Portfolio Committee No. 4 - Legal Affairs

Parklea Correctional Centre and other operational issues

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Terms of reference

That Portfolio Committee No. 4 - Legal Affairs inquire into and report on the current operations of Parklea Correctional Centre, and in particular:

(a) the adequacy of staffing levels and staff safety,

(b) the inflow of contraband,

(c) the security at the facility, including access to gaol keys,

(d) corporate governance of the GEO Group and the facility,

(e) any possible contraventions of the contract between the NSW Government and the GEO Group,

(f) the appropriateness and operation of private prisons in New South Wales,

(g) Rapid-Build dormitory prisons,[1]

(h) the benchmarking of prisons in New South Wales,[1] and

(i) any other related matter.

[1] *Minutes*, NSW Legislative Council, no 138, 13 February 2018, pp 2273-74.

Committee details

Committee members

The Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	*Chair*
Mr David Shoebridge MLC	The Greens	*Deputy Chair*
The Hon David Clarke MLC	Liberal Party	
The Hon Scott Farlow MLC*	Liberal Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Shaoquett Moselmane MLC	Australian Labor Party	
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* The Hon Scott Farlow substituted for the Hon Catherine Cusack MLC from 28 November 2018 for the duration of the inquiry

Chair's foreword

This inquiry commenced in the wake of a media crisis that erupted in mid 2017 highlighting serious lapses in security and major problems with contraband at Parklea Correctional Centre, which at the time was the second largest prison in the state and one of two private prisons in New South Wales. The uploading of a video filmed on a contraband mobile phone to YouTube – in which an inmate flaunted homemade weapons and drugs and claimed mobile phones were brought into the prison by guards for money – immediately prompted the Minister for Corrections to call for an investigation, and the Commissioner to order an unprecedented 'intervention' at the prison. Further evidence gathered during our inquiry, both public and confidential, made it very clear that these incidents were indicative of serious and systemic failings at Parklea, under the operation of the company contracted to run it, the GEO Group Australia.

The fact that the problems at Parklea escalated to the point of crisis is extremely troubling to the committee. Parklea plays a critical role in the state's prison system, especially in Sydney, as one of two major reception and remand centres, close to the courts, with a large capacity for maximum security inmates. The committee cannot emphasise strongly enough how critical it is that this correctional centre operate effectively into the future.

In our report the committee makes a number of findings: that the problems that erupted into crisis at Parklea were symptomatic of more fundamental failures of leadership and culture in the private prison; that the GEO Group failed to meet its obligations in respect of the prison, failed to manage it effectively, and failed to recognise and address the prison's problems in a timely and effective way. In respect of Corrective Services NSW (CSNSW), which has ultimate responsibility for the correctional centre, we found: first, that CSNSW did not exercise sufficient diligence in its governance over the prison and its operator, allowing the problems to escalate to the point of crisis before intervening with sufficient strength to address them; and second, that it had not taken sufficient responsibility for its part in the crisis. We also found that the current independent oversight mechanism for the state's correctional system was inadequate to identify the prison's problems of leadership and culture.

A new company has now been contracted to operate the centre, but the committee has made a number of recommendations to address the transparency and accountability of private prisons, to prevent the crisis at Parklea from recurring, to manage the risks accompanying private prisons, and to ensure that erosion of quality and standards does not occur. In other recommendations we address the brand new rapid build dormitory prisons that have been built in response to the major increase in the state's prison population. And in system-wide recommendations we address the performance framework to operate across all prisons, the oversight provided by the Inspector of Custodial Services, and the provision of health services and infrastructure in the corrections system, and especially forensic mental health beds.

I thank my committee colleagues for the commitment and insights they have brought to this important inquiry, shining a light into the prison system, especially the private prison system, which by its nature is hidden from public view. This important report embodies the vital scrutiny and accountability functions of the Legislative Council. I also thank all inquiry participants for their valuable contributions, and the committee staff for their capable assistance.

Hon Robert Borsak MLC
Committee Chair

Findings

Finding 1 **37**
That the problems of security and contraband that erupted into crisis at the Parklea Correctional Centre in 2017 were symptomatic of more longstanding fundamental failures of leadership and culture in the private prison.

Finding 2 **37**
That the GEO Group Australia failed to meet its obligations in respect of the operation of Parklea Correctional Centre, failed to manage the prison effectively, and failed to recognise and address the significant and systemic problems that occurred there in a timely way.

Finding 3 **38**
That Corrective Services NSW:

- did not exercise sufficient diligence in its governance over Parklea Correctional Centre and its operator, the GEO Group Australia, allowing the problems at Parklea to escalate to the point of crisis before intervening with sufficient strength to address them
- has not taken sufficient responsibility for its part in the crisis that occurred at the prison.

Finding 4 **39**
That the current independent oversight mechanism for the New South Wales corrections system was inadequate to identify the significant and systemic problems of leadership and culture that occurred at Parklea Correctional Centre.

Finding 5 **50**
That the deficiencies in the contract between the GEO Group Australia and Corrective Services NSW entered into in 2009 by or under the authority of the former Minister John Robertson significantly contributed to the problems at Parklea Correctional Centre.

Recommendations

Recommendation 1 **53**

That in the interests of transparency and accountability to the public, the NSW Government publish the contracts for all privately operated prisons in full, apart from those parts which may compromise the safety and security of the correctional centre and place the public at risk.

Recommendation 2 **73**

That by the end of 2021, and again in 2023, the Minister for Corrective Services table in Parliament a report by Corrective Services NSW on the implementation and effectiveness of its performance framework, the lessons learned and future improvements to be made.

Recommendation 3 **74**

That Corrective Services NSW, in its report on the implementation and effectiveness of its performance framework, specifically consider:

- the effectiveness of its new contract for Parklea Correctional Centre
- how adequately the characteristics of individual centres have been recognised and accommodated within the framework
- how well the key performance indicators have captured the dynamics of prison life and the experience of inmates
- any evidence of erosion of standards
- any evidence of adverse outcomes from staffing changes during the benchmarking process, such as greater risks to staff and inmate safety
- the effectiveness of interventions with those prison governors whose centres are identified as underperforming
- potential improvements to encourage and measure reductions in reoffending
- any further steps to be taken to enhance accountability across the public and private corrections systems
- the private provision of health services at Parklea Correctional Centre.

Recommendation 4 **74**

That Corrective Services NSW incorporate performance reviews for all correctional staff into its performance framework by December 2019, to improve service delivery.

Recommendation 5 **94**

That the NSW Government ensure that each of the defining features of the rapid build dormitory model, including its structured day, extensive security, high staffing levels and careful selection of inmates, remain for the life of these prisons.

Recommendation 6 **94**

That the NSW Government ensure that the employment and training elements of the rapid build dormitory prisons' structured day be meaningful, with the long term purpose of equipping inmates for life in the community, and that these remain for the life of these prisons.

Recommendation 7 **95**
That, with respect to the evaluation of the rapid build dormitory prisons, Corrective Services NSW:

- formally engage the input of an independent research body, to ensure impartiality
- include detailed information gathered from the perspective of both inmates and staff.

Recommendation 8 **95**
That the Minister for Corrective Services table all evaluation reports on the rapid build dormitory prisons in Parliament within one month of receipt.

Recommendation 9 **95**
That Corrective Services NSW investigate and implement ways to better mitigate the problem of noise in the rapid build prison dormitories.

Recommendation 10 **96**
That the NSW Government implement the structured day model that currently operates in the rapid build dormitory prisons, with meaningful employment and training programs, across the prison system.

Recommendation 11 **106**
That Corrective Services NSW report annually to the Minister for Corrective Services detailed information on the activities and observations of its contract monitors for privately operated prisons, and on Corrective Services NSW's own decisions and actions in response to monitors' observations, and that the report be tabled in Parliament within one month of receipt by the Minister.

Recommendation 12 **107**
That the NSW Government resource the Inspector of Custodial Services to implement the state's obligations under the *Optional Protocol to the Convention Against Torture* via its inspections regime.

Recommendation 13 **107**
That the NSW Government:

- review the performance, functions, powers and resourcing of the Inspector of Custodial Services, in order to enhance the effectiveness of that office
- conduct the review in the first half of 2019
- ensure that any resultant legislative changes are introduced to Parliament by the end of 2019.

Recommendation 14 **121**
That the NSW Government, over and above its recent investment in mental health services and infrastructure from 2018-19:

- provide sufficient additional resources to the Justice Health and Forensic Mental Health Network to enable it to meet the health needs of the New South Wales prisoner population, and their mental health needs in particular
- ensure that 60 more forensic beds are provided urgently
- ensure that there is sufficient investment in other mental health infrastructure for the prison population throughout the state.

Conduct of the inquiry

The terms of reference for the inquiry were self-referred by the committee on 23 November 2017

The committee received 38 submissions and 7 supplementary submissions.

The committee held 3 public hearings at Parliament House in Sydney.

The committee also conducted site visits to

- Parklea Correctional Centre
- Hunter Correctional Centre,
- Wellington Correctional Centre
- Macquarie Correctional Centre
- Junee Correctional Centre
- Silverwater Women's Correctional Centre
- Metropolitan Remand and Reception Centre
- Long Bay Correctional Complex.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Background

This first chapter sets the scene for the report on Parklea Correctional Centre (hereafter Parklea) and other operational issues by providing background information on the genesis and scope of the inquiry and on Parklea itself, along with a range of matters explored in the remaining chapters of the report.

