

**Submission  
No 22**

**INQUIRY INTO PARKLEA CORRECTIONAL CENTRE AND  
OTHER OPERATIONAL ISSUES**

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# The System Effects of Contestability in Prison Management

## Submission to the Inquiry into Parklea Correctional Centre and Other Operational Issues

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### Introduction

This submission addresses the sixth and eighth elements of the Terms of Reference:

- (f) the appropriateness and operation of private prisons in New South Wales,
- (h) the benchmarking of prisons in New South Wales.

In particular, it explores whether having a small number of prisons managed by external providers (private or not-for-profit) might provide benefits for the rest of the prison system.

In the public or the private sector, opening a system or a supply chain to competition from external providers or contestability may provide benefits for the particular facility that is benchmarked or market-tested, but there might also be advantages for the system as a whole.

This is not an unprecedented approach to the question of a mixed economy in prison services. For example, the potential benefits of contestability and contracting in prison management for the prison system as a whole were mentioned by the Queensland Audit Office in a report published in February 2016:

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 prisons.

With current policy settings limiting the number of privately run prisons to two, and at a time where the system is experiencing significant overcrowding, *it is even more important that the state avail itself of the opportunity to garner insights from its privately-run prisons and apply these across the entire prison portfolio.*

A greater understanding by QCS [Queensland Corrective Services] of how their private sector service providers operate offers the prospect of establishing better practice process and quantitative benchmarks, particularly in relation to how they achieve their cost efficiencies.<sup>1</sup> (*emphasis added*)

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A 2017 report into the Wandoo Reintegration Facility by the Western Australian Inspector of Custodial Services also referred to the potential for system-wide learning from the innovations introduced into a privately-managed facility:

This report shows that Wandoo has been a success in its own right. But more than that, it offers some positive lessons for the state's other prisons and the Banksia Hill Detention Centre for juveniles.<sup>2</sup>

This submission explores some of those potential benefits, with reference to the experience of UK and Australian governments over the past thirty years. It does so under the following headings:

1. Performance management – the use of performance contracts has played an important role in the spread of performance management across correctional systems in the UK and Australia.
2. Benchmarking – the introduction of performance measurement has, in turn, made it easier to benchmark individual prisons.
3. Contestability – in some jurisdictions, the introduction of external providers has made it more possible to challenge incumbents to improve.
4. Transparency – contracting has made a significant contribution to the transparency of the prison system, particularly the capacity of central agencies and senior managers to understand what is happening in individual prisons.
5. Innovation – the inclusion of new providers can result in the introduction of new approaches to corrections.
6. Learning – the introduction of greater diversity into the system allows for experimentation with new approaches and, under the right conditions, the dissemination of best practice across the system as a whole.

### **1. Performance Management**

Much of what we know about performance management in prisons, at least in the UK and Australia, has been learned from prison contracting.

The eminent Australian criminologist, Professor Richard Harding, who served for some years as the Western Australian Inspector of Custodial Services, has written about this on many occasions. For example, in 1994, he wrote:

Privatisation compels one to define what one wants to achieve within the prison system – something which has often been obfuscated or self-contradictory within public systems. In the language of economics, the prison system must become output-based, whereas the traditional state model has tended to be overwhelmingly input-based.<sup>3</sup>

When a service is to be delivered by an external provider under contract, it is necessary for government to clearly specify in advance what will be required of the provider (and thus how success and failure will be measured), and to develop the

capacity to monitor ongoing performance and intervene if performance is not acceptable. This was not routinely done prior to the introduction of prison contracting when all facilities were managed by through a hierarchical management system.

There was an international movement to the specification of prison standards throughout the 1970s and 1980s, evidenced in this country by the 'Minimum Standard Guidelines for Corrections in Australia', first issued in 1978, which were based on the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Council of Europe Standard Minimum Rules.

But these were (and continue to be) statements of principle, such as the prohibition of cruel, inhuman and degrading treatment. For example, on the question of performance management, the 2016 standards state:

There will be a commitment to continuous improvement in practices and the quality of services provided. To this end, each Administering Department will develop and implement quality assurance processes designed to measure performance against established standards and principles.<sup>4</sup>

It was the necessity of having a clear statement of specifications in prison management contracts that were capable of being measured, monitored and sanctioned, which drove the development of performance management in prisons in the UK and Australia.

Evidence for this claim can be found in a report commissioned by the UK Home Office in 1988, at a time when the government was first considering the possibility of contracting the management of one of its prisons (in that case, a remand centre). This report was written by the firm of Deloitte Haskin & Sells and published in February 1989, and it includes the following passages, which make it clear that they were bringing together and clearly specifying, *for the first time*, what was required of prison management in a remand facility:

. . . contracts would set, *for the first time*, enforceable standards of security and regime. . .

