombudsman and Auditor General and, in two states (WA and NSW), the introduction of a prisons Inspector function, independent of corrections reporting to Parliament.

Over this time, Australia has seen unprecedented growth in prisoner numbers, well beyond population growth. The physical infrastructure and technology of most of the country's prisons, and the operations within, have changed significantly. Still there remain some aged and unfit for purpose prisons, operating alongside the newest of prisons. And in every state many of these prisons house more prisoners than their original build design capacity. Meanwhile other prisons have been redesigned and new prisons built, housing up to 1000 prisoners and beyond as an emerging norm for men's prisons.

Private prisons tend to be the largest prisons in Australia. The exceptions are a sub-set of new special purpose prisons, where a different model is introduced. (eg Wandoo Reintegration Facility in Western Australia, which is a 80-bed prison specifically for 18-28 year olds⁷⁴). The net result is that there are currently nine private prisons out of the total of 99 prisons across the five states: nine percent of the prisons incarcerating 19 per cent of the prisoners.

Corrections is a State responsibility in Australia, and the appendix to this report traces the development of private prisons in Australia on a state by state basis. As noted, private prisons represent a substantial segment of the prison systems in five states. Each state though has taken somewhat different decisions in privatising prisons. It appears the strongest ideological affinity for private prisons is with Liberal and National party governments, but across changes in governments almost all private prisons contracts have remained and been extended or re-contracted.

Australian state governments have built and redeveloped both public and private prisons across this period of growth, finding for and against private prisons at different points in time. The two states with the highest numbers of prisoners in private prisons have significantly higher costs per prisoner than other states (excluding Tasmania and ACT which have much smaller populations). If the intent of privatisation were to reduce the cost of the prison system, it is clear this has failed.

Given the extent of privatisation of the prison system, and the level of interest in reducing costs and strengthening outcomes from prisons, it is remarkable how little performance and outcome information is

publicly available to make a judgement on the efficacy of prisons, let alone private prisons as a fairly new part of the prison system.

The Productivity Commission with its accountability for government performance metrics does not separate out public from private prisons performance (see Table 1, following), even though the rationale for the introduction of private prisons was around productivity (value for money), the Commission's core mandate.

Performance reporting by government is limited and performance requirements for public and private prisons are not always equivalent. Given that most prisoners move between prisons across the period of their sentence, conclusive data (including data around reporting and attribution on re-offending and other post prison outcomes) is often not available.

This provides context for the conclusion of Andrew, Baker and Roberts in their recent report on private prisons in Australia that:

*"There is insufficient publicly available information to determine whether or not private prisons provide a better approach to the delivery of prison services as compared to the public system. The purported benefits of introducing private prisons along the lines of accountability, costs, efficiency and performance still remain to be proven."*⁷⁵

Australia has integrated and developed a more significant dependence on private prisons than almost any other country in the world. Available research does not validate the assertions of governments that there is advantage of cost, quality and outcomes from private prisons. Instead research, mostly from outside Australia, indicates that there can be both better and worse outcomes from private prisons.

There is on the public record significant information from:

- Ombudsmans' offices, where prisoner complaints and the occasional thematic review speak to the quality and impact of imprisonment;
- Auditor-General reports that press into the detail of prisons;
- specific reviews or investigations at times of particular concern, sometimes publicly available;
- occasional research reports from the Australian Institute of Criminology and universities;
- Coroners' Inquests that provide significant insights into the operation of prisons; and data and analysis from Corrections themselves; and

- occasional snippets in proceedings of governments where an opportunity may be taken to probe behind the available budget for meaning and detail.

Available information tells us a little about the earliest stages of privatisation in Australia, and where this produced failures and unanticipated consequences. Strategic plans and responses to report recommendations also reveal how different states have reviewed and adjusted their approaches

to imprisonment across the following decades. Public availability of contracts for private prisons over the past few years has also shed some light on arrangements with commercial providers.

Nevertheless this information does not yet provide a systematic, transparent, publicly accountable method by which Australians in Victoria, Queensland, New South Wales, South Australia and Western Australia can judge the efficacy of prison privatisation.

TABLE 1. REPORT ON GOVERNMENT SERVICES 2017 – KEY COMPARISONS

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUS
Total prisoners	12,305	6,320	7,522	5,850	2,870	524	379	1,528	3,4526
Prisoners in private prisons	1,779	1,822	1,465	1,468	455	0	0	0	6,989
Per cent share <i>Total percentage of prisoners in private facilities</i>	14.5	28.8	19.5	25.1	15.9	-	-	-	18.7
Total prisons	47	14	14	16	9	5	3	4	-
Total private prisons	2	2	2	2	1	0	0	0	-
Real net operating expenditure per prisoner, per day (\$)	166.94	289.83	177.26	250.48	195.45	311.87	307.73	198.86	209.96
Imprisonment rate per 100,000	206.4	134.7	201.2	291.2	213.8	129.8	131.6	921.7	201.0
Recidivism rate (%)	50.7	42.8	39.7	38.1	36.9	39.8	41.0	58.3	44.6
Time out of cell – average hours per day (24 hour period)	7.8	11.1	10.3	12.5	9.6	8.6	9.0	12.1	9.9
Employment (%) <i>No. of prisoners or periodic detainees employed as a percentage of those eligible for employment</i>	80.4	87.5	68.9	66.0	71.2	53.4	71.1	79.3	74.9
Education and training (%) <i>No. of prisoners actively participating in education and training as a percentage of those eligible to take part</i>	32.2	34.1	35.6	28.5	67.4	14.4	72.3	24.4	34.4
Assault rate <i>Annual no. of assaults per 100 prisoners</i>	23.68	16.14	7.09	3.74	8.29	8.97	16.92	3.31	23.68
Unnatural deaths (%) <i>No. of unnatural deaths as a percentage of daily average prisoner population</i>	0.05	0.03	0.04	0.10	0.07	-	0.25	0.06	0.06
Escapes from open camps per 100 prisoners (%) <i>No. of escapes as a percentage of the daily average open/secure prison population</i>	0.23	0.57	0.90	0.67	0.33	-	-	1.07	0.46

Governance and accountability

Freedom of Information legislation has played a significant part in providing a means for public accountability, including in relation to private prisons.