The inquiry

1.1 This self referred inquiry was established by Portfolio Committee No. 4 – Legal Affairs on 23 November 2017 to inquire into and report on the current operations of Parklea Correctional Centre. On 7 December 2017 the committee extended its terms of reference to inquire into rapid build dormitory prisons. On 13 February 2018 the committee further extended its terms of reference to inquire into the benchmarking of prisons in New South Wales.

1.2 The inquiry commenced in the wake of a media crisis in mid 2017 highlighting serious lapses in security and significant problems with contraband at Parklea. A video filmed on a mobile phone inside the prison was uploaded to YouTube, in which an inmate shows a homemade knife and another weapon, along with a substance that he claims is the drug ice, and alleges corruption on the part of Parklea guards. In a separate incident occurring in December 2016, a set of keys was stolen by an inmate as they were released from custody. Both incidents gained widespread media attention. Ongoing criticism in the broadcast media, especially on radio, escalated criticisms of the security and broader operations of the correctional centre, and of its management under the GEO Group Australia (hereafter the GEO Group or GEO), also raising significant questions about how effectively Corrective Services NSW (CSNSW) was responding to the problems at Parklea as the government agency with governance of the private contract for the prison. The crisis at Parklea is examined in detail in chapter 2.

1.3 The inquiry was established to investigate, among other things, the adequacy of staffing levels and staff safety, the inflow of contraband, and other security arrangements at the prison. It was also recognised that the inquiry would provide an opportunity to scrutinise the governance and oversight of privately managed prisons in New South Wales more generally.

1.4 The rapid build dormitory prisons and benchmarking were added to the terms of reference in recognition that they were the focus of significant reforms underway in CSNSW, and that the dormitory prisons embodied a significant departure from the longstanding model of corrections in New South Wales.

Parklea Correctional Centre

1.5 Parklea Correctional Centre in Western Sydney is one of two private prisons in New South Wales, the other being Junee Correctional Centre in the central west of the state. Both are operated by The GEO Group Australia (hereafter the GEO Group or GEO), however the operation of Parklea will transfer to a new operator in 2019.

The current operator, The GEO Group Australia

1.6 The GEO Group has operated Parklea since 2009, when it was transferred from public to private management under the then Minister for Corrective Services, the Hon John Robertson MP. The contract under which GEO operated Parklea until the termination of the contract in 2018 (including by extension) was that entered into in 2009.

1.7 GEO's parent company is The GEO Group, based in the United States. Internationally, it operates 140 facilities across the United States, the United Kingdom, South Africa and Australia. Within Australia, as of October 2018, GEO Group manages five facilities in three states.[1]

1.8 The GEO Group has also managed Junee Correctional Centre since it opened in 1993 and in April 2019 will commence a five year extension to its contract there.[2]

The new operator, MTC/Broadspectrum

1.9 Following a tender process commencing in March 2018, the Minister for Corrective Services announced in September 2018 that the joint venture MTC/Broadspectrum will be the new operator for Parklea from 1 April 2019, 'under a strengthened contract' that commenced in November 2018. The joint venture is between US corrections organisation Management & Training Corporation and Australian-based provider Broadspectrum.[3]

Features

1.10 Parklea is the second largest prison in the state, after the Metropolitan Remand and Reception Centre at Silverwater.[4] As of May 2018, Parklea housed around 1,100 adult male remand and sentenced inmates.[5] The majority are on remand and are thus held for the period up to and including their trial. The smaller proportion – sentenced inmates – undertake offender programs and community work placements prior to release. According to the GEO Group, Parklea is one of Australia's busiest correctional centres, with 34,224 prisoner movements in 2016 and 31,692 in 2017.[6]

1.11 The prison is strategically important to the New South Wales correctional system as it is located in metropolitan Sydney, close to the courts, where remand beds are required, and is critical to CSNSW's management of demand for remand beds.[7]

1 Submission 29, The GEO Group Australia Pty Ltd, pp 3-4; Evidence, Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia, 18 May 2018, p 1.

2 Submission 37, Corrective Services NSW, p 18.

3 Media release, Hon David Elliott MP, Minister for Corrections, 'New operator for Parklea prison', 20 September 2018.

4 Submission 37, Corrective Services NSW, pp 18-19.

5 Evidence, Mr Bezuidenhout, 18 May 2018, p 1.

6 Submission 29, The GEO Group Australia, p 4.

7 Submission 37, Corrective Services NSW, pp 18-19.

1.12 Recent construction works at Parklea undertaken by CSNSW as part of the Prison Bed Capacity Program will take Parklea's total capacity to 1,675, making it the largest prison in Australia. The new beds comprise:

- 150 minimum security beds for sentenced inmates, which opened in November 2017
- 500 maximum security beds for remand inmates, due for completion in November 2019.[8]

1.13 Health services at Parklea are currently provided by the Justice Health and Forensic Mental Health Service (hereafter Justice Health) but will transfer to MTC/Broadspectrum when it takes over operation of the centre.[9] It remains to be seen how this new, wholly privatised, medical service model will work in Parklea. Further consideration of it was outside the scope of this inquiry.

Challenges

1.14 According to CSNSW, Parklea is 'distinct from other prisons in New South Wales by virtue of its dual function as both a remand and reception centre, managing large volumes of both remand and sentenced inmates and a high proportion of inmates requiring protection.'[10] CSNSW identified a number of specific aspects of Parklea's operating environment that pose challenges to its management:

- the substantial and rapid increase in its maximum security population from 634 in 2009-2010, to 906 in 2016-2017
- the growing complexity of its operations, including its transition in 2013 to a full remand and reception centre that also housed maximum security inmates and other difficult inmate cohorts
- the 900 per cent growth in its number of new reception inmates, processing 4,331 in 2016-17 compared with 432 in 2011-12, such that it is the second largest reception centre in the state
- its management of a large population of sentenced maximum security inmates, averaging 368 individuals in 2016-17
- the additional resource demands in respect of remand inmates which arise from their more frequent escorts to court and greater use of legal visits
- its management of a large number of inmates convicted or remanded into custody for murder or for serious violent or sexual offences
- a high proportion of inmates having links to outlaw motorcycle gangs
- in turn, the challenges that the complex inmate cohort bring for cell placement.[11]

8 Submission 29, The GEO Group Australia Pry Ltd, p 4; Submission 37, Corrective Services NSW, p 26.

9 Evidence, Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, 28 September 2018, p 25.

10 Submission 37, Corrective Services NSW, p 23.

11 Submission 37, Corrective Services NSW, pp 21-27.

Context

1.15 Two related matters are noted here as context for the inquiry: the large increase in the prison population between 2014 and 2017; and the subsequent major expansion of prison infrastructure in New South Wales, now well advanced.

The increased prison population

1.16 Mr Peter Severin, Commissioner of Corrective Services NSW, acknowledged that 'the significant and unprecedented growth in prisoner numbers over the past three to four years … is continuing to present a challenge to us.'[12]

1.17 According to CSNSW, the state's prison population grew 26 per cent in three years, from 10,384 in July 2014 to 13,120 in July 2017. Major contributors to this rapid and substantial growth included higher arrest rates, a higher proportion of convicted offenders receiving a prison sentence, and a higher rate of bail refusal.[13]

1.18 A research paper published by the NSW Bureau of Crime Statistics and Research in 2015 provides more detail on the various drivers of the increase:

> The growth in the number of persons entering remand is likely due to four factors: (a) an increase in the number of people proceeded against by police for offences where bail refusal is likely (b) an increase in the number of persons proceeded against by police for breach of bail (c) an increase in the time spent in custody on remand and (d) (possibly) an increase in the likelihood of bail refusal. The cause of the increase in time spent on remand is not known for certain at this stage but it may be related to a growth in the backlog of trial cases in the NSW District Criminal Court.
>
> The increase in the sentenced prisoner population is entirely due to an increase in the number of sentenced prisoners received into custody. There is no evidence that non-parole periods are getting longer. The increase in the number of sentenced prisoners is partly due to the fact that the percentage of convicted offenders given a prison sentence has risen for a large number of offences and partly due to the fact that police are more often initiating criminal proceedings against offenders who, if convicted, are likely to be imprisoned.
>
> Conclusion: The increase in the prison population is partly a consequence of changes in the way the courts respond to suspected or convicted offenders and partly a consequence of an increase in the number of people charged by police with serious offences.[14]

1.19 The prison system is largely a passive responder to these changes. It must cope with increased prison numbers that are sent its way by the Parliament, the police and the judiciary. Whether or not this increase in prisoner numbers is an appropriate public policy outcome at a time where

12 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 28 May 2018, p 23.

13 Submission 37, Corrective Services NSW, p 24.

14 Don Weatherburn, Simon Corben, Stephanie Ramsey and Jacqueline Fitzgerald, 'Why is the NSW prison population still growing? Another look at prison trends between 2011 and 2015', Bureau of Crime Statistics and Research, Issues paper 113 (2016), p 1.

New South Wales is experiencing record low rates of violent crime is not able to be answered in this inquiry.