*There is no consolidated document outlining Prison Department policy on the conditions under which remand prisoners are kept. We therefore used a number of individual documents as a basis for constructing a list of areas for which standards would need to be considered. . . This list is based on observation during our fieldwork, on the experience of the Prison Service and Police experts participating in the study, and on a number of individual documents such as European Prison Rules and Home Office Circular Instruction 55 of 1984.*

Where possible, we propose that standards should relate to the results to be achieved (outputs) rather than to resources or methods to be used (inputs). .<sup>5</sup> (emphasis added)

The Woolf Report (1991-92) argued the case for a Code of Minimum Standards for prisons, but that document was published three years after the report by Deloitte Haskins & Sells.<sup>6</sup>

Contracting continues to be an important driver of more extensive and more transparent performance management. The 2016 report by the Queensland Audit Office into the contract prisons noted:

QCS [Queensland Corrective Services] monitors the performance of its private operators at a more detailed level than what it does for its public prisons. This is especially in relation to the quality of food services and measuring the time prisoners spend in meaningful activities such as training and employment.<sup>7</sup>

Performance management can be used in two ways: (i) to ensure that service levels do not fall below some mandated minimum; and/or (ii) to steadily drive improvement across the system.

In both cases, government must form a view about acceptable levels of performance, on cost as well as quality, and it must have the capacity to challenge prison managers to improve, and to support them where they are struggling. There need to be predictable and proportionate consequences for the ongoing failure to deliver.

In the latter case, where performance management is being used to deliver better services at better value, the system must also have the capacity to innovate and to learn from individual best practice over time.

If they are used well, competition and/or contestability can assist with each of these elements.

## **2. Benchmarking**

Competition and contracting have also made a significant contribution to the benchmarking of prison performance. In part this is because contracting provided a compelling reason and a methodology for defining and measuring performance (as discussed above), but also because it can be used to introduce innovation and diversity into the system, providing a variety of different models which could serve as comparators.

The potential for benchmarking was one of the principal reasons why the Commission of Review into Corrective Services in Queensland (the so-called Kennedy report) recommended a competitive tender for the operation of Borallon Correctional Centre in 1988 (which became the first contract prison in Australia):

For the first time there would be competition providing a real measure against which to test the performance and costs of the Queensland Corrective Services.<sup>8</sup>

Benchmarking can be used in two ways – to measure and compare the quality of services delivered by different facilities, and to measure and compare the resources expended in delivering those results.

### *Benchmarking Quality*

A number of academic studies have demonstrated the system-wide benefits of benchmarking or 'yardstick competition' in driving service improvement. In these examples, it seems to have been the ability to compare services that were perceived as similar, and the reputational incentives associated with doing well (or badly) which delivered improvement.<sup>9</sup>

*Water utilities:* Walstein and Kosec studied more than 53,000 community water systems in the United States, comparing contaminant violations and monitoring and reporting violations under the EPA's Safe Drinking Water Information System from 1997 to 2003. They concluded:

While ownership, per se, does not appear to matter much here, the evidence suggests that benchmark competition makes some difference. We find that water systems in counties in which each water system tends to serve a smaller share of the county population have fewer violations. Likewise, regulatory compliance with respect to contaminant violations is better when water systems are required to disclose test results to consumers and consumers can easily compare performance to nearby systems.<sup>10</sup>

*Secondary schools:* Bradley et al looked at school efficiency, as measured by school performance tables, including exam results and truancy rates, of all English secondary schools over the period 1993-1998. They were interested in the determinants of efficiency and change in efficiency over time. One of their strongest findings was the impact of competition (measured by the number of rivals within a two kilometer radius). They concluded:

. . . as the number of schools in the immediate neighbourhood increases, so the efficiency of the school under observation also increases during the period. . . More proximate rivals exert a stronger effect on efficiency compared to their more distant rivals. Compared to county schools, grant maintained and voluntary assisted schools have experienced the greatest increase in relative efficiency, which may be a reflection of their greater independence over resource allocation and admissions policies.<sup>11</sup>

*Public hospitals:* In 2010, Bloom et al studied 100 acute hospital trusts in England, comparing data from a management survey and information about hospital performance with a competition measure based on geographic proximity (the number of hospitals per person within a defined catchment). They found that management quality was 'strongly correlated with financial and clinical outcomes such as survival rates and emergency heart attack admissions', and 'that higher competition (as indicated by a greater number of neighbouring hospitals) is positively correlated with increased management quality. . . Adding another rival hospital increases the index of management quality by one third of a standard deviation and leads to a 10.7% reduction in heart-attack mortality rates'.