In 2009 in the United Kingdom, data on the Ministry of Justice Performance Assessment Tool (results unpublished) was released through Freedom of Information on all prisons in the United Kingdom (including the 12 private prisons of that time). The Prison Reform Trust found:

Mixed results – some private prisons have proven innovative and effective but others have been criticised by the Chief Inspector for high staff turnover, tendency to cut corners and weaknesses in security.

HM Chief Inspector has also been particularly significant in the public accountability of each prison, and in the accountability of government to respond. In August 2000, Professor Richard Harding was appointed the first Inspector of Custodial Services in Western Australia under legislation to coincide with the state's move to contract out a prison. This legislation was to provide the mechanism for external scrutiny of both public and private prisons, borne of concerns around privatisation in the community. The legislation was modelled on the United Kingdom's HM Inspector of Prisons.

Two years before that appointment Richard Harding, in writing for the Australian Institute of Criminology on private prisons said:

"The challenge is to ensure that privatisation is harnessed and driven for the benefit of imprisonment standards as a whole... Governments have a responsibility to cement and improve regulatory procedures not as a matter of economic rationalism but as one of equity, decency and purposiveness in Australian prisons policy and administration – both private and public."⁷⁶

The law and regulation that applies to public prisons applies equally to private prisons, as must the requirement of public accountability. In Victoria, for example, the Public Interest Test⁷⁷ in private prison contracts explicitly spells out requirements to comply with all legislation. This would include legislation around freedom of information, audit, human rights and responsibilities, disability, discrimination, employment, privacy and data requirements. It also requires compliance with the Correctional Management

Standards for Men's Prisons in Victoria and the national Standard Guidelines for Corrections in Australia.

Over time, countries and states have responded to this responsibility and approaches have been modified. As an example, it has taken until just the past few years for governments in Australian states to peel back the commercial-in-confidence label on private contracts and begin to put them in the public domain. Even now, the extent of redactions remains contentious, and the approach and extent of disclosure varies between states.

The UK acted earlier than Australia to strengthen governance and increase transparency for public accountability of prisons.

In the UK in 2015, reviews across the prison estate demonstrated the considerable risks and impacts of overcrowded prisons on decency, safety, rehabilitation and reintegration, and placed significant pressure on government to act. External inspections, if publicly reported, oblige government to consider and respond. However, while recommended by reviews,⁷⁸ Victoria, South Australia, and Queensland have not established an external inspectorate reporting to parliament for prisons. While New South Wales now has an Inspector of Custodial Services, this office has neither completed nor reported any review of individual prisons across the past three years. In Australia, the public accountability of prisons is largely ad hoc, driven by incidents and identified risks. The review of Auditors General and Ombudsmen remain irregular and limited.

The United States, UK,⁷⁹ New Zealand, Canada and France have ratified the Optional Protocol for the Convention Against Torture, which provides international oversight of conditions of imprisonment, and they report as required by this protocol through the National Preventive Mechanism to the United Nations. The United Kingdom routinely inspects and reviews and reports to Parliament on all UK prisons.

The US Federal Bureau of Prisons recent report⁸⁰ notes the strength and weakness of potential monitoring models for private prisons. Its model includes routine on-site monitoring, a model that is sometimes also used in other jurisdictions. This approach provides a source of regular direct examination of performance, but the volume and variety of activity within a prison means such monitoring is unlikely to provide a comprehensive picture on its own. The net accountability picture is incomplete, with significant variability by country and by state. The mix and nature of monitoring, performance reporting, legislation and

regulation, reviewing, internal and public reporting have evolved over this time, but nonetheless there is no country or state where citizens have a clear and thorough view into prisons and their outcomes. In this context it should be no surprise that the effort to compare public and private prisons has been challenging, with results equivocal.

It is the reticence of government to ensure sufficient governance and to be publicly accountable for the performance of each of its prisons (public and private) that creates the greatest risks to our prisons and communities and may provide the most significant opportunity for private prisons to work in the gaps of contract and governance. It was Richard Harding who identified one symptom of this reticence of government, when he wrote "the cry of commercial-in-confidence is more aptly described as government in confidence".⁸¹

Confirming this, Western Australia's Economic Regulation Authority in its 2015 report concluded:

*"There is a strong public interest case for improving the standards of the prison system - for both financial and social reasons... We consider that the quality and performance of the prison system can be improved by strengthening governance arrangements, ensuring a better allocation of existing resources within the system, focusing on evidence-based approaches, and collaborating with the not-for-profit sector and universities. These improvements will lead to better rehabilitation outcomes."*⁸²

The Optional Protocol – Convention Against Torture (OPCAT)

The United Nations has taken steps to bind states to certain human rights principles and conventions. This includes directing sustained international attention towards prisoners and prisons and highlighting the responsibility of the State to every prisoner.

One specific mechanism is the Optional Protocol – Convention Against Torture (OPCAT). The origins of OPCAT are from the Universal Declaration of Human Rights Article 5 which states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Conventions Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in June 1987. Australia ratified this convention in 1989.

OPCAT was adopted by the United Nations and came into force just eleven years ago in 2006, based upon common agreements on the necessity for independent scrutiny of States by fellow States to hold governments to account for their treatment of prisoners.

There are currently 81 State parties to OPCAT and 17 additional signatories (who have signed but not ratified, including Australia). OPCAT establishes a requirement that a National Preventive Mechanism (NPM) is set up by each State, with mandates guided by "a preventive approach, independence, transparency, cooperation and constructive dialogue".⁸³ The NPM is obliged to publish an annual report in their own country on their activities and prevention issues. Of the 81 OPCAT State parties, 64 have designated their NPMs.

Australia and the United States are the two outliers, the only two of the countries who do not have an NPM and who have privatised prisons. And while Australia is a signatory to the protocol, the United States is not. The decision announced by the Australian government in February 2017 to ratify OPCAT by year-end has been welcomed by lawyers and human rights advocates, although they have also noted it is "long overdue".⁸⁴

International treaties are with the Commonwealth, not individual Australian states. Prisons are a state responsibility, which means implementing OPCAT specifications requires cooperation of all states.

New Zealand has been publishing its annual report for the past five years. In the forward to the most recent report it notes:

*"Agencies charged with monitoring detention facilities in New Zealand cannot be complacent. Although many of the more extreme examples of torture and abuse that occur overseas are not generally seen in New Zealand, significant issues still arise and need to be addressed if we are to comply with international standards and the general expectations of a humane society."*⁸⁵

The United Nations Human Rights Council, in reviewing reports submitted by States, reiterated its concern at the privatisation of prison management.