2016 funding injection for prison infrastructure, including the rapid build dormitory prisons

1.20 In response to the problem of prison overcrowding arising from the substantial increase in the inmate population, in 2016 the NSW Government announced the $3.8 billion over 4 years Prison Bed Capacity Program to increase the prison system's operational capacity through a major expansion of prison infrastructure which includes:

- expansions at existing publicly operated prisons
- expansions at Parklea and Junee Correctional Centres
- construction of new two facilities, the rapid build dormitory style Macquarie Correctional Centre in Wellington and Hunter Correctional Centre in Cessnock, both of which have 400 beds and commenced operating in early 2018.[15]

Private prisons in New South Wales

1.21 While as noted above, there are currently two private prisons in New South Wales, a third – Clarence Correctional Centre – is currently being built under a public-private partnership and will commence operating in 2020.[16]

1.22 In 2016-2017, 14 per cent of the daily average inmate population was managed in privately operated prisons.[17]

1.23 According to CSNSW:

> [T]he mixed model of publicly and privately operated prisons benefits the State by driving innovation and improvement across the correctional system, through indirect competition and exchange of good practice. Under this model, CSNSW has strict oversight of privately operated prisons, which remain State owned and ultimately responsible to the State for their performance under their contracts.[18]

Role of Corrective Services NSW

1.24 In its broadest sense, CSNSW is responsible for ensuring both sentenced inmates and remand inmates (those held in custody pending the outcome of a court hearing) are supervised and managed in a secure, safe and humane manner. It provides programs to reduce reoffending and services to support the wellbeing of inmates and their families. It also administers sentences and legal orders through its custodial and community based services, and provides advice to courts

15 Submission 37, Corrective Services NSW, p 12; Evidence, Mr Severin, 18 May 2018, p 23.

16 Submission 37, Corrective Services NSW, p 85.

17 Submission 37, Corrective Services NSW, p 14.

18 Submission 37, Corrective Services NSW, p 6.

and other statutory bodies that make decisions about offenders. According to CSNSW, its overriding focus is to ensure community safety and to reduce the rate of reoffending.

1.25 There are 38 prisons in New South Wales. As at 18 February 2018, the inmate population was 13,383, and on 1 February 2018, CSNSW managed 18,797 offenders in the community.[19]

Corporate governance

1.26 Unlike typical models of privatisation, which are characterised by independence from government authority, in the case of prisons the government retains ultimate responsibility of the centre.[20] Thus the contract holders of Parklea and other private prisons must adhere to:

- all legislative requirements that apply to the functioning of all other prisons
- most CSNSW policy and procedures relating to operational management
- service requirements contained in the contract.[21]

1.27 Operational matters impacting on the delivery of correctional services in both public and private prisons fall within the responsibility of the Assistant Commissioner, Custodial Corrections.

1.28 The governance structure to seek to ensure compliance of the GEO Group with both its contracts is managed by CSNSW's Governance and Continuous Improvement (G&CI) Division. Within G&CI, the Operational Performance and Review Branch (OPRB) is responsible for performance specifications and performance monitoring of all prisons. The OPRB monitors and reports on correctional centres' operational performance and service delivery, including via onsite monitoring at Parklea and Junee (see below).[22] It is also responsible for the ongoing assessment and reporting of Parklea's performance and contractual compliance under a contract management framework.[23]

Payment and penalties under the contract

1.29 Under its contract, 2.5 per cent of the monthly fee paid to GEO is withheld as a performance linked fee (PLF) as a financial incentive for optimal performance. The amount of the PLF (paid annually in arrears) is fully dependent on the operator's performance against 34 key performance indicators. The contract also requires that GEO's performance be assessed against 74 individual operating specifications.[24]

19 Submission 37, Corrective Services NSW, p 12.

20 Lenny Roth, *Privatisation of Prisons*, Background Paper No 3/2004, NSW Parliament, p 3, cited in Legislative Council, General Purpose Standing Committee No. 3, *The privatisation of prisons and prison-related services* (2009), pp xv-xvi.

21 Submission 37, Corrective Services NSW, p 28.

22 Submission 37, Corrective Services NSW, p 29.

23 Submission 37, Corrective Services NSW, p 30.

24 Submission 37, Corrective Services NSW, p 30; Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 52.

1.30 In addition, Performance Improvement Notices (PINs) may be applied after issues have been raised in an operational context and have not been resolved, or if further performance issues occur once an issue is believed to have been resolved through earlier remediation by the prison operator. PINs outline the components of an issue that CSNSW requires to be addressed, as a minimum, for it to be satisfied that service provision is adequate, as well as a timeframe in which rectification must occur. They also alert the provider that issues may be escalated if left unaddressed. If actions prescribed by a PIN are not completed within the requested timeframe a deduction from service fees may be applied or a default notice issued.[25]

Onsite monitors

1.31 The governance arrangements for both Parklea and Junee include the deployment of CSNSW contract monitors onsite to actively oversight performance and report back on incidents and issues. The monitors are responsible for assessing and reporting on the operator's operational performance and contractual compliance.[26]

1.32 The OPRB has two teams of monitors, one for all publicly operated prisons (with 3.5 FTE staff) and another, the Private Contract Monitoring Team, for Parklea and Junee (with 3 FTE staff).[27]

1.33 CSNSW advised that there are currently three monitors at Parklea and that on occasion this is augmented to five. From 2011 to 2017 there was only one monitor, at which time it increased to three.[28] The monitors are present on site each day, observing a range of functions, from inmate reception to gatehouse practices. They report to an experienced general manager, who reports to the Assistant Commissioner, Custodial Corrections. The monitors have several roles:

- to assess the operational performance of the centre, with a focus on safety and security, ensuring that the centre fulfils its obligations in respect of programs and activities
- to conduct thematic reviews
- to operationally test aspects of management
- to observe practices across the prison and conduct a range of compliance and monitoring functions
- to alert CSNSW should they have any concerns about activities at the correctional centre.[29]

1.34 Monitors have unrestricted access to all correctional centre records, employees and inmates and may freely move about each area of a prison at all times. They are required under legislation to report their findings in writing at least annually.[30] The role of monitors at Parklea is examined in chapter 6.

25 Submission 37, Corrective Services NSW, p 36.

26 Submission 37, Corrective Services NSW, pp 31-32.

27 Submission 37, Corrective Services NSW, p 29.

28 Answers to supplementary questions, Corrective Services NSW, received 13 June 2018, p 2.

29 Evidence, Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 18 May 2018, p 35; see also Evidence, Mr Carlo Scasserra, Acting Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 28 September 2018, p 49.

30 Submission 37, Corrective Services NSW, pp 31-32.

Independent oversight via the Inspector of Custodial Services

1.35 Independent oversight in respect of all prisons in New South Wales, both public and private, is provided by the Inspector of Custodial Services (ICS). The purpose of the ICS is to provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody and to promote excellence in staff professional practice. It reports directly to the NSW Parliament.[31] The role of the ICS in respect of both private prisons and the rapid build dormitory prisons is examined in detail in Chapter 6.

1.36 Under the provisions of the *Inspector of Custodial Services Act 2012* (the Act), the Inspector is required to inspect each custodial centre once every five years, and every juvenile justice centre once every three years. The Inspector does not respond to individual complaints and, where appropriate, may refer complaints received to relevant agencies and/or oversight bodies for resolution.

Functions

1.37 Other functions of the Inspector include:

- to examine and review any custodial service at any time
- to report to Parliament on each such inspection, examination or review
- to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so
- to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by the Minister
- to include in any report such advice or recommendations as the Inspector thinks appropriate (including advice or recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services)
- to oversee official visitor programs conducted under the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987*
- to advise, train and assist official visitors in the exercise of the functions conferred or imposed on them under those Acts.[32]

1.38 The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister or in response to a reference by NSW Parliament's Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (hereafter the Joint Committee) or any public authority or public official.[33]

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31 Inspector of Custodial Services, *Annual Report 2016-17*, p 5.

32 *Inspector of Custodial Services Act 2012*, s 6; Inspector of Custodial Services, *Annual Report 2016-17*, pp 5-6.

33 Inspector of Custodial Services, *Annual Report 2016-17*, p 6.

Official visitors

1.39 Official visitors are community representatives appointed by the Minister for Corrections to visit correctional centres and juvenile justice centres. Their role is to be independent observers of the custodial environment, to report on the conditions in custodial facilities, and to receive and deal with complaints. When at a given facility, official visitors record enquiries and complaints and try to resolve them at the local level by speaking with staff and inmates.[34]

1.40 Parklea has four official visitors appointed to it, who each visit the centre once a fortnight, such that Parklea is visited by an official visitor twice per week.[35]

Powers

1.41 The Inspector in the exercise of the Inspector's functions:

a) is entitled to full access to the records of any custodial centre (including health records) and may make copies of, or take extracts from, those records and may remove and retain those copies or extracts, and

b) may visit and examine any custodial centre at any time the Inspector thinks fit, and

c) may require custodial centre staff members to supply information or produce documents or other things relating to any matter, or any class or kind of matters, concerning a custodial centre's operations, and ,

d) may require custodial centre staff members to attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations, and

e) may refer matters relating to a custodial centre to other appropriate agencies for consideration or action, and

f) is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.[36]

Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission

1.42 In turn, under the Act, the Inspector of Custodial Services is itself subject to oversight by the NSW Parliament's Joint Committee. The Joint Committee has the following functions in respect of the Inspector of Custodial Services:

a) to monitor and to review the exercise by the Inspector of the Inspector's functions,

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34 Inspector of Custodial Services, *Annual Report 2016-17*, pp 11-12.