In their discussion of the mechanisms through which this might have occurred, they considered the impact of yardstick competition, the possibility that there was greater competition for patients in these hospitals and that there might have been a more attractive labour market.<sup>12</sup>

Benchmarking is also used by service managers to directly compare their performance with that of broadly similar institutions: it provides managers and commissioners with important information about what kinds of service improvements are possible – however, because no two institutions (be they hospitals, prisons or water systems) are exactly alike, some care must be exercised in how this information is interpreted and used.

Prison contracting has been employed for around 30 years across the English-speaking world, and this has contributed to reasonably widespread agreement about a relatively small number of key performance indicators for three of the four agreed outcomes of prison systems – safety, security and humanity.

Prisons are, necessarily, highly controlled environments, where activity can be closely monitored, and the causal chains linking inputs and outputs are reasonably well understood, at least as far as these three outcomes – safety, security and humanity – are concerned. This makes performance benchmarking easier to measure than with some other public services (although it is by no means easy).

The work of Cambridge academic, Alison Lieblich, in the measurement and evaluation of prison regimes has made a significant contribution to the quantitative assessment (and thus the benchmarking) of institutional values, organisational culture and inter-personal relationships in British and Australian prisons.<sup>13</sup>

However, a great deal remains to be done to improve our understanding of the causal chains, and thus the way in which benchmarking and performance management can be used, to improve the results around rehabilitation, the fourth key outcome demanded of our correctional systems. The introduction of payment-by-results contracting and social impact investing, initially at HMP Peterborough in the UK, has been promising, but a great deal remains to be learned.<sup>14</sup>

It is significant that these lessons about the application of performance measurement to the reduction of reoffending are being explored through the use of a contractual instrument.

### *Benchmarking Resources*

The language of benchmarking tends to be used much more often in relation to inputs. There is great value for service managers in being able to compare how similar institutions allocate scarce resources to achieve comparable outcomes. For obvious reasons, governments are reluctant to publish the results of such studies, but it is surprising how rarely benchmarking is used, not just in prisons, but across the public sector more broadly.

Under the Better Prisons program, Corrective Services NSW has compared different public sector prisons across the NSW system, public sector prisons in NSW and Queensland, and public and contract prisons in NSW. For a variety of reasons, no two prisons are directly comparable, which is why benchmarking must be pursued intelligently, and why there needs to be close consultation with local management, staff and unions.

Poorly managed, benchmarking can do as much damage as competitive tendering that is badly done. The UK Ministry of Justice introduced a benchmarking agenda in 2014, variously referred to as the 'Benchmarking Programme' or the 'Prison Unit Cost Programme'. However, this built on an earlier program known as 'Specification, Benchmarking and Costing' which had commenced in 2008. Overwhelmingly, this was driven by the need to significantly reduce expenditure across the system, and this led to a strong focus on bringing down unit costs.

By December 2016, it was clear that a 25 percent reduction in staff numbers since 2010 had left the Prison Service dangerously under-staffed, and the Justice Secretary announced the investment of another £104 million to recruit another 2,500 personnel.<sup>15</sup> The situation in certain jails had deteriorated for other unrelated reasons, but benchmarking had been mismanaged, it was done too quickly, and insufficient time was allowed for consultation with management, staff and unions.

Market testing is an intensive form of benchmarking, where service commissioners challenge several different providers to develop competing solutions for the operation of a particular facility, addressing both results and resources. Under the NSW Better Prisons program, John Morony Correctional Centre has recently been market-tested, with the in-house team winning the competition. Performance will then be measured over time against the service and resource levels to which the successful proponent committed.

The author has elsewhere warned of the care which needs to be exercised in using such an intensive form of benchmarking. Competitive tendering is a highly effective tool for driving down price, and great care must always be exercised to ensure that the qualitative dimensions are protected and, one would hope, improved.<sup>16</sup>

### **3. Contestability**

Done well, the introduction of competition and contestability into a previously closed system can serve as a vehicle for challenging incumbent managers to perform better. This is not just about challenging inefficiency, but also stimulating innovation and driving improvements in service outcomes.

It should be noted that contestability is not a synonym for competition – the term refers to latent as opposed to actual competition. Contestability is about ensuring that those who commission and fund public services have credible alternatives when management fails to perform.