"The State party should ensure that all persons deprived of their liberty are guaranteed all rights enshrined in the Covenant. In particular, all measures of privatisation of prison management should continue to be closely monitored with a view to ensuring that under no circumstances can the State party's responsibility for guaranteeing to all persons deprived

of their liberty all Covenant rights, in particular those under article 10, be impeded.”⁸⁶

It is clear that the State cannot abrogate its responsibility and accountability for the individual prisoner held within any prison – public or private. That is not simply a matter of human rights law, but more generally constitutional law. The concerns of the Human Rights Council are around the obligation to strengthen and maintain legislative and governance protections to ensure that.

Investor influence

This paper has already considered the profit motive of prison operators, and the pressure on publicly-listed companies to provide shareholder returns. However, it is worth also considering the flipside of this – the influence of the investment community where it becomes concerned about the activities of private prison operators. There are already a number of high profile investors who have expressed an intent to avoid investments in such companies.⁸⁷ Reasons include concerns around financial and reputational risk, moral concerns, and an inability to assess the investment case because of lack of transparency.

In June 2017, New York City’s pension funds announced they would sell all investments in private prison companies, due to a record of alleged human rights abuses and the risk of the industry attracting “long-term reputational and financial harm.” In total, the funds offloaded about \$48 million from GEO Group, CoreCivic and G4S. Announcing the decision, NYC pension funds Comptroller Scott Stringer pointed to security issues, overuse of solitary confinement, concerns around poor medical care, violence, and the associated reputation, legal and regulatory risks. He said:

“Our criminal justice system has failed a generation of Americans because, for decades, we built bigger prisons instead of greater schools, and we were ‘tough on crime’ instead of ‘smart on crime’ Morally, the industry wants to turn back the clock on years of progress on criminal justice, and we can’t sit idly by and watch that happen. Divesting is simply the right thing to do, financially and morally.”⁸⁸

At this stage, the sums involved in divestment announcements have amounted to just a fraction of the market value of large private prison operators. However, the fact that investors (including government-managed funds) are beginning to express concern adds a new dimension to the debate over private prisons.

Conclusion

Australian states now have more than two decades’ experience with private prisons. Over this time internal and external accountability have increased and have shaped both private and public prisons. While some of the most outdated infrastructure has been discarded, prisons have shifted from loose regulation to significantly increased standards and performance requirements, and a broader group of professionals has been trained, contracted and employed to work within prisons.

Government remains responsible for prisoners whatever the delivery mechanism of imprisonment, and significant improvements are still required to deliver on the expectations of the community regarding outcomes.

The experience of the small group of countries with private prisons continues to provide insights into the necessary elements to operate with a mixed public/private prison system. Examination of this experience provides insights into the particular risks of the leverage of such a concentration of very large global corporations reaching into each of these countries, and examples of the potential for undue influence through donations, lobbying, concerted legislative campaigns and, at its worst, through corruption. This study has highlighted the potential for perverse outcomes through contract incentives and requirements, and the need for governance structures and vigilance to detect these early.

This study has provided examples of failures, of some particular risks of driving costs down, and of the range of governance and public accountability options available to government to ensure operations and outcomes that meet our international obligations and our domestic laws.

Australia, coming a little later to private prisons, appears to have been spared some of the most egregious examples of unfettered cost reduction and profit taking. Still, the possibility of perverse outcomes from performance and contract requirements remains a real risk.

As Katherine Curchin noted in a critique around the Productivity’s Commission’s inquiry into social services, we must:

“acknowledge the imperative of publicly resourcing regulators capable of putting the brakes on trickery and deception, as well as the importance of protecting

the altruistic motivations of civil society from being crowded out by market values.⁸⁹

The Productivity Commission was founded in 1998 to "improve the productivity and economic performance of the economy" and is also required to recognise the interests of the community. It has been a significant advocate of competition and efficiency. Given its remit, and access to state data, it is remarkable that it has not provided the forum to examine the efficacy of the privatisation of prisons.

Recently, in turning its gaze on Human Services, the Productivity Commission has provoked a renewed debate on social governance, and on the limits of marketisation. In her commentary, Katherine Curchin wrote:

"If we are to avoid the full commodification of all aspects of human life, governments must recognise ethical limits to the operation of markets. Other considerations important to our society - human dignity, democracy and justice for example - must be allowed to trump profitability."⁹⁰

It is clear that a shift in community and expert focus is important to the policy and approach to prisons. Australia needs to develop its conversation about privatisation and prisons beyond "choice, competition, and contestability" to also include a fourth 'c', "care".⁹¹

The community must be recognized as a stakeholder in prison outcomes and therefore allowed the means to assess them. Prisons across Australia continue to lack sufficient public accountability. It can readily be argued that neither government nor the community has enough information or assurance that prisons – public or private – can positively change the lives of prisoners or fulfil community expectations of justice.

Our international obligations require that prisons operate with humanity, respect and dignity, offering reformation and social rehabilitation. Private prisons have become a significant part of prison systems in Australia and in a limited number of countries around the world. Over this time, imprisonment rates in Australia have increased as have recidivism rates.

The lack of available information to unpack indicators of performance and outcomes of prisons hampers an ability to objectively compare public and private prisons. The lack of public accountability restricts the ability for the community to understand and to participate in ensuring government takes responsibility for providing the circumstances for prisons to deliver

on both our international obligations and the intent of imprisonment.

Recommendations

This study concludes with seven recommendations to ensure Australia's prisons meet community expectations and public policy goals, in a fair and humane manner. They are that state and territory governments should:

1. Acknowledge the increasing imprisonment rates in Australia are neither sustainable nor desirable, and establish targets for reducing imprisonment through appropriate prevention and diversion strategies.
2. Reduce reliance on fully privatised prisons.
3. Ensure independent expert inspection and review of all prisons with reporting to respective parliaments along with international reporting through the OPCAT National Preventative Mechanism.
4. Publish private prison contracts and their contract monitoring and performance outcomes.
5. Publish public prison requirements and their monitoring and performance outcomes.
6. Revise Productivity Commission Report on Government services data collection and reporting so that the effectiveness of public and private prisons can be separately examined.
7. Commission research to examine the impact of emerging and expanding prison size and operation on safety and rehabilitation outcomes.