35 Evidence, Ms Fiona Rafter, Inspector of Custodial Services, 28 September 2018, p 2.

36 *Inspector of Custodial Services Act 2012*, s 7; Inspector of Custodial Services, *Annual Report 2016-17*, pp 5-6.

b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Inspector or connected with the exercise of the Inspector's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,

c) to examine each annual and other report to Parliament of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,

d) to report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Inspector,

e) to inquire into any question in connection with the Inspector's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.[37]

NSW Ombudsman

1.43 Further oversight is provided by the NSW Ombudsman, which has a Custodial Services Unit responsible for complaints handling in respect of both public and private correctional services. In addition to accepting complaints by telephone or in writing, Ombudsman staff visit adult correctional centres and juvenile justice centres to take complaints, speak with staff, resolve issues and observe conditions and routines. According to the NSW Ombudsman:

> Visits to centres provide people in custody with an opportunity to raise any concerns about government or community services directly with our staff. During our visits we also speak with senior managers, observe the conditions and amenities in the centres and check paperwork. Many of the complaints and concerns we receive are handled informally through contact with senior staff at the centre.[38]

Human rights standards and prisoners

1.44 The human rights framework in respect of prisoners is captured in several United Nations instruments.

1.45 The UN General Assembly's *Principles for the Treatment of Prisoners*, adopted in 1990, include:

> Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the *Universal Declaration of Human Rights*, and, where the State concerned is a party, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.[39]

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37 *Inspector of Custodial Services Act 2012*, s 17.

38 Ombudsman New South Wales, *Custodial Services*, https://www.ombo.nsw.gov.au/what-we-do/our-work/custodial-services.

39 *Basic Principles for the Treatment of Prisoners* adopted by United Nations General Assembly resolution 45/111 of 14 December 1990, clause 5, cited in Submission 36, Legal Aid NSW, p 4.

1.46 Specifically, the *International Covenant on Civil and Political Rights* provides that:

- no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[40]

1.47 In addition, the UN *Standard Minimum Rules for the Treatment of Prisoners*, also known as the Nelson Mandela Rules, provide clear guidelines for the state and prison authorities on the minimum standards of compliance with international human rights law in Australia. Based on those Rules, the *Standard Guidelines for Corrections in Australia* is intended to reflect 'best practice' and community demands for state and territory correctional services.[41]

1.48 Australia a party to the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment* (CAT), and has recently ratified the Optional Protocol for the CAT (OPCAT), under which prison inspections are to occur.[42]

2009 Legislative Council inquiry into the privatisation of prisons

1.49 In 2009 the then General Purpose Standing Committee No. 3 conducted an inquiry into the privatisation of prisons and prison related services following the an announcement by the then NSW Government that Parklea and Cessnock prisons would be privatised. In May 2009, prior to the conclusion of the inquiry, the Government overturned its decision to privatise Cessnock, but proceeded with Parklea.

1.50 That committee saw benefits with a mixed model of correctional management, that is, a mixture of public and private management of prisons.[43] It made a number of recommendations to increase transparency and accountability in private prisons. It also recommended that if privately managed prisons fail to meet their contractual obligations, they should revert to public ownership.[44]

40 *International Covenant on Civil and Political Rights*, Articles 7 and 10, cited in Submission 36, Legal Aid NSW, p 4.

41 Submission 36, Legal Aid NSW, p 4.

42 Submission 23, Australian Human Rights Commission, pp 2-3.

43 Legislative Council, General Purpose Standing Committee No. 3, *Privatisation of prisons and prison-related services* (2009), pp 45 and 87.

44 General Purpose Standing Committee No. 3, *Privatisation of prisons and prison-related services*, pp xv-xvi.

Chapter 2 Past problems at Parklea Correctional Centre

Just as the rapid increase in the New South Wales prisoner population was peaking, in 2017 Parklea Correctional Centre (hereafter Parklea), one of two private prisons in the state and the second largest prison in New South Wales, became the focus of significant media attention highlighting serious lapses in security and major problems with contraband, allegedly enabled by lax security practices and low level corruption. In July that year Corrective Services NSW (CSNSW) took the unprecedented step of intervening in the operations of the centre run by the company GEO Group Australia (hereafter the GEO Group or GEO), and in September 2018 a new contract for the operation of the centre was awarded to different company. As noted in chapter 1, Parklea is strategically important to CSNSW as it is located in metropolitan Sydney, close to the courts, and is critical to the management of demand for remand beds across the state.

This first of two chapters focusing specifically on Parklea explores the past problems of the prison, setting the scene for the next chapter, which examines the steps that the government is taking to safeguard its future.

Recent troubling events

2.1 As noted in chapter 1, this inquiry commenced in the aftermath of the media crisis that erupted in July 2017, when a video filmed on a contraband mobile phone was uploaded to YouTube. In the video an inmate flaunts a knife, another makeshift weapon and a substance which he claims to be the drug ice, and claims that mobile phones are brought into the gaol by guards for money.[45] A sweep of the prison subsequently uncovered a range of illegal contraband including nine mobile phones, three phone chargers, 60 green and white capsules, 11 heart shaped tablets and 50g of tobacco, that had been hidden in toilets, food packages and televisions.[46]

2.2 In an earlier incident in December 2016, an inmate allegedly stole a set of keys as he was being released from the correctional centre, necessitating 28 locks to be changed. Prison managers were not aware of the security breach until the following day.[47] It was also alleged that the centre's General Manager at the time attempted to cover up the incident.[48]

2.3 As detailed below in paragraphs 2.31 to 2.32, in February 2017 CSNSW initiated a 'wellbeing review' of the operations at Parklea with a focus on safety and security issues.

2.4 Immediately following the YouTube incident, the Minister for Corrective Services, the Hon David Elliot MP, called for an investigation of Parklea and stated that the Government would review its contract with the operator to establish what penalties could be used in the event of a failure on the GEO Group's part. At the same time, Mr Peter Severin, Commissioner of

45 Sam Buckingham-Jones, 'Privately run Parklea prison faces penalties', *The Australian*, 11 July 2017.

46 'Seven face charges over drugs in jail', *The Australian*, 19 July 2017, p 2.

47 Jason Tin, 'Locks changed at Parklea Jail after keys stolen by released inmate', *The Daily Telegraph*, 5 January 2017

48 'Corrections minister responds to Parklea allegations,' Ray Hadley, 4BC, 23 November 2017, https://www.4bc.com.au/podcast/exclusive-corrections-minister-responds-to-parklea-allegations/

Corrective Services NSW, ordered 'an intervention' at the centre, announcing that a CSNSW team led by an experienced public sector prison governor would oversee all major decisions made by GEO and conduct a comprehensive review of practices there. The intervention team was authorised to act, if it deemed necessary, to ensure that Parklea operated in accordance with mandatory regulations and operating procedures. The Commissioner also determined that the costs of the intervention were to be met by GEO.[49]

2.5 In the lead up to this point of crisis, 2GB Radio commentator Ray Hadley had run a long campaign reporting problems in the prison, suggesting that the GEO Group 'has a history of disgraceful administration at the [gaol]'[50], and that he had 'repeatedly exposed trafficking of contraband, extreme violence, cover ups and allegations of widespread corruption over recent years.'[51] Other media also reported allegations of corruption and drug trafficking,[52] along with concerns about 'corrupt guards, out-of-control inmates and mismanagement' at the centre.[53]

2.6 The committee received confidential evidence detailing numerous allegations about occurrences in Parklea which we are not able to recount in our report. For that reason the report relies upon allegations reported by the media to capture the range of serious problems occurring at the centre in 2017 and early 2018, including:

- A female guard was assaulted and threatened by her manager after accusing him of smuggling contraband into the prison. After she notified senior management and lodged a complaint, the manager released her personal details, including her home address, to inmates. The only punishment the manager received was to be moved to another part of the prison, and another staff member who stood up for the female guard had her car torched.[54] Three mobile phones were subsequently found in the new area supervised by the manager, when it had no previous history of contraband. The same manager allegedly tried to cover up the presence of a heavy tool in an inmate's cell.[55]
- A former Parklea inmate 'John' disclosed on radio that while in custody in January 2017 he had made calls from a contraband phone. He alleged that contraband was routinely smuggled in through meals. A phone might cost a prisoner $1,500 to $3,000, which is

49 Sam Buckingham-Jones, 'Privately run Parklea prison faces penalties', *The Australian*, 11 July 2017; Submission 37, Corrective Services NSW, p 39; Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 28 September 2018, p 41.

50 'Baton stolen from prison guards at Parklea Jail', Ray Hadley, 4BC, 20 March 2018, https://www.4bc.com.au/exclusive-baton-stolen-from-prison-guards-at-parklea-jail/.

51 'Inquiry unearths more about one of Sydney's worst prisons', Ray Hadley, 2GB, 22 May 2018, https://www.2gb.com/inquiry-unearths-more-about-one-of-sydneys-worst-prisons/.

52 Janet Fife-Yeomans and Danielle Gusmaroli, 'Prison plans a real steal', *Daily Telegraph*, 13 December 2017, p 15.

53 Ava Benny-Morrison, 'Elite cops boycotting Parklea jail', *Sunday Telegraph*, 8 October 2017, p 5.

54 'Prison staff accused of corruption and bullying at Parklea', Ray Hadley, 2GB, 21 November 2018, https://www.2gb.com/exclusive-former-inmate-reveals-how-contraband-is-allegedly-smuggled-into-parklea-jail/.