Thus, it is possible to make a delivery system contestable without competitive tendering, and examples can be found of contracts awarded to external providers as the result of competitive tendering which are not contestable.<sup>17</sup>

In public delivery systems where the management of individual facilities is closed off from external competition, this might be achieved through benchmarking and, when appropriate, intervention to reform or replace senior management. If the performance accountability and consequences regime is sufficiently formalised, then this might serve as an effective way of challenging incumbent prison managers.



This is the approach being pursued by the CSNSW through the benchmarking program of its Better Prisons initiative. However, the success of the benchmarking in serving as an effective challenge to prison managers may be influenced, in part, by the fact that two prisons in the state are already managed under contract, and another facility (John Morony Correctional Centre) has been market-tested.

In 2001, the UK centre-left think tank, the Institute for Public Policy Research, noted that the management of prisons was no longer a monopoly in that country. At that time, private providers accounted for less than 10 percent of provision, and the IPPR suggested that this seemed to have been sufficient to create true contestability in the system.<sup>18</sup>

Officials who were involved in the Queensland correctional system in the 1990s have reported that the prospect of prison contracting enabled them to challenge the public sector to do better.<sup>19</sup> There have been similar reports from the UK, where Prison Governors were able to challenge their staff to deliver better services at a lower cost because of the prospect of alternative management.<sup>20</sup>

It was widely accepted in the UK that the challenge posed by private providers served to drive system-wide improvement in both cost and quality. Derek Lewis, who was Director General of HM Prison Service from 1992 to 1995, said that 'much, perhaps most, of the progress that has been achieved in the public sector in the last ten years would not have been possible without the threat of credible competition from the private sector'.<sup>21</sup>

In his 2001 report into the UK prison system by Patrick Carter (later Lord Carter), concluded:

It is widely accepted by management and unions alike, that the competition offered by the new private prisons and the market testing of existing establishments has made the prison system more efficient and effective as the public sector has sought ways to improve its working practices and become more competitive.<sup>22</sup>

Mike Newell, then president of the Prison Governors' Association, acknowledged in 2002 that 'despite my moral objections to placing prisons in private hands, I have to admit that the shock to the Service of privatisation did start it on a path to recovery'.<sup>23</sup> And the National Audit Office stated in 2003 that 'Competition has been important within the prison system for improving both management and conditions for prisoners'.<sup>24</sup>

Martin Narey, who was Director General of the Prison Service of England and Wales between 1998 and 2003, and Chief Executive of the National Offender Management Service from 2004 to 2005, was initially hostile to the introduction of private providers (and thus contestability) into the prison system for which he was responsible. But as he explained in 2006:

When I took over prisons I was critically aware that, despite the dedication of many prison officers, there was a lot of institutionalised abuse of the incarcerated. As I sought to improve the way prisoners were treated, through

the introduction of what became known as the decency agenda, I soon began to notice that the private sector prisons did some things rather well. Prisoners and particularly their visitors repeatedly told me that at private prisons they were treated with dignity; that visiting was less harrowing and that staff treated them courteously. One prisoner, at Altcourse Prison in Birkenhead, told me that initially, he had believed he was being 'wound up' by officers there who, noting he had been on a long journey from a London prison, offered him a cup of tea on arrival.

It was not that my public sector Governors and many officers were not committed to improving conditions. They were, and in many institutions progress was commendable. But in others, POA resistance, abetted by ineffective management, meant that regimes and rehabilitative activity were frequently compromised for the benefit of staff.

Competition changed that. When I visited Dartmoor in 2001, and despite my expectations being low, I was shocked by how poor the prison was. Classrooms stood more or less empty. Prisoners, who should have been unlocked during the night to use a toilet, were instead condemned to slopping out. There was little preparation for release and visitors who ensured arduous journeys to visit the moorland prison were accorded the same disrespect routinely applied to prisoners. The POA told me bluntly that they were not going to change. I told them that if the jail was not transformed in 26 weeks the public sector would no longer run Dartmoor.

Let me be very clear. I am not an advocate for the private sector over the public sector. Indeed, I do not believe there is anything that the private sector can do which the public sector cannot do at least as well. But monopolies, either public, private or charitable are unlikely to be efficient. Competition drives efficiency. And it also drives innovation.

In the case of Dartmoor, and at many other prisons before and since, we were able to obtain radically improved value for money while at the same time driving up standards of care and introducing some new and innovative working practices. Improvements which might have taken years to drive through were achieved in twenty-six weeks and all because staff knew that we could get someone else to run the prison decently and effectively, if they could not or would not. In short, as a customer, we could shop elsewhere.

But this was not, I stress, simply about scaring staff into submission, although the POA at Dartmoor at that time, needed a bit of scaring. It was about involving staff in the re-design of working practices and in the moulding of renewed rehabilitative activity. And it was hugely motivational.