The outsourcing of prison management and operation presents unique challenges. A market is usually significantly influenced by customer experience – yet in a private prison arrangement, the State is the customer while the prisoners, and the community more broadly, are essentially the end-users. In such a scenario, transparency and an ability to monitor performance are essential to maintaining confidence that the prisons are operating in an appropriate way.

Ultimately, the making of laws and any associated policing and sanctioning remains a government responsibility. At present, there remain notable gaps in transparency, at the same time as significant power

is handed to a select group of private, profit-driven organisations. This paper has examined the risks associated with this, and made recommendations to address them. There are few people more powerless than those imprisoned by the State and accordingly, it is incumbent on the State to take all steps to ensure its prisons provide a humane environment offering the best chance of prisoner rehabilitation and, ultimately, community safety.

NOTES

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6. Mason C (2013), International Growth Trends in Prison Privatization, The Sentencing Project, August, 2013, accessed <http://sentencingproject.org/wp-content/uploads/2015/12/International-Growth-Trends-in-Prison-Privatization.pdf>
7. See Table 1, p.16 of this document (Report on Government Services 2017 data)
- 78 Productivity Commission data for 2015-16 (see Productivity Commission (2017), Report on Government Services, Table 8A.4 January 2017 (Table 1, p.16 of this document) showed that the daily average size of the Victorian prison population was 6,320 of whom 1,822 or 28.8% were housed in private prisons. As the rationale for installation of private prisons is that they might be less costly to run, it could be anticipated that within a shortest practical time after opening, Raven-hall would house 1,000 prisoners in addition to those held in other private facilities. This would bring the percentage of prisoners up to 44.7%. However prisoner numbers appear to be still growing, as evidenced by an estimate of 6,838 prisoners in Victoria in December 2016 (based on December 2016 monthly prisoners by prison location data - Corrections Victoria (2016), Monthly prisoner and offender statistics, accessed <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/monthly+prisoner+and+offender+statistics+time+series>). Even if overall prison numbers were to grow by 1,000, the percentage in private prisons would still be around 36.7%.
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13. *Ibid*, p2
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Appendix A: Private prisons in Australia – development state by state

This appendix provides a sketch of each of the five states that have privatised prisons.

As a backdrop to those sketches, the comparisons from the most recent Report on Government Services across all states and territories are also discussed. (See Table 1 on p.16 of this study.)

The Report on Government Services is an annual report from the federal Productivity Commission deliberately designed to provide a yardstick, prompting competition between states, with selected metrics seen as indicators of performance. This approach is taken across the whole of government services. While comparative metrics have gradually refined and converged for states, there remain some variances in the comparability of the data that is presented state by state.

The metrics available on prisons include some important performance measures. As an example, time out of cells is both a key cost driver (as prisons require more staff when their prisoners are unlocked from their cells), and critical to the well-being of prisoners including their access to programs and services. Time out of cells along with rates of prisoners involved in education, training and prisoner employment are proxy measures for purposeful daily activity, seen as key ingredients for both rehabilitation and decency of prisons. Assaults, unnatural deaths and escapes are seen as key indicators of the safety and security of prisons.

Unhelpfully, the only available elements of performance that separately report private and public prisons are prisoner numbers and number of prisons.

Queensland

Queensland was not just the earliest adopter of private prisons in Australia, it also quickly adopted a competitive bidding process to award contracts in the early 1990s. This highlighted the secondary intent of privatisation, delivering competitive conditions to drive substantive change of the public prison system.

In 2013, the politicised Queensland Commission of Audit recommended progressive opening of all prisons to competitive tendering 'where there is a contestable market'.ⁱ This was a reprise of the mid 1990s option where public and private prisons competed to operate existing prisons.

This went off the agenda in May 2015 when Queensland put in place a policy limiting the number of private prisons to two (the existing Arthur Gorrie Remand Centre and South Queensland Corrections Centre), and cancelling an offer to the market for prison operation of a 'mothballed' facility, Borellan.

In 2016 the Queensland Audit Office released a report 'Management of privately operated prisons' providing a mixed picture of the comparison of public and private operation of prisons. It found 'the private provision of public services in the state's prison system is realising significant cost savings while providing a level of service commensurate with publicly run systems,' based on public sector comparators from 2008 for one facility and 2012 for the other.

QAO said:

Private operators can deliver prison operations at a lower cost than the public sector because their costs for labour, medical and overheads are lower. Their labour costs are lower because they do not employ as many staff as the public sector would to operate the prisons and they do not require as many relief staff.ⁱⁱ

The cost for medical services was 45-60 per cent lower in private prisons with no certainty of like for like. The medical provider in public prisons was public area health services.

Just as UK studies had found, QAO went on to note that most of the variations between public and private prisons were related to the differences in profile and physical conditions. These included differences in size, prisoner profile, infrastructure, location, and purpose between the two private prisons (one nearly 1000 bed remand facility, the other a 300 bed sentenced facility). The public prisons also differed markedly, from 120 bed prison farms through various purposed regional prisons, to four women's prisons.

The QAO identified that on most performance measures there were public prisons performing better and worse.

Queensland has nearly 20% of its prisoners in private prisons, and the cheapest real net operating expenditure per prisoner per day in Australia (see Table 2, following). Across all prisons, it has below average out of cell hours, education and training and prisoner employment, contrasted with a better (lower) recidivism rate than average and lower rates of assault and unnatural deaths.

In Queensland the Chief Inspector of Prisons reviews every prison, public and private, and reports to the Corrections Commissioner. As a process of public accountability, the department had until recently been routinely releasing these reviews and their follow-up reviews. No reviews have been publicly released since 2013.

Andrew et alⁱⁱⁱ noted that Queensland performed badly on public accountability, with the public unable to assess performance given the scarce disclosure of private contracts and related costs, as well as key performance indicators. They concluded that despite a long history (27 years) of privatization, the State provided no evidence in support of privatisation.

South Australia

South Australia has a single 350 bed low and medium security facility with hybrid privatisation (somewhat like the Brazil example cited in this paper). A State-owned and maintained facility, Mt Gambier prison operates under legislation that maintains direct State operational control. Senior management of the prison are government employed.