55 'More allegations of corruption at Parklea jail', Ray Hadley, 4BC, https://www.4bc.com.au /podcast/exclusive-more-allegations-of-corruption-at-parklea-jail/.

paid by someone outside the gaol via a deposit into a bank account at the direction of a guard.[56]

- Guards failed to notice an 81 year old inmate had committed suicide.[57]
- A prison officer was stabbed twice, with only a name tag preventing a potentially fatal wound to his chest.[58]
- A delivery driver entered Parklea Correctional Centre without being searched by security.[59]
- The prison had to go into lockdown because an extendable baton went missing, allegedly stolen by inmates.[60]
- Plans for offices in a new maximum security wing at Parklea were stolen and smuggled out of the prison by an inmate and later recovered at Silverwater Correctional Centre.[61]

Other evidence of significant problems

2.7 In this section the committee considers other evidence it received about the substantial problems at Parklea Correctional Centre. While a number of inquiry participants' concerns were focused on the period prior to the unprecedented action by CSNSW, others continue to the present day. The problems highlighted by participants include the higher rates of reportable incidents and investigations at Parklea compared to other prisons, management and staffing issues, deaths in custody, inadequate health care, and impediments to inmates' legal communication. In later sections the factors contributing to these problems are explored.

Reportable incidents and investigations

2.8 The committee sought from CSNSW the numbers of reports to the Minister about contraband, excessive use of force, inmate on inmate assault and serious incidents at Parklea. These are set out in table 1 on the following page.

56 'More allegations of corruption at Parklea jail', 4BC, 'Prison staff accused of corruption and bullying at Parklea', Ray Hadley, 2GB, 21 November 2017, https://www.2gb.com/exclusive-former-inmate-reveals-how-contraband-is-allegedly-smuggled-into-parklea-jail/.

57 'Corrections minister responds to Parklea allegations,' Ray Hadley, 4BC, 23 November 2017, https://www.4bc.com.au/podcast/exclusive-corrections-minister-responds-to-parklea-allegations/

58 Rose Brennan, 'Jail fails sparking switch at Parklea', *The Daily Telegraph*, 16 October 2017.

59 'David Elliott, security MIA at Parklea jail,' Ray Hadley, 4BC, 28 June 2017, https://www.4bc.com.au /podcast/david-elliot-security-mia-at-parklea-jail/.

60 'Baton stolen from prison guards at Parklea jail,' Ray Hadley, 4BC, 20 March 2018, https://www.4bc. com.au /exclusive-baton-stolen-from-prison-guards-at-parklea-jail/.

61 'Maximum security prison plans stolen by inmate', Ray Hadley, 4BC, 13 December 2017, https://www. 4bc.com.au/maximum-security-prison-plans-stolen-by-inmate/.

Table 1 Formal briefings to the Minister for Corrective Services in respect of contraband, excessive use of force, inmate assault and serious incidents at Parklea Correctional Centre, 2015-17

Year	Contraband	Excessive use of force	Inmate assault	Serious incidents	Total
2015	1	0	9 (7 hospital admissions)	5	**15**
2016	10	0	10 (5 hospital admissions)	16	**36**
2017	17	0	6 (4 hospital admissions)	18	**41**

Source: Answers to supplementary questions, Corrective Services NSW, received 13 June 2018, p 2.

2.9 The committee sought from the GEO Group data on the sources of detection for contraband incidents, and on staff terminations and suspensions as a result of contraband or security breaches. These are set out in tables 2 and 3 respectively.

Table 2 Incidents of contraband reported at Parklea Correctional Centre by source of detection, 2016-18

Year	Detected and seized from external and internal perimeter areas of facility	Found during search in reception area	Visitors involved in trafficking or possession of contraband
2016	26	1	66
2017	30	4	138
2018*	13	4	62

Source: Answers to questions on notice, The GEO Group Australia, received 13 June 2018, pp 1-2.
** Note: The 2018 data is for a partial year only.*

Table 3 Staff terminated or suspended as a result of suspected breaches of security and contraband at Parklea Correctional Centre, 2016-18

Year	Staff terminated following investigations and disciplinary hearings	Staff suspended pending finalisation of investigation and disciplinary hearings
2016	1	2
2017	3	7
2018*	2	7

Source: Answers to questions on notice, The GEO Group Australia, received 13 June 2018, p 3.
** Note: The 2018 data is for a partial year only.*

2.10 The committee also sought from CSNSW figures on investigations of Parklea staff notified by the GEO Group to CSNSW. These are set out in table 4 below. CSNSW's advised that under its contract with the GEO Group, GEO is not required to report all disciplinary action to Corrective Services, only serious misconduct that could result in termination or withdrawal of authorisation. According to CSNSW, this is because some disciplinary action may be the result of relatively minor infractions such as lateness to work, rudeness to supervisors or excessive absenteeism.

Table 4 Investigations of staff for serious misconduct notified by the GEO Group to Corrective Services NSW, 2011-17

Year	Investigations	Staff disciplined
2011	9	10
2012	5	9
2013	14	24
2014	5	6
2015	3	3
2016	7	15
2017	18	60
2018*	4	11
Total	**65**	**138**

Source: Answers to supplementary questions, Corrective Services NSW, received 13 June 2018, p 2.
** Note: The 2018 data is for a partial year only.*

2.11 Representatives of the Public Service Association and Community and Public Sector Union NSW (hereafter PSA/CPSU) observed that Parklea performs poorly on various measures compared to other prisons. In respect of serious and reportable incidents, the PSA/CPSU noted Parklea's poor performance with regard to assaults on staff, assaults on inmates, use of force and contraband seized, further stating its 'serious concerns that these statistics do not portray an accurate picture … [because of] the chronic under reporting of incidents throughout the gaol.'[62]

2.12 Ms Nicole Jess, Chairperson, Prison Officers Vocational Branch and Senior Vice President of the PSA, asserted that she was not aware of any other prison in New South Wales with a comparable number of investigations for serious misconduct and disciplinary actions as those for Parklea in 2017. She further claimed that while the union was aware of escalating problems through anecdotal reports by members, it had no idea of the extent of infractions until it saw the evidence presented to the committee by CSNSW. In addition, she reported that when the union met with GEO to raise its concerns, 'these would be dismissed and minimised.'[63]

62 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 21.

63 Evidence, Ms Nicole Jess, Chairperson, Prison Officers Vocational Branch, and Senior Vice President, Public Service Association of NSW, 2 August 2018, pp 6 and 7; see also evidence, Mr Troy

2.13 CSNSW provided figures on the trends in the performance of Parklea and comparable prisons (the Metropolitan Remand and Reception Centre and Wellington). These figures indicated that in 2016-17 Parklea recorded a significantly lower rate of assaults on staff than comparable public prisons and a much lower rate than all public secure custody prisons. Since 2010-11 Parklea has consistently recorded a lower rate of inmate on staff assaults than comparable public prisons and a lower rate compared to all public secure custody prisons (with the exception of 2012-13 only).

2.14 Overall, staff at Parklea are statistically less likely to be assaulted than staff working in public secure custody prisons, or comparable publicly operated prisons. CSNSW provided further figures which indicated that in 2016-17, Parklea recorded a slightly lower rate of spontaneous use of force on inmates than comparable public prisons and a slightly higher rate than all public secure custody prisons. In 2015-16, the rate of spontaneous use of force on inmates at Parklea was slightly lower than all public secure custody prisons. Since 2009-10, Parklea has consistently recorded a lower rate of spontaneous use of force on inmates than comparable public prisons.[64]

Deaths in custody and incidents of harm

2.15 Mr Gary Forrest, Chief Executive of the Justice Health and Forensic Mental Health Network, NSW Health, advised the committee of the deaths in custody and serious incidents of harm at Parklea in 2016, 2017 and 2018:

> In 2016, there were four deaths in custody, in 2017, there were six, and there has been one in 2018 to date. Of the 11 deaths in custody, seven were by suicide, one patient died of endocarditis, one patient died of sepsis, one death occurred while the patient was undergoing detoxification, and one death occurred as a result of a cerebral aneurysm. There were six serious incidents. Three were due to self harm that required hospitalisation and surgical intervention; two were due to self harm that required hospitalisation; and one was due to an assault that required hospitalisation and surgical intervention.[65]

2.16 Justice Action and the Community Justice Coalition suggested that the suicide of an inmate in 2014, examined at a coronial inquest in 2017, 'raised urgent questions' about standards of care at Parklea, 'including how easily the inmate was able to take his own life without raising the alarm of those entrusted with his care', and why he was unnecessarily restrained in shackles at the time. According to Justice Action, 'The prison provided a host of inconsistent stories as to why he was restrained, thus emphasising the lack of transparency and poor standards of care.'[66]

2.17 Justice Action also highlighted the death of Indigenous man Eric Whittaker in July 2017, who died in Westmead Hospital after being transferred from Parklea, where he was held only briefly for minor matters and who is reported to have died of an aneurism. Mr Whittaker was shackled in his hospital bed for at least two days, including after he was unconscious and determined to

Wright, Assistant General Secretary, Public Service Association of Australia and Branch Assistant Secretary, Community and Public Sector Union NSW, 2 August 2018, p 4.