Indeed, as we extended competition in the Prison Service, the public sector performed remarkably well. . .<sup>25</sup>

The NSW government also used contestability as a way of driving value improvements in the years 2003 to 2008, through the so-called 'Way Forward' prisons. In discussions with the unions about several new prisons about to be

constructed, the then minister made it clear that the government did not want to outsource more prisons, but would consider doing so if significant changes were not made to practices relating to sick leave and overtime.

A new 'island award' was negotiated which applied only to the 'Way Forward' prisons, and a 2005 report by the NSW Public Accounts Committee found dramatic improvements in the performance of the first two such facilities against these two measures.<sup>26</sup>

**Table 1: New South Wales – Comparison of Overtime and Sick Leave at Two Traditional and Two 'Way Forward' Prisons**

		<i>Kempsey</i>	Bathurst	<i>Dillwynia</i>	Mulawa
Overtime	% of total employee-related expenses	1%	6%	2%	11%
	\$ per inmate per day	0.84	5.93	1.67	25.52
Sick Leave	Average sick days per staff member	6.37	9.89	5.96	25.52
	\$ per inmate per day	65.55	103.99	101.33	230.00

It has been observed that the 'Way Forward' prisons have not maintained this edge, with deterioration on their part, and improvements elsewhere across the system. This is a reminder that contestability must be an ongoing state of affairs, not simply a one-off exercise.

According to one former minister, the original decision to outsource Parklea prison was driven, in large part, by a concern that yardstick competition was no longer challenging management, staff and unions to do better.<sup>27</sup>

#### **4. Transparency**

Richard Harding has commented on the increase in transparency and accountability that has sometimes flowed from prison contracting: 'In the United States, the state of Louisiana required ACA accreditation by its private prison but not for its own public sector prisons. This requirement soon worked its way into the fabric of the public sector system'.<sup>28</sup>

Performance measurement inevitably leads to greater performance accountability, and while this information has generally not been released to the public-at-large, it has provided much greater transparency of prison management for senior management and central agencies. The benchmarking work being undertaken as part of the Better Prisons initiative will – for the first time – generate comprehensive and timely performance data on public and contract prisons, and the government has committed to the publication of this data once the measures and the measurement regime have been fully developed.

In the UK, the development (and publication) of a 'Weighted Scorecard' (in the early 2000s) and then the 'Prison Performance Ratings' (from 2008), for publicly- and privately-managed prisons, grew out of the performance regimes initially developed in association with prison contracting. The Prisons Inspectorate was an independent initiative, but applied to contract prisons from the outset. (New Zealand now also publishes quarterly performance ratings for its prisons.)

## **5. Innovation**

While the question has not been studied systematically, there is considerable anecdotal evidence indicating that at different times, competition and contracting have stimulated greater innovation in prison management, which has then been adopted across the system more broadly. This was most evident in the design and construction of the early PPP prisons in the UK, which resulted in a 45 percent drop in construction and commissioning times for new establishments and a marked reduction in construction costs.<sup>29</sup>

There was also technological innovation, with CCTV cameras, magnetic key cards and drug detection machines in managing inmates. Privacy locks were another radical initiative, allowing prisoners to have keys to their own cells.<sup>30</sup> In terms of day-to-day operations, the UK National Audit Office concluded:

A key innovation by the private sector has been in promoting a more constructive staff/prisoner relationship. PCOs [prison custody officers] are encouraged to treat prisoners in a more positive manner, for example through the use of first names and mentoring schemes. The senior management of the Prison Service has been able to use the success of the private sector in nurturing better staff/prisoner relationships to encourage their own staff to adopt a similar approach.<sup>31</sup>

### *Direct Supervision*

In some cases, public sector commissioners have used their engagement with external providers to introduce new models of delivery which have been resisted within the existing system.

This was the case with the adoption of 'direct supervision' or 'dynamic security' into the UK correctional system in the late 1980s and early 1990s. Direct supervision had developed in some North American jurisdictions in the 1970s, although it drew on reforms that had been initiated for several decades prior to that.

Direct supervision has been described as a proactive management system intended to prevent negative inmate behaviour before it occurs, and it involves prison officers spending their working day associating with prisoners, managing issues as they arise and ensuring that they are meeting their commitments around work, education and programs.<sup>32</sup> Facilities were specifically designed to embody the direct supervision approach, which involved (for example) larger open association spaces, soft furnishings, bright colours on the walls and so on.