The facility has operated with this hybrid model since the mid-1990s. As discussed earlier, a comparative study saw this model, and others with varying levels of outsourcing of functions to for-profits and not-for-profits, as likely to have somewhat lower cost and higher quality. The data in Table 1 indicates that South Australia may be an example of this.

New South Wales

New South Wales has two private prisons, and 45 other prison facilities. Around 15 per cent of prisoners are held in the private prisons: Junee Prison, which opened in 1993, and Parklee, which was previously a public prison and was contracted out in 2009. The two private prisons are among the largest prisons in the state.

In March 2017, the state Government announced a new prison was to be constructed near Grafton for 1,700 men and women. The prison, Australia's largest, would be built and operated by a consortium led by Serco.^{iv}

Three key reviews/inquiries provide some insight into the NSW experience. In 2004, the Auditor-General identified the difficulty in comparing public and private prisons. In 2005, a Public Accounts Committee inquired into 'Value for Money in NSW Correctional Facilities'. This was followed by the General Purpose Standing Committee No. 3 Inquiry into the privatisation of prisons and prison related services.

This Committee recommended:

The re-establishment of an Independent Inspector of Prisons, onsite monitors at all New South Wales prisons, and the Department of Corrective Services make public the methodology used to establish the costs of public and private prisons in the state.^v

Material put to the Committee suggested that Junee private prison was operating at a cost of \$124.29 per prisoner per day while the public prison system operated at \$184.03 per prisoner per day, although these figures were not verified.

The re-established Independent Inspector of Custodial Services commenced in 2013 and while legislation requires all facilities to be reviewed (juvenile facilities at least once every three years, other facilities at least once every five years), no individual facility review has been published at this time. A number of reviews on more general issues have been published, however, while the Inspector also reports annually to Parliament on the year's activity.^{vi}

In April 2015, the report *Full House: The growth of the inmate population in NSW* was released and its review included Parklee (a private prison) as one of the three prisons examined. The inspector found significant deficits in the NSW custodial system, including overcrowding and 'erosion of the quality of life', and warned:

Where the State treats inmates in a way that denies them a modicum of dignity and humanity it should not be surprised if they respond accordingly.^{vii}

John Paget in his second (and last) report^{viii} as the NSW Inspector of Custodial Services gave a scathing rebuke of the decisions of government. His report identified increased demands without increased resources as a critical factor in the poor performance

of the NSW prison system. He highlighted the extent of non-compliance with their own standards, and some specific instances of perverse incentives both for public and private prisons.

NSW has the second-lowest cost per prisoner per day of Australian states and territories against the second-highest recidivism rate, the lowest average hours out of cell and the highest rates of assault of Australian prisons. This would suggest reducing costs is also adversely affecting quality and outcomes. A higher level of complaints in NSW private prisons than in public facilities also warrants further investigation.^{ix}

Western Australia

Western Australia is a relative latecomer to private prisons. In 2000 a new prison, Acacia, was the state's first private prison. In circumstances with some similarity to the failure of MWCC in Victoria, there were problems in the first contract period which resulted in a competitive process and continued private delivery under a different private prison provider. Andrew et al identify this as:

Inaccurate staffing level estimates, poor accountability structures within the contracting company, and poorly defined corporate decision making structures.^x

The second private prison contract came 12 years later. It was a small, specialised prison, Wandoo Reintegration Facility. Nonetheless, Andrew et al asserted:

Western Australia represents the most sophisticated example of prison privatisation in Australia, using the services of two private prisons to manage a fairly dramatic rise in prison inmates over the last 20 years. Drawing on the experiences of states such as Queensland and Victoria, Western Australia uses detailed contracts to incorporate performance measures and to embed systems for monitoring and accountability.^{xi}

Western Australia has the second highest imprisonment rate in Australia, almost double the rate Victoria's imprisonment rate. Western Australia has the lowest recidivism rate, the highest average hours out of cell, a lower than average cost per prisoner per day, better than average safety and security measures, and slightly lower than average employment, education and training. Twenty two percent of prisoners in Western Australia are held in the private prisons.

In August 2017, the WA Government announced that the operation of Wandoo would return to public hands at the end of the current contract in mid 2018. The Labor Government said this would save taxpayer funds, and indicated the move was part of an election commitment to return privatised services to the state where possible and economically beneficial to do so.^{xii} The announcement raises questions around the future of arrangements with Serco and Sodexo when their respective current contracts for Acacia Prison and the Women's Remand and Reintegration Facility at Hakea Prison expire.

Western Australia is a state with a long-standing independent inspector of prisons, reporting publicly to Parliament on the performance of each individual prison since 1999. Western Australia is the only state with this level of direct public accountability.

Western Australia's Economic Regulation Authority, in its 2015 Inquiry into the Efficacy and Performance of Western Australian Prisons, recommended:

A commissioning model, whereby prisons and prison services can be delivered by a mix of public, private and not-for-profit providers.^{xiii}

The ERA suggests it is this combination of diversity, hybrid models, and contract specifications that works to get the incentives right, alongside public accountability that allows independent verification of performance. The ERA also notes a clear value of including not-for-profits in service delivery.

Victoria

In 1997, Tim Daly framed the first moves into privatisation in Victoria in this way:

I am confident that we have produced a win-win solution to the intractable problems which faced the Victorian corrections system only a few short years ago and set the scene for the decades ahead in the delivery of correctional services.^{xiv}

Victoria opened three prisons in its first phase of privatisation, taking the proportion of prisoners in private prisons to 43 per cent in the 1990s, each built, owned and operated by private companies. At the same time it closed five aged prisons that were no longer fit for purpose. It was not, however, the start of significant changes to the prison system. Barwon and Loddon prisons, both public prisons, opened in the early 1990s. These prisons were built and staffed with

aspirations far removed from the old Castlemaine and Pentridge complex prisons which they replaced.

In 2000, independently reviewing some of the early impacts of privatisation, Kirby said:

While media and public attention has tended to focus on specific incidents at individual prisons, it is important to acknowledge that there have been a number of areas where the introduction of new providers has had a positive outcome. The standard of prisoner accommodation has improved... standards of care for prisoners have been clearly documented... an accountability framework has been implemented... and the multi provider model has brought greater attention to prison and prison management systems.^{xv}

The review identified that the prison system had moved from 'custom and practice' to standards for professional practice.