64 Submission 37, Corrective Services NSW, p 52.

65 Evidence, Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, NSW Health, 28 September 2018, p 25.

66 Submission 34, Justice Action, pp 9-10; Submission 30a, Community Justice Coalition, p 10.

be brain dead. Justice Action questioned how Mr Whittaker came to be shackled and the adequacy of Parklea staff behaviour in this matter.[67]

Management, staffing and culture

2.18 The PSA/CPSU highlighted significant problems with respect to GEO's staffing of the prison including unsafe work practices and lack of management action to address them, enabling 'an occupationally dangerous culture to flourish'. It also pointed to a 'culture of short cuts and making do' in the highly volatile prison environment, for example in the movement of prisoners around the centre despite the known risks.[68] The union further attested to unclear lines of command, poor respect for authority and rank, poor adherence to properly understood procedure, and lack of confidence among staff in management and their peers.[69] Mr Troy Wright, Assistant General Secretary of the PSA and Branch Assistant Secretary of the CPSU, contended that there has been very high staff turnover at Parklea, such that perhaps 80 per cent of staff have less than two years' experience, and that the prison has 'enormous problems with attraction and particularly retention' of staff.[70]

2.19 Justice Action also pointed to significant problems in respect of the centre's leadership, citing 'widespread allegations of corruption and drug trafficking' as evidence of this.[71]

2.20 The NSW Nurses and Midwives Association (NSWNMA) reported concerns on the part of its members that inadequate numbers of correctional staff place the safety of nursing staff at greater risk whilst also affecting their ability to provide health care services to inmates.[72]

Inadequate health care

2.21 Legal Aid NSW voiced very significant concerns that the health care given to inmates at Parklea Correctional Centre does not meet obligations embodied in human rights instruments and also New South Wales' provision under the *Crimes (Administration of Sentences) Act 1999*.[73]

2.22 It noted the findings of the 2015 Inspector of Custodial Services *Full House* report that a lack of health care was 'the single biggest issue at all centres, and was particularly so at Parklea'.[74] According to Legal Aid, inmates reported that a lack of access to both physical health care and

67 Sarah Hawke, 'Family calls for investigation after Erik Whittaker dies shackled by his ankles in a Sydney Hospital bed', *ABC News*, 3 December 2017, cited in Submission 34, Justice Action, pp 12-13.

68 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, pp 12-13.

69 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, pp 12 and 18.

70 Evidence, Mr Wright, 2 August 2018, p 8.

71 Submission 34, Justice Action, p 12.

72 Submission 31, NSW Nurses and Midwives Association, p 3.

73 Evidence, Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, p 30; Submission 36, Legal Aid NSW, p 9.

74 Inspector of Custodial Services, *Full house: The growth in the inmate population in New South Wales* (2015), p 12, quoted in Submission 36, Legal Aid NSW, p 9.

mental health services was particularly acute at Parklea. Waitlists in 2014 were around twice as long at Parklea as the average for all NSW correctional centres. Waiting times were 49 days for a primary health nurse, 43 days for a medical officer, and 60 days for a psychiatrist or a mental health nurse.[75] Indeed, waiting times for medical care at Parklea were double the state average.[76]

2.23 As an example of the many cases of which Legal Aid is aware, Mr Anthony Levin, Senior Solicitor, Human Rights Group, referred to a recent client who told him that he had a four month wait to see a general practitioner for blood tests at Parklea.[77] Further examples of clients who had difficulty accessing timely and adequate health care at Parklea are set out in the case studies of 'Anthony', below, and 'Patrick' and 'Chioke', in chapter 7, where the committee explores the issue of the adequacy of Justice Health resources across the corrections system.

Case study – Anthony[78]

In 2017 an assault by three inmates at Parklea Correctional Centre left Anthony unconscious. As a result, Anthony suffered a broken left ulna (bone in the forearm), a broken nose, fractured eye sockets and a perforated retina.

After a four hour wait in custody, Anthony was taken to hospital. He underwent surgery on his arm the following day and was released back to prison after four days with his arm in a cast.

Upon re-entering custody, Anthony had difficulty breathing and eating, and had limited vision. Two weeks later, an eye specialist recommended that surgery on his right eye take place within three weeks to avoid complications. That surgery was delayed and never took place, which Anthony attributes to Parklea staff cancelling his appointments.

Anthony now has permanent damage to the vision in his right eye and suffers persistent headaches. He also continues to have problems with his left arm. When the cast was due to come off, Anthony had to remove it himself with a shaving razor. He has not seen any physiotherapists while in custody, despite experiencing nerve pain and pins and needles in his arm and hand. In addition, a psychologist at Parklea has informally diagnosed Anthony as having post traumatic stress disorder on the basis of hyper vigilant behaviour (other symptoms include disturbed sleep, sweaty palms, increased heart rate and anxiety). Despite such symptoms, he has not received any ongoing mental health support.

Impediments to inmates' legal communications

2.24 Legal Aid NSW also reported that its solicitors are frustrated by arrangements for Parklea's inmates to speak with their legal representatives, whether in person or via audio visual link

75 Inspector of Custodial Services, *Full house: The growth in the inmate population in New South Wales* (2015), pp 52 -53, quoted in Submission 36, Legal Aid NSW, p 9.

76 Evidence, Mr Levin, 2 August 2018, p 31.

77 Evidence, Mr Levin, 2 August 2018, p 33.

78 Submission 36a, Legal Aid NSW, p 10.

(AVL). This is despite the human rights provisions under the instruments noted in chapter 1 for all prisoners who have legal matters pending to be able to meet with their lawyers.[79]

2.25 With regard to in person prison visits, Legal Aid reported that poor entry procedures cause delays and inconvenience, and prison staff are unreliable in actually bringing the clients to the interview room for their appointments. While at the Metropolitan Remand and Reception Centre, Legal Aid solicitors might see up to 20 prisoners in one day, at Parklea it may be as few as four or five.[80]

2.26 In respect of AVL, inmates are often brought to their appointments late, videoconferences are sometimes cancelled without adequate justification, and there is no efficiency to the process when solicitors have more than one client to see. The delays not only affect legal appointments, but also inmates' appearances at court, impeding the ability to proceed through the day's list.[81]

2.27 In addition, Legal Aid advised that the process for lawyers and inmates to get legal documents in and out of the jail is highly problematic, with documents handed by inmates to staff never reaching their destination, such that inmates may be out of time to exercise their legal rights. Inmates also report confidential legal correspondence having been opened before they receive it, despite staff's statutory obligation not to do so.[82]

Corrective Services NSW actions

2.28 In chapter 1 the committee explained the corporate governance structure and systems in place for private prisons in New South Wales, including via payments and financial penalties under the contract and onsite monitors (see paragraphs 1.26 to 1.34). This section briefly documents CSNSW's actions in respect of Parklea prior to 2017, then during the wellbeing review in early 2017, then the intervention mid that year.

Prior to 2017

2.29 According to CSNSW, across all its performance, the GEO Group has been largely compliant with the terms of its contract (as it was framed when Parklea was privatised in 2009). When it has not complied, it has been forced to rectify any issues, and 'proactive action to hold the GEO Group accountable for breaches of its contract' has occurred via a combination of performance improvement notices (PINs) and financial penalties (explained in chapter 1). As of March 2018 a total of 13 PINs were issued to GEO during the 8 ½ years of its contract for Parklea, along with one default notice for non compliance with the contract.[83]

2.30 CSNSW's perspective on the adequacy of its oversight is examined in a later section of this chapter, while the evidence the committee received in respect of monitoring and oversight of Parklea and other private prisons is explored in chapter 6.

79 Submission 36, Legal Aid NSW, p 5.

80 Submission 36, Legal Aid NSW, p 6.

81 Evidence, Ms Rebecca Simpson, Solicitor in Charge, Prisoners Legal Service, Legal Aid NSW, 2 August 2018, p 30; see also Submission 36, Legal Aid NSW, pp 5-8.

82 Evidence, Ms Simpson, 2 August 2018, p 30; see also Submission 36, Legal Aid NSW, pp 8-9.

83 Submission 37, Corrective Services NSW, pp 6 and 36.

The wellbeing review – February to April 2017

2.31 Prior to its intervention into Parklea's operations, CSNSW escalated its action from February 2017 via a 'wellbeing review' of the operations of Parklea, with a focus on safety and security.[84] According to CSNSW, the review was prompted by patterns of concern identified by Corrective Services monitors in 2016 and early 2017 regarding issues including serious and repeated contraband incidents, the practices used by GEO Group to roster and deploy staff throughout the centre, as well as the incident of the stolen keys.[85] Mr Severin attested to further concerns at the time regarding deaths in custody and incidents of self harm, and told the committee that he announced this 'deep dive' review because he needed to satisfy himself that GEO was taking the problems at Parklea very seriously, and that every action that needed to be taken was being taken.[86]

2.32 Conducted by staff of CSNSW's Operational Performance Review Branch (OPRB) and subject matter experts from other parts of Corrective Services, the review's scope included staff retention, staff supervision, the effectiveness of staff deployment strategies, interactions between staff and inmates, inmate discipline and management, and gatehouse operations.[87]

Findings

2.33 According to CSNSW, no significant cases of contractual noncompliance were identified during the wellbeing review and Parklea was assessed as inherently safe. However, 'some work practices were identified that contribute to increased risk to the good order and security of Parklea', including:

- approaches to staff supervision and oversight
- redeployment of staff posts
- deployment of less experienced staff in critical security functions and posts.[88]

2.34 The wellbeing review also identified risks associated with key control systems and found the following to be 'issues of concern':

- ongoing staff vacancies and low retention rates, which compounded difficulties with staff deployment
- the high number of less experienced staff with limited supervision who were being deployed to key security posts including the gatehouse

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84 The review occurred in March and April although the Commissioner instructed on 2 February 2017 that it be undertaken. See Submission 37, Corrective Services NSW, p 37 and Answers to questions on notice, Corrective Services NSW, received 13 June 2018, p 18.

85 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 47.

86 Evidence, Mr Severin, 28 September 2018, p 45.

87 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 47; Submission 37, Corrective Services NSW, p 36. CSNSW has noted that the Commissioner ordered this action prior to the media reporting of the YouTube contraband video in July 2017.