UK interest in this model began to emerge in the mid-1980s, and in 1985, a Home Office working party visited some of the 'new generation' prisons in North America

which had been founded on these ideas. Some of the core principles of direct supervision were built into the physical design of the new prisons that were constructed around that time, however there was union resistance to the introduction of dynamic security, and for some senior officials in the Home Office, contracting offered a way of transforming prison culture and accelerating the introduction of this approach. The publication of the Woolf Report in 1991 reinforced this new approach.<sup>33</sup>

### *Female Prison Officers*

Among the many changes that accompanied the introduction of prison contracting in the UK, perhaps the most striking was the increased reliance on female prison officers in male prisons. Around one-third of prison officers in The Wolds, the first contract prison in the UK, were female. The average in the Prison Service at that time of around two percent. Interestingly, this transformation was not brought about because of an alternative theory of prison management, but because the company which won this tender had its roots in Scandinavia and when managers completed their usual recruitment process, they discovered that one-third of the successful applicants were female.<sup>34</sup>

In giving evidence before the House of Commons Select Committee on Home Affairs in 2001, Martin Narey agreed that the private prisons innovated with the deployment of female prison officers in male prisons:

Q: Take one particular lesson: the private sector was fairly successful in introducing women officers, who have, generally speaking, a civilising impact on prison regimes.

Martin Narey: Yes, it was, not least because it recruited all its staff at once. .  
<sup>35</sup>

Needless to say, the introduction of so many female officers had a profound effect on prison culture, and the public sector subsequently accelerated the employment of women for these frontline positions.

### *Australian Examples*

Harding described the impact that early prison contracting had on regime in Australia, with fewer resources committed to security staff and more for education and training.<sup>36</sup> It would seem that there is still scope for significant innovation in the Australian correctional system

For example, the 2016 report by the Western Australian Inspector of Custodial Services into Wandoo Reintegration Facility, which was at that time privately-managed:

Wandoo provides a positive, purposeful, and safe regime, and has performed well across all key measures. It offers new ways of 'doing business' that are relevant to the management of both adult prisoners and juveniles at the troubled Banksia Hill Detention Centre.

The Inspectorate offered the following examples of where Wandoo was doing things differently and lessons might be learned:

- a coherent, purposeful philosophy that is supported by staff and which permeates all areas of the centre's operations;
- a strong multi-disciplinary approach to managing and supporting the residents;
- a model that is based on personal responsibility, positive reinforcement and genuine opportunities for rehabilitation;
- sustained and targeted partnerships with the not-for-profit sector; 'real' work opportunities for residents leading to post-release employment;
- the contractor's willingness to respond, innovate and improve.<sup>37</sup>

One of the reasons why CSNSW won the market-test for the management of the John Morony Correctional Centre was that they developed a solution based on a range of service innovations.

It is arguable that these innovations to the UK and Australian prison systems were primarily brought about, not because the new entrants were from the private sector, but because they were outsiders, not acculturated to the norms and the values of traditional providers. Organisation theorists have argued that a modest level of turnover in a system, involving the introduction of personnel who are not as deeply socialised with prevailing norms, has the effect of increasing exploration and improving aggregate knowledge. From this perspective, it matters less that the new entrants are experts in the field than that they bring a different perspective. There may be significant gains to the correctional system simply because of increased diversity.<sup>38</sup>

## **6. Cross Fertilisation**

Harding has looked at the system effects of diversity in the correctional system in terms of 'cross-fertilisation' – the flow of new ideas and best practice from one provider to another. Under appropriate conditions, the incumbent is able to learn from the new entrants and adopt the best of their innovations.

In looking at health care in the Queensland correctional system, Richard Harding and a PhD student, John Rynne, found that the standards demanded of the contract prisons were initially much higher than those demanded of itself: 'Within a few years the public sector found it necessary to equal those standards. . .'

The same research project has also identified substantial cross-fertilization in the area of prisoner programs. Borallon Prison [the first contract prison in Queensland] avowedly set out to integrate programs into the daily lives of inmates through a unit management approach. The cognitive programs directed at addressing offending behavior were different from anything else found in the public system. . . These fresh approaches were picked up by the public sector quite quickly.<sup>39</sup>

The potential for cross-fertilisation was specifically addressed in the Queensland Audit Office report on contract prisons in 2016:

A well-structured performance management framework can motivate private operators to innovate their practices, which public sector agencies can then transfer into publicly operated services. Agencies can learn from the private sector ways to reduce the cost and increase the effectiveness of publicly delivered services.<sup>40</sup>

As noted above, the Western Australian Inspectorate of Custodial Services also referred to the possibility of cross-fertilisation in its 2017 report on Wandoo. For example, on reintegration, the report stated:

Wandoo's assessment and case management processes are far more comprehensive than those of state-operated prisons. . .