From 2001, government policy was for public sector delivery of core correctional services. Two prisons were contracted for design, build and facility management through private companies, and a third prison (Ararat, now Hopkins) was extensively modified and expanded under a similar model. But Corrections Victoria remained the prison operator for all prisons except Port Phillip and Fulham prisons, both contracted in the late 1990s.

Victoria's Auditor General in 2010 produced a review report Management of Prison Accommodation using Public Private Partnerships looking at the effectiveness of the contracting and performance regimes. The Auditor-General found:

DOJ [the Department of Justice] has not been able to demonstrate that it is continuing to receive value for money in terms of the standard of prison accommodation services it is paying for... all PPP contracts examined have weaknesses, particularly those developed pre-2001.^{xvi}

An illustrative example of an ill-defined specification, from the original Port Phillip and Fulham prison contract, was the requirement that 'the facility must accommodate prisoners predominantly in single cells'. This provided clarity neither for the provider nor the State on the limits of doubling up cells.

Although obviously negotiated through contract variations, both Port Phillip Prison and Fulham have

grown considerably in size and have more than half of their inmates in refitted double cells.

Inevitable renegotiation and variation of contracts, as needs change, is one risk of privatisation that has been acknowledged. For a private contractor this presents an opportunity to grow profit, an issue that would not arise where prisons are run by the State. The Auditor-General identifies this weakness, saying:

With the competitive pressures of tendering gone, the State is at a disadvantage if it wants changes. Any renegotiation of services or standards without the benefit of a competitive process risks erosion of the original value for money proposition.^{xvii}

And:

It is difficult for DOJ to demonstrate that contract variations and facility modifications have maintained value for money.^{xviii}

Victoria has been well served by Ombudsman reports, occasional incident-related reviews, and the Auditor-General's examinations in identifying risks and prompting government action. However, there is room for greater transparency and depth of analysis. The state's Office of Correctional Services Review reports to the Secretary of the Department of Justice and does not release its reports, nor does it routinely review the operation and performance of each prison across the state. As with Queensland, the relative value and performance of public and private prisons is asserted, not demonstrated to the community, and public accountability prison by prison is weak.

Victoria has the most significant reliance on private prisons for delivery of the prison system in Australia and one of the highest in the world. The new private prison at Ravenhall, the third private prison in Victoria, is scheduled to open towards the end of 2017. All indications are that the 1000-plus beds will be rapidly filled. Even before Ravenhall's completion, 29 per cent of Victoria's prisoners are held in private prisons, a 38 per cent higher proportion than any other state in Australia with private prisons. The impending opening of Ravenhall will likely see the proportion of prisoners in private prisons rise to about 40 per cent, and Victoria will be dependent on a single company to manage about 25 per cent of the state's prisoners. This would seem an unwise level of dependence on an entity whose goals

and focus regarding prison operation are shaped by different drivers to those of Government, for whom rehabilitation and safety should be paramount.

Victoria has now given the Auditor-General 'follow the money' capacity, an ability that specifically empowers closer examination of entities such as private prisons.

Tasmania, ACT and Northern Territory

Tasmania, the Australian Capital Territory and Northern Territory have not fully privatised a prison. The reasons for the ACT were around a particular desire to run a human rights-compliant prison, an experiment of sorts that required direct State control. For Tasmania, and to some extent the Northern Territory, the much smaller size of their prisoner populations would have made it less likely that a cost-related gain, which relies somewhat on the size of the prison itself, could be demonstrated.

Appendix B: US prisoners held in private prison, by state

Jurisdiction	Prisoners held in private prisons ^a			
	2014	2015	Per cent change 2014-15	Percentage of total jurisdiction, 2015
U.S. total	131,723	126,272	-4.1%	8.3%
Federal^b	40,017	34,934	-12.7%	17.8%
State	91,706	91,338	-0.4%	6.9%
Alabama	481	398	-17.3	1.3
Alaska ^c	595	593	-0.3	11.1
Arizona	6,955	6,471	-7.0	15.1
Arkansas	0	0	~	~
California	2,376	2,195	-7.6	1.7
Colorado	3,782	3,987	5.4	19.8
Connecticut ^c	647	524	-19.0	3.3
Delaware ^c	0	0	~	~
Florida	12,395	12,487	0.7	12.3
Georgia	7,901	7,953	0.7	15.2
Hawaii ^c	1,425	1,340	-6.0	22.8
Idaho	639	545	-14.7	6.8
Illinois	0	0	~	~
Indiana	4,420	4,204	-4.9	15.4
Iowa	0	0	~	~
Kansas	0	0	~	~
Kentucky	0	0	~	~
Louisiana	3,142	3,152	0.3	8.7
Maine	0	0	~	~
Maryland	30	30	0.0	0.1
Massachusetts	0	0	~	~
Michigan	0	0	~	~
Minnesota	0	0	~	~
Mississippi	4,114	3,946	-4.1	20.9
Missouri	0	0	~	~
Montana	1,432	1,490	4.1	40.4
Nebraska	0	0	~	~
Nevada	/	/	~	~
New Hampshire	0	0	~	~
New Jersey	2,761	2,863	3.7	14.0
New Mexico	3,072	3,026	-1.5	42.2
New York	0	0	~	~

Jurisdiction	Prisoners held in private prisons ^a			
	2014	2015	Per cent change 2014-15	Percentage of total jurisdiction, 2015
North Carolina	30	29	-3.3	0.1
North Dakota	371	427	15.1	23.8
Ohio	5,370	6,050	12.7	11.6
Oklahoma	7,367	7,446	1.1	26.1
Oregon	/	/	~	~
Pennsylvania	636	605	-4.9	1.2
Rhode Island ^c	0	0	~	~
South Carolina	15	14	-6.7	0.1
South Dakota	10	22	120.0	0.6
Tennessee	5,116	5,172	1.1	18.4
Texas	14,368	14,293	-0.5	8.7
Utah	0	0	~	~
Vermont ^c	/	/	~	~
Virginia	1,570	1,568	-0.1	4.1
Washington	0	0	~	~
West Virginia	0	0	~	~
Wisconsin	0	0	~	~
Wyoming	255	267	4.7	11.0

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held. Totals include imputed counts for Nevada, Oregon, and Vermont, which did not submit these data to the 2015 National Prisoner Statistics.

/ Not reported.