88 Submission 37, Corrective Services NSW, p 38.

- the stripping of key posts as a contingency for temporary staff vacancies including the K9 (sniffer dog) and intelligence posts which may have contributed to the capacity to detect and prevent contraband
- opportunities for the introduction of contraband including some staff entering and exiting the prison without being properly searched
- poor security practices employed in inmate work areas including waste management.[89]

Initial actions

2.35 According to CSNSW, in response to this 'cooperative' review, the GEO Group worked with the OBRP to consider remedial actions, to which it committed, and which CSNSW subsequently monitored. In addition, CSNSW developed new protocols with Justice Health and GEO to mitigate risks associated with Parklea's receiving of new inmates.[90]

The intervention – July and August 2017

2.36 CSNSW advised the committee that notwithstanding GEO's engagement in responding to the wellbeing review's findings, as noted earlier in this chapter, in July 2017 the Commissioner ordered an unprecedented intervention by CSNSW at Parklea. Its terms of reference included the:

- review of operational routines and practices in all areas of the centre to establish both adequacy and compliance
- assessment of the confidence and competence of staff to perform their roles
- identification of any requirement to amend or modify prisoner management arrangements and regimes to ensure safety and security
- establishment of whether prisoners felt safe
- identification of any gaps in prisoner management practices
- assessment of the adequacy of program and welfare services to inmates
- identification of any other issue requiring improvement 'to ensure the sustained safe and secure operation of the prison and the optimal provision of offender services'.[91]

2.37 The intervention team was onsite at Parklea for five weeks then prepared a report with findings that built on those made in the wellbeing review, along with other CSNSW monitoring and reporting activities. It made 38 recommendations.[92]

2.38 The committee was eager to understand why the Commissioner acted to intervene when he did. Mr Severin advised that GEO's implementation of actions arising from the wellbeing review

89 Submission 37, Corrective Services NSW, pp 38-39.

90 Submission 37, Corrective Services NSW, p 39; Evidence, Mr Severin, 28 September 2018, p 41.

91 Submission 37, Corrective Services NSW, p 40.

92 Submission 37, Corrective Services NSW, p 40.

was not to his satisfaction, stating, 'I think it is fair to say there was not the sense of urgency that I expected the Group to take decisively implementing action.'[93]

2.39 He further stated that subsequently a change of management occurred at GEO Group that he considered 'very healthy'.[94]

2.40 Asked why, if he had concerns about the urgency of GEO's implementation of the actions, did he wait until the release of the YouTube video to announce the intervention, Commissioner Severin responded, 'The video, quite frankly, topped it off. For me, it was a clear indication that more decisive action was necessary.'[95] He stated that, while he knew that the video was actually filmed in 2016, prior to the wellbeing review, his systemic concerns about the illicit introduction of contraband at Parklea at the time caused him to escalate his actions at that point. He contended that rather than the extreme step of taking the contract back from the operators, the intervention 'was a very serious step under the contract to ensure that not only were we told of things that were happening, but also that we had firsthand evidence that the changes we considered had to be made were being made.'[96]

2.41 Mr Severin further noted that in intervening in the operation of the centre, the team 'actually did not take over the running of the facility because I did not want to relieve the GEO Group from that responsibility and accountability.'[97]

Recommendations and actions

2.42 The intervention team confirmed contraband as a significant problem at Parklea, and according to CSNSW, 28 of its recommendations reinforced the findings of the wellbeing review. Additional critical issues concerned gatehouse operations as well as risks around screening new reception inmates.[98]

2.43 Summarising the improvements made as a result of the intervention, Mr Severin highlighted tighter controls and strengthened management of the centre:

> There has been a much tighter regime when it comes to cell searches. There has been a much tighter regime when it comes to the control of working equipment—keys and the like. There is much tighter control of the way staff operate. Middle management has been strengthened. There is a much stronger focus on middle management taking a far greater role in the day-to-day operations. I understand that some additional managers have been introduced to the facility. That was clearly an element that was identified as being lacking. There were other operational improvements [as well]…[99]

2.44 According to CSNSW, in response to the intervention, in September 2017 GEO prepared a remedial action plan subsequently endorsed by CSNSW which set out a number of changes to work practices, along with strategies and new technologies to improve prevention and detection

93 Evidence, Mr Severin, 18 May 2018, p 38.
94 Evidence, Mr Severin, 18 May 2018, p 38.
95 Evidence, Mr Severin, 18 May 2018, p 38.
96 Evidence, Mr Severin, 18 May 2018, p 38.
97 Evidence, Mr Severin, 18 May 2018, p 38.
98 Submission 37, Corrective Services NSW, p 40
99 Evidence, Mr Severin, 18 May 2018, p 39.

of contraband. As part of this, GEO committed to deploying additional staff in high risk operational areas including the gatehouse, clinic and accommodation.[100]

2.45 CSNSW further advised the committee that it has monitored the implementation of GEO's actions to mitigate the risks identified in the wellbeing review and the intervention. As of March 2018, most of the remedial action plan's actions had been implemented. Specific actions included the:

- review of staff deployment to ensure an even spread of experienced staff are located in key operational areas
- review and amendment of a number of operating procedures related to security
- training of 65 new recruits
- establishment of a security support team to provide specialist security and emergency response skills
- introduction of new technologies to limit the introduction and movement of contraband
- transfer of experienced managers from other GEO operated prisons 'to embed improved correctional practices, deliver structured training and mentor and guide staff, supervisors and managers'
- changes to policies and manuals to ensure consistency of practices among supervisors and managers
- deployment of an experienced officer from GEO's Queensland site to oversee the implementation of all remediation actions.[101]

2.46 When the committee expressed concern as to the breadth and strength of the actions arising out of the intervention, and what these actions suggest about the problems that existed before the intervention took place, Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement with CSNSW, confirmed that Corrective Services was very concerned about the problem of contraband at Parklea, and significant changes were made as a result of the intervention:

> There is no doubt about it, the level of contraband detected at Parklea was higher than at both the comparable prisons we indicated in our submission and others across the State. We intervened pretty decisively in terms of both the operations and the wellbeing review to identify possibilities for how the contraband was being introduced and to eliminate them. GEO Group went away and introduced all that new technology, increased the number of staff in key posts at our insistence, and made a number of operational changes.[102]

100 Submission 37, Corrective Services NSW, pp 40-41.

101 Submission 37, Corrective Services NSW, pp 41-42.

102 Evidence, Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 18 May 2018, p 39.

Contributing factors

2.47 The committee was concerned to understand the various factors contributing to the substantial problems at Parklea, in order to assess the adequacy of CSNSW responses to them and the broader system's ability to limit the risk that they recur there or indeed elsewhere in the future.

Staffing and culture

2.48 Mr Wright of the PSA/CPSU identified staffing and culture not only as problems in themselves, but also as contributing substantially to other problems at Parklea, contending that problems of contraband, violence and security at Parklea 'had been present for a long time and all stem back to the same issues, which are a lack of staff, inexperienced staff and horrifically low staff morale.'[103] He further highlighted 'a culture that has led to officially unauthorised shortcuts, a culture of errors that have arisen out of those shortcuts; and … a real and not imagined perception of danger among the staff group.'[104]

2.49 Others who saw inadequate staffing resources as contributing to the problems of Parklea included Legal Aid NSW and Justice Action.[105] Mr Brett Collins, Justice Action's Coordinator, referred to a recent incident of an inmate's bashing, suggesting that the delayed response of 30 minutes arose from inadequate staffing levels, with only one correctional officer being available at the time.[106] Justice Action subsequently provided a statement from a former inmate who overheard the incident, Mr David Johnson, in which he states his 'firm belief that at the time of the attack, there was only one GEO prison officer on duty in Area 4.'[107] Mr Johnson's direct account of life inside Parklea, and his questioning of the rehabilitative potential of the Parklea environment, is set out in the case study below.

Case study: Mr David Johnson[108]

In December 2015 I walked out of the gates of Area 4, Parklea Correctional Centre for the last time. After spending more than seventeen months confined behind the security fencing of this 'minimum' security facility on the outskirts of Sydney, it was a huge relief.

Managed by GEO Australia Pty Ltd, Area 4 is a small depressing place that was never intended to occupy inmates on a permanent basis. More suited to housing inmates on weekend detention, the jail has none of the facilities one would reasonably expect to find in a minimum security gaol in one of the richest countries on earth. Area 4 has no grass or trees, only drab concrete and bricks to look at for months on end.

Home to approximately eighty men who have been sentenced to a full range of offences from murder to white collar crime, the gaol claims to be a work release centre. However, in my experience less than

103 Evidence, Mr Wright, 2 August 2018, p 4.

104 Evidence, Mr Wright, 2 August 2018, p 2.

105 Evidence, Mr Levin, 2 August 2018, p 38.

106 Evidence, Mr Brett Collins, Coordinator, Justice Action, 2 August 2018, p 17.

107 Answers to questions on notice, Justice Action, received 25 September 2018, pp 4-5.

108 'David Johnson – Official statement', answers to questions on notice, Justice Action, received 25 September 2018, pp 12-13.

15 per cent of the population were C3 category [that is, those who need not be confined by a physical barrier at all times and who need not be supervised]109 and able to attend work or college. And no meaningful assistance was provided by GEO Australia Pty Ltd to those inmates who were eligible for works release. Indeed, I only ended up working outside Area 4 during my last five months, and that was only because a job placement agency desperately needed to fill some seasonal positions in the lead up to Christmas.