Wandoo has continued to deliver the best offender management model in the state. The Department has promised to introduce a similar statewide offender management model that will identify the reintegration needs of every offender in custody, develop reintegration plans and deliver interventions through various stakeholders.<sup>41</sup>

Benchmarking has the potential to serve as a powerful enabler of cross-fertilisation, with public and private providers learning from each other as performance is compared. Of course, it is also important that the system has a learning culture, that there is the capacity for studying successful approaches and disseminating those across the whole, and that there are appropriate incentives for management – at the agency level and at the level of the individual facility – to invest the time and effort in adopting and adapting the lessons from elsewhere.

## Conclusion

Academic researchers who have studied public service contracting have long maintained that the benefits of a mixed economy come from competition and contestability rather than the inherent superiority of the private sector.<sup>42</sup>

This paper has provided evidence from the UK and Australia over three decades which suggests that the prison system as a whole benefits when performance is measured and benchmarked, when management can be effectively challenged to deliver better results over time, and when there is scope of innovation and learning.

In the public sector, as in the private sector, systems that are open to outsiders are more robust and more effective than ones that are closed from the challenge of new ideas and new approaches.

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<sup>1</sup> Queensland Audit Office, 'Management of Privately Operated Prisons', Report 11: 2015-16, Brisbane, February 2016, p.1.

<sup>2</sup> Office of the Inspector of Custodial Services, '2016 Inspection of the Wandoo Reintegration Facility', Report No.109, Perth: Government of Western Australia, January 2017, p.1.

<sup>3</sup> Richard Harding, 'Models of Accountability for the Contract Management of Prisons', in Paul Moyle (ed.), *Private Prisons and Police: Recent Australian Trends*, Leichhardt, NSW: Pluto Press, 1994, pp.63-90 at p.71,

<sup>4</sup> 'Standard Guidelines for Corrections in Australia', 2012, No.6.6.

<sup>5</sup> Deloitte Haskin + Sells, 'Report to the Home Office on the Practicality of Private Sector Involvement in the Remand System', February 1989, pp.7, 33 & Appendix VI, Sheet 1, emphasis added.