: Not calculated.

~ Not applicable.

a Includes prisoners held in the jurisdiction's own private facilities and private facilities in another state.

b Includes federal prisoners held in nonsecure, privately operated facilities (9,153) and prisoners on home confinement (3,122).

Excludes persons held in immigration detention facilities pending adjudication.

c Prisons and jails form one integrated system. Data include total jail and prison populations.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014–2015, in p.28 of <https://www.bjs.gov/content/pub/pdf/p15.pdf>

Appendix C: Australian prison capacity, by state and by prison (public and private)

New South Wales

Prison	Managed by	Capacity
Bathurst Correctional Centre	Corrective Services NSW	659
Berrima Correctional Centre	Corrective Services NSW	75
Brewarrina (Yetta Dhinakka) Centre	Corrective Services NSW	30
Broken Hill Correctional Centre (initially as Silverton Gaol)	Corrective Services NSW	89
Cessnock Correctional Centre	Corrective Services NSW	944
Compulsory Drug Treatment Correctional Centre	Corrective Services NSW	55
Cooma Correctional Centre	Corrective Services NSW	200
Dawn de Loas Correctional Centre	Corrective Services NSW	515
Dillwynia Women's Correctional Centre	Corrective Services NSW	313
Emu Plains Correctional Centre	Corrective Services NSW	193
Glen Innes Correctional Centre	Corrective Services NSW	208
Goulburn Correctional Centre	Corrective Services NSW	608
Grafton Correctional Centre	Corrective Services NSW	282
High Risk Management Correctional Centre	Corrective Services NSW	75
Illawarra Reintegration Centre	Corrective Services NSW	61
Ivanhoe (Warakirri) Correctional Centre	Corrective Services NSW	50
John Morony Correctional Centre	Corrective Services NSW	441
Junee Correctional Centre	Private (GEO Group Australia)	853
Kariong Correctional Centre	Corrective Services NSW	99
Kirkconnell Correctional Centre	Corrective Services NSW	260
Lithgow Correctional Centre	Corrective Services NSW	460
Long Bay Hospital	Corrective Services NSW	501
Mannus Correctional Centre	Corrective Services NSW	164
Metropolitan Remand and Reception Centre (MRRC)	Corrective Services NSW	1199
Metropolitan Special Programs Centre	Corrective Services NSW	1256
Mid North Coast Correctional Centre	Corrective Services NSW	668
Oberon Correctional Centre	Corrective Services NSW	130
Outer Metropolitan Multi-Purpose Correctional Centre	Corrective Services NSW	340
Parklea Correctional Centre	Private (GEO Group Australia)	1046
St Heliers Correctional Centre	Corrective Services NSW	286
Silverwater Correctional Complex	Corrective Services NSW	374

New South Wales (continued)

Prison	Managed by	Capacity
South Coast Correctional Centre	Corrective Services NSW	691
Special Purpose Centre	Corrective Services NSW	60
Tamworth Correctional Centre	Corrective Services NSW	89
Wellington Correctional Centre	Corrective Services NSW	748
Grafton Correctional Facility (recently announced, not yet open)	Private (Serco)	1700

**NSW figures provided by Corrective Services NSW, a division of the Department of Justice.*

Australian Capital Territory

Prison	Managed by	Capacity
Alexander Maconochie Centre	ACT Corrective Services	539 (xxv)

Queensland

Prison	Managed by	Capacity
Arthur Gorrie Correctional Centre	Private (GEO Group Australia)	890 (xix)
Borallon Correctional Centre	Queensland Corrective Services	492 (xx)
Brisbane Correctional Centre (formerly known as Sir David Longland Correctional Centre)	Queensland Corrective Services	558 (xix)
Brisbane Women's Correctional Centre	Queensland Corrective Services	258 (xix)
Capricornia Correctional Centre	Queensland Corrective Services	498 (xix)
Lotus Glen Correctional Centre	Queensland Corrective Services	498 (xix)
Maryborough Correctional Centre	Queensland Corrective Services	500 (xix)
Numinbah Correctional Centre	Queensland Corrective Services	55 (xix)
Palen Creek Correctional Centre	Queensland Corrective Services	170 (xix)
Southern Queensland Correctional Centre	Private (Serco)	300 (xix)
Townsville Correctional Centre (formerly known as H.M.P.E. Stewart's Creek)	Queensland Corrective Services	503 (xix)
Townsville Women's Correctional Centre	Queensland Corrective Services	154 (xix)
Wolston Correctional Centre	Queensland Corrective Services	600 (xix)
Woodford Correctional Centre	Queensland Corrective Services	998 (xix)

Northern Territory

Prison	Managed by	Capacity
Alice Springs Correctional Centre	Northern Territory Correctional Services	500 (xxiv)
Alice Springs Youth Correctional Centre	Northern Territory Correctional Services	16 (xxiv)
Darwin Correctional Centre	Northern Territory Correctional Services	1,048 (xxiv)
Don Dale Juvenile Detention Centre	Northern Territory Correctional Services	55 (xxiv)
Barkly Work Camp (being increased)	Northern Territory Correctional Services	50 (xxiv)
Datjala Work Camp	Northern Territory Correctional Services	50 (xxiv)

South Australia

Prison	Managed by	Capacity
Adelaide Pre-Release Centre	Department for Correctional Services	104 (xxi)
Adelaide Remand Centre	Department for Correctional Services	267 (xxi)
Adelaide Women's Prison	Department for Correctional Services	148 (xxi)
Cadell Training Centre	Department for Correctional Services	180 (xxi)
Mobilong Prison	Department for Correctional Services	327 (xxi)
Mount Gambier Prison	Private (G4S)	172 (xxi)
Port Augusta Prison	Department for Correctional Services	392 (xxi)
Port Lincoln Prison	Department for Correctional Services	90 (xxi)
Yatala Labour Prison	Department for Correctional Services	468 (xxi)

Tasmania

Prison	Managed by	Capacity
Hobart Reception Centre	Tasmanian Prison Service	50 (xxvi)
Launceston Reception Centre	Tasmanian Prison Service	33 (xxvi)
Mary Hutchinson Women's Prison	Tasmanian Prison Service	45 (xxvi)
Risdon Prison Complex (incorporating the Ron Barwick Minimum Security Prison and the Wilfred Lopes Centre for Forensic Mental Health)	Tasmanian Prison Service	280 (xxvi)

Western Australia

Prison	Managed by	Capacity
Acacia Prison	Private (Serco)	1,513 (xxiii)
Albany Prison	Corrective Services	510 (xxiii)
Bandyup Prison	Corrective Services	384 (xxiii)
Boronia Pre-release Centre for Women	Corrective Services	95 (xxiii)
Broome Regional Prison	Corrective Services	117 (xxiii)
Bunbury Regional Prison	Corrective Services	347 (xxiii)
Casuarina Prison	Corrective Services	1,032 (xxiii)
Eastern Goldfields Regional Prison	Corrective Services	367 (xxiii)
Greenough Regional Prison	Corrective Services	332 (xxiii)
Hakea Prison	Corrective Services	1,225 (xxiii)
Karnt Prison Farm	Corrective Services	328 (xxiii)
Melaleuca Remand and Reintegration Facility	Private (Sodexo)	254 (xxiii)
Pardelup Prison	Corrective Services	85 (xxiii)
Roebourne Regional Prison	Corrective Services	174 (xxiii)
Wandoo Reintegration Facility	Private Serco	80 (xxiii)
West Kimberley Regional Prison	Corrective Services	168 (xxiii)
Woorloo Prison Farm	Corrective Services	365 (xxiii)

Victoria

Prison	Managed by	Capacity
Barwon Prison	Corrections Victoria	435 (xxii)
Beechworth Correctional Centre	Corrections Victoria	210 (xxii)
Dame Phyllis Frost Centre	Corrections Victoria	419 (xxii)
Dhurringile Prison	Corrections Victoria	328 (xxii)
Fulham Correctional Centre (including NALU)	Private (GEO Group Australia)	893 (xxii)
Hopkins Correctional Centre (Ararat)	Corrections Victoria	748 (xxii)
Judy Lazarus Transition Centre	Corrections Victoria	25 (xxii)
Karenga Correctional Centre	Corrections Victoria	300 (xxii)
Langi Kal Kal Prison	Corrections Victoria	428 (xxii)
Loddon Prison Precinct	Corrections Victoria	470 (xxii)
HM Prison Tarngower	Corrections Victoria	72 (xxii)
Marngoneet Correctional Centre	Corrections Victoria	559 (xxii)
Melbourne Assessment Prison	Corrections Victoria	305 (xxii)
Metropolitan Remand Centre	Corrections Victoria	853 (xxii)
Port Phillip Prison	Private (G4S Australia Pty. Limited)	1084 (xxii)
Ravenhall Correctional Centre (Under Construction)	Corrections Victoria	1000 (xxii)

APPENDIX NOTES

APPENDIX A

- i. Queensland Commission of Audit (2013) – Queensland Commission of Audit: Final Report (Volume 3). QCA, Brisbane
- ii. Queensland Audit Office, 2016, Management of privately operated prisons 2015-16
- iii. Op cit
- iv. Cornish R (20-17), "Plans Unveiled for Australia's Largest Prison", 16 March 2017, accessed <http://www.abc.net.au/news/2017-03-16/plans-unveiled-for-australias-largest-prison-near-grafton/8360862>
- v. General Purpose Standing Committee No. 3, NSW (GPSC-NSW) (2009) Inquiry into the Privatisation of Prisons and Prison-related Services. (Report 21). Legislative Council, Sydney, cited in Andrew et al (2016), *ibid* at p21
- vi. See <http://www.custodialinspector.justice.nsw.gov.au/Pages/Reports-and-publications.aspx> and Inspector of Custodial services Act (NSW) 2012
- vii. Paget J (2015), "Full House: The growth of the inmate population in NSW", Inspector of Custodial Services NSW, p 6.
- viii. Paget J (2015), *ibid* p2
- ix. Andrew et al, op cit
- x. Andrew et al (2016), op cit
- xi. Andrew et al (2016), *ibid*, p58
- xii. Beyer M (2017) "Labor to End Serco Prison Contract", Business News 27 August 2017, accessed <https://www.businessnews.com.au/article/Labor-to-end-Serco-prison-contract>
- xiii. Economic Regulation Authority (WA) (2015) "Inquiry into the Efficacy and Performance of Western Australian Prisons " WA, p1-2, accessed <https://www.erawa.com.au>
- xiv. Daly T 1997, "Policy Overview and Framework for Prison Privatisation in Victoria"; paper presented at the Australian Institute of Criminology Conference - Privatisation and Public Policy: A Correctional Case Study Melbourne, 16&17 June 1997, p6

xv. Private Prisons Investigation Panel (Investigation Panel) (2000), op cit p4

xvi. Pearson D – Auditor-General (Vic) (2010), "Management of Prison Accommodation using Public Private Partnerships", Victorian Government Printer, September 2010, p vi, accessed <http://www.audit.vic.gov.au/publications/2010-11/20101509-Prisons-full-report.pdf>

xvii. *ibid* p12

xviii. *ibid*

APPENDIX C

xix. Queensland Corrective Services www.correctiveservices.qld.gov.au

xx. Queensland Corrective Services www.news.correctiveservices.qld.gov.au

xxi. Correctional Services South Australia www.corrections.sa.gov.au

xxii. Corrections, Prisons & Parole Victoria www.corrections.vic.gov.au

xxiii. WA Department of Justice/Prisons/Prison Locations www.correctiveservices.wa.gov.au

xxiv. Northern Territory Correctional Services and Youth Justice Annual Statistics 2015-2016 https://justice.nt.gov.au/_data/assets/pdf_file/0009/430110/2015-16-NTCS-Annual-Statistics.pdf

xxv. ACT Department of Justice Annual Report, 2015-2016/ Justice and Community Safety <https://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/JACS%20Annual%20Report%202015-16.pdf> NB: Symonston, also known as the Periodic Detention Centre, is not being used now

xxvi. Australian Institute of Criminology – Tasmanian Correctional Facilities - http://www.aic.gov.au/criminal_justice_system/corrections/facilities/tas.html - No more recent figures for Tasmania were publicly available

Jesuit Social Services acknowledges the input and assistance of Marlene Morison in the preparation of this report. The report has benefitted from Marlene's extensive knowledge and experience of prison operation, including through previous roles as Corrective Services Commissioner for Queensland and Director of Prisons in Corrections Victoria.