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- <sup>6</sup> See The Prison Reform Trust, 'The Woolf Report: A Summary of the Main Findings and Recommendations of the Inquiry into Prison Disturbances', London, 1991.
- <sup>7</sup> Queensland Audit Office, 'Management of Privately Operated Prisons', p.3.
- <sup>8</sup> J.J. Kennedy, 'Commission of Review into Corrective Services in Queensland: Final Report', Brisbane: Government of Queensland, August 1988, p.97.
- <sup>9</sup> The following examples were published in Gary L. Sturgess, 'Diversity and Contestability in the Public Service Economy', Sydney: NSW Business Chamber, 2012, pp.58-59.
- <sup>10</sup> Scott Wallstein and Katrina Kosec, 'The Effects of Ownership and Benchmark Competition: An Empirical Analysis of U.S. Water Systems', *International Journal of Industrial Organization*, (2008) 26, pp.186-205.
- <sup>11</sup> Steve Bradley, Geraint Johnes and Jim Millington, 'The Effect of Competition on the Efficiency of Secondary Schools in England', *European Journal of Operational Research*, (2001) 135, pp.545-568 at p.562.
- <sup>12</sup> Nicholas Bloom, Carol Propper, Stephen Seiler and John Van Reenan, 'The Impact of Competition on Management Quality: Evidence from Public Hospitals', NBER Working Paper No.16032, Cambridge, MA: National Bureau of Economic Research, May 2010.
- <sup>13</sup> See, for example, Alison Liebling, *Prisons and their Moral Performance*, Oxford University Press, 2004.
- <sup>14</sup> See Ministry of Justice, 'Peterborough Social Impact Bond. HMP Doncaster, Payment by Results Pilots. Final Reconviction Rates for Cohorts 1', Ministry of Justice Statistics Bulletin, London, 7 August 2014; Emma Disley and Jennifer Rubin, 'Phase 2 Report from the Payment by Results Social Impact Bond Pilot at HMP Peterborough' and Appendices, Ministry of Justice Analytical Series, London, 2014; Emma Disley et al, 'The Payment by Results Social Impact Bond Pilot at HMP Peterborough: Final Process Evaluation Report' and Appendices, Ministry of Justice Analytical Series, 2015.
- <sup>15</sup> Richard Ford, 'Tory Cuts Left Jails without Enough Staff to Halt Riots, Minister Admits', *The Times*, 20 December 2016.
- <sup>16</sup> Gary L. Sturgess, 'Just Another Paperclip? Rethinking the Market for Complex Public Services', London: Business Services Association, 31 March 2017.
- <sup>17</sup> Gary L. Sturgess, 'Contestability in Public Services: An Alternative to Outsourcing', Melbourne: Australia and New Zealand School of Government, April 2015.
- <sup>18</sup> Commission on Public Private Partnerships, 'Building Better Partnerships', Final Report, London, Institute for Public Policy Research, 2001, p.71.
- <sup>19</sup> The source is a former senior executive in QCORR.
- <sup>20</sup> Referred to in Julian Le Vay, *Competition for Prisons: Public or Private?*, Bristol: Policy Press, 2016, p.208. Le Vay was Finance Director of the Prison Service for five years.
- <sup>21</sup> Statement accompanying the release of Gary L. Sturgess, 'Competition: A Catalyst for Change in the Prison Service', London: Confederation of British Industry, July 2003.
- <sup>22</sup> Patrick Carter, 'Review of PFI and Market Testing in the Prison Service', Home Office, January 2001, p.3.
- <sup>23</sup> Mike Newell, 'Privatisation – the morale-sapping sledgehammer', *The Howard League Magazine*, (May 2002) Vol.20 No.2, p.13.
- <sup>24</sup> National Audit Office, 'The Operational Performance of PFI Prisons', HC700, 2002-03, London: The Stationery Office, p.7.
- <sup>25</sup> Martin Narey, 'Commissioning: Getting the Best Deal for the Public and the Need for Competition', Speech delivered at an unknown event, 2006, copy of the original in possession of the author. Narey delivered much the same account in evidence given to the House of Commons Select Committee on Home Affairs, 4 December 2001, answer to question 142.
- <sup>26</sup> Public Accounts Committee, 'Value for Money from NSW Correctional Centres', Report No 13/53 (No 156), Sydney: Legislative Assembly of New South Wales, September 2005.
- <sup>27</sup> Private communication with the author.
- <sup>28</sup> Richard Harding, 'Private Prisons', *Crime and Justice*, 28 (2001) pp.265-346 at pp.332-333.
- <sup>29</sup> National Audit Office, 'The PFI Contracts for Bridgend and Fazakerley Prisons', HC253, 1997-98, 31 October 1997, pp.28, 29, 44-45.
- <sup>30</sup> Gary L. Sturgess, 'Competition: A Catalyst for Change in the Prison Service', pp.34, 35-36; National Audit Office, 'The Operational Performance of PFI Prisons', p.33.
- <sup>31</sup> National Audit Office, 'The Operational Performance of PFI Prisons', p.9.
- <sup>32</sup> Richard Wener, 'Effectiveness of the Direct Supervision System of Correctional Design and Management', *Criminal Justice and Behavior*, (2006) Vol.33, No.2, pp.392-410.



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<sup>33</sup> Ian Dunbar, *A Sense of Direction*, London: HM Prison Service, 1985; Home Office, 'New Directions in Prison Design', Report of a Home Office Working Party on American New Generation Prisons, London: HMSO, 1985; Home Office, 'Prison Disturbances April 1990: Report of an Inquiry by the Rt. Hon. Lord Justice Woolf', Parts I and II, London: HMSO, 1991.

<sup>34</sup> Gary L. Sturgess, 'Competition: A Catalyst for Change in the Prison Service', p.34, and interviews by the author with members of the senior management of Group 4 in the early 1990s.

<sup>35</sup> House of Commons Select Committee on Home Affairs, 4 December 2001, answer to question 143.

<sup>36</sup> Richard W. Harding, *Private Prisons and Public Accountability*, New Brunswick: Transaction Publishers, 1997, p.138.

<sup>37</sup> Office of the Inspector of Custodial Services, '2016 Inspection of the Wandoo Reintegration Facility', Report No.109, Perth: Government of Western Australia, January 2017, pp.iii-iv.

<sup>38</sup> See, for example, James G. March, 'Exploration and Exploitation in Organizational Learning', *Organizational Science*, Vol.2, No.1 (February 1991), pp.71-87, at p.79.

<sup>39</sup> Richard Harding, 'Private Prisons', *Crime and Justice*, 28, 2001, pp.265-346 at pp.332-333.

<sup>40</sup> Queensland Audit Office, 'Management of Privately Operated Prisons', p.61.

<sup>41</sup> Office of the Inspector of Custodial Services, '2016 Inspection of the Wandoo Reintegration Facility', p.32.

<sup>42</sup> See, for example, John D. Donahue, *The Privatization Decision: Public Ends, Private Means*, New York: Basic Books, 1989, p.78.