Most of the inmates therefore, who were C2 category [that is, those who need not be confined by a physical barrier at all times but who need some level of supervision], had nothing to do other than the bin run; a twenty minute venture to the main jail to collect the bins; working in the kitchen, placing cheese and Vegemite on dry bread and wrapping the sandwiches in cling film for delivery to the inmates; working on the grounds, which involved picking up rubbish and occasionally cutting the grass; or the pallet shop, making wooden pallets. Inevitably, most inmates got bored very quickly because there was nothing to do most of the time.

The red brick cells surrounded a small yard roughly thirty metres square. A few benches surrounded the perimeter, but there was no shade or protection from the sun. During the summer months the heat would build up and become unbearable. With sunshine and rain, the only option was to seek refuge in the tiny cells, most of which housed two inmates. Typically, inmates were always either hot or cold, never comfortable.

Off the yard there was a small 'kitchen' area that had a microwave, hot water, a toaster and a TV on the wall. There was also a dilapidated table tennis table and some old, badly damaged, gym equipment.

During my time at Area 4, the only money spent on the inmates was for a new medicine ball and a few cheap board games that were handed out in an attempt to pacify the inmates following the introduction of the non smoking ban. Even access to books was sporadic and unreliable.

There was a demountable cabin in the yard that was home to a few aged computers, but it was ringed by a high fence and permanently locked, largely surplus to requirements.

In summary, the ethos and attitude of the management of Parklea Correctional Centre can be summed up by the words written on a mug that belonged to the manager of Area 4: "TELL SOMEONE WHO GIVES A SHIT!"

In this environment, the notion of rehabilitation is a fallacy. Ultimately, New South Wales taxpayers are funding a system that encourages high recidivism rates and does nothing to allow inmates to use their time constructively.

Parklea's status as a private prison

2.50 Numerous inquiry participants identified Parklea's status as a private prison as significant contributor to the problems there.

2.51 Associate Professor Jane Andrew and Dr Max Baker of the University of Sydney Business School drew attention to 'the tensions arising between cost cutting and service quality …

109 Corrective Services NSW, *Offender Classification & Case Management Policy & Procedures Manual, Classification of Male Inmates*, March 2015, p 3, https://www.correctiveservices.justice.nsw.gov.au/Documents/Related%20Links/open-access-information/offender-classification/12.1-Classification-of-Male-Inmates.pdf

experienced intensively within [private] prisons', suggesting that these tensions provide some context to the events that prompted the committee's inquiry.[110] Their views on accountability measures in respect of private prisons are explored in detail in chapter 4, and on monitoring and independent oversight, in chapter 6.

2.52 Similarly, the PSA/CPSU argued that the problems occurring at Parklea are substantially attributable to commercial model under which the prison operates:

> It is the PSA/CPSU's position that the incidents and issues emerging from [Parklea] that sparked this inquiry are not attributable entirely to GEO in isolation, but the commercial contractual system in which it competes. To be competitive, GEO is required to adopt a business model that relies on staffing a prison with fewer officers than public sector equivalents. A business model that requires a company to pay its workforce less than its competitors and consequently attract a more transient, inexperienced workforce. A business model steeped in secrecy. A business model that focuses on identified key performance indicators and not a holistic approach. A business model that attracts the maximum number of beds filled for the lowest outlay. A business model that requires short cuts at every opportunity.
>
> It requires a business model that is a roll of the dice with the security of the centre and the safety of those working or living in it every day in order to maximise shareholder returns.[111]

2.53 Justice Action and the Community Justice Coalition raised further concerns about the standards of care in private prisons, referring to the experience of the United Kingdom, in which 10 of the 11 private prisons were ranked in the lowest quarter of the performance register for all UK prisons, with their performance consistently poorer than that of publicly run equivalents. These participants proposed that private prisons are incentivised to reduce costs such as medical care, security staff and programs, thus placing the health and safety of prisoners at greater risk, due to the profit imperative.[112] They further argued that private prisons have a tendency only to adhere to minimum standards, asserting, 'Corporations will only spend as much as they have to when running prisons. They often do not account for the moral considerations of prisoners' quality of life, which are fundamental for their wellbeing and rehabilitation.'[113]

Contract arrangements

2.54 Linked to Parklea's status as a private prison, the PSA/CPSU also voiced strong concerns about the contract between the GEO Group and CSNSW, pointing to the built in cap on penalties of only 2.5 per cent of the operational service fee, as well as incentives that value quantity of service over quality.[114] It also suggested that GEO managers had developed an undesirable focus on achieving KPIs as a result of the contract arrangements:

110 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 3.

111 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 28

112 Submission 34, Justice Action, p 9; Submission 30a, Community Justice Coalition, p 9.

113 Submission 34, Justice Action, p 10; Submission 30a, Community Justice Coalition, p 10.

114 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, pp 19-20 and 22.

> Secondly, what is apparent through interviews with PSA/CPSU members is how prominent these KPIs are in the company's thinking and how amongst staff they appear to supplant operational requirements in importance. It is clear that the outcomes/KPIs against which GEO is measured have now evolved as is reflected by what officers can now identify as the priorities. Officers have had it reinforced to them not only what the KPIs are but the importance of those areas overriding all others within the centre …[115]

2.55 Mr Wright of the PSA/CPSU went so far as to question CSNSW's position (reflected later in this chapter) that they have carefully supervised GEO's contract for Parklea, asserting that, 'Whilst Corrective Services NSW have already provided the committee with evidence claiming to have rigorously policed the contract, we argue this is not the case.'[116]

Physical layout

2.56 Having observed the physical layout of Parklea during our site visit there in May 2018, the committee asked Legal Aid NSW representatives about how that layout might contribute to some of the problems they reported in respect of inmate movements around the facility. Ms Simpson explained that the five ways area through which all movements are funnelled is particularly problematic, and that she has not observed the same problems with movements in other metropolitan prison:

> I think the layout of Parklea is quite a big contributing factor to their difficulties because of how sprawled the centre is and the way it feeds into one tunnel to get to the visits area. For family visits they all come back to the five ways and then come back towards the front of the jail for those visits … Once you go through the gatehouse, you go up a long walk and then into that circular area at the five ways, and it is that area that directs traffic through the whole prison. You have got people coming from the protection area, or what used to be a protection area in area five, through the multipurpose area and in area three, all feeding into one area, so there are inmates that should not be in the same area at the same time. That does cause, in my view, quite a considerable difficulty for staff. At Prisoners Legal Service, we have not experienced the same level of delay or difficulties so far as movements are concerned, I do not think, in any of the other Sydney prisons.[117]

More complex inmates

2.57 Finally, Mr Wright of the PSA/CPSU acknowledged that the difficulties at Parklea also arose from its shift towards more and more complex inmates, saying:

> The complexity of the inmates, particularly upon reception, particularly when they first enter custody, has increased exponentially [across the system], and this ties in again with one of the issues at Parklea, that it changed its population … But once it moved from sentenced inmates to remand inmates to fresh custody inmates that is the exact time line of the deterioration of standards at Parklea because those demands, both on Parklea and any correctional centre in the State, fresh custodies of people coming in off the

115 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, pp 19-20.

116 Evidence, Mr Wright, 2 August 2018, p 2.

117 Evidence, Ms Simpson, 2 August 2018, p 31.

> street with undiagnosed mental health issues, potential developmental disabilities, drug addiction and all of those things upon reception, are enormous.[118]

The GEO Group Australia perspective

2.58 Next, the committee turns to the perspective of the GEO Group's representatives on the past problems with Parklea Correctional Centre. Specifically, their evidence addressed Parklea's performance, contraband and security, the actions GEO had taken since 2017, private prisons, and Junee Correctional Centre.

Parklea's performance

2.59 Appearing before the committee in May 2018, Mr Pieter Bezuidenhout, Managing Director of GEO Group, disputed that Parklea was performing poorly and argued that media reports had distorted the truth of recent events, perhaps assisted by stakeholders opposed to private prisons, such that Parklea became a 'soft target' for media criticism.[119] At several points he and Mr Domonique Karauria, Director of Correctional Services, emphasised parallels with other correctional centres, that is, that the same problems existed and the same actions were taken in other prisons.[120]

Contraband and security

2.60 With respect to contraband and security, Mr Bezuidenhout and Mr Karauria challenged the conclusion that Parklea's higher rates of contraband than comparable prisons can only be interpreted as indicating greater problems at Parklea, noting that the figures might actually indicate better detection. In addition, they explained that the contraband count reflects the items found in a correctional centre without indicating whether they were actually in the possession of an inmate. The GEO representatives further pointed out the greater susceptibility of Parklea to contraband because of its very high throughput of remand inmates as well as the presence of a minimum security facility on site (from which inmates can come and go). They did acknowledge an ongoing issue with the ability of visitors and members of the public to throw mobile phones over a perimeter fence from outside.[121]

2.61 Mr Karauria went on to defend the prison's detection systems vigorously:

> The point that I would like to make is that we use efficient and effective searching measures. We have a search matrix that is utilised every day, so we search a specific number of inmate accommodation areas every day. Our intelligence team is one of the most efficient teams that we have within our organisation so we target specific inmates, areas, cells, whatever, to find contraband and it has been very effective for us. And, yes,

118 Evidence, Mr Wright, 2 August 2018, p 10.

119 Evidence, Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia, 18 May 2018, p 12.

120 Evidence, Mr Bezuidenhout, 18 May 2018, pp 5-6; Evidence, Mr Domonique Karauria, Director, Correctional Services, The GEO Group Australia, 18 May 2018, pp 5-6.

121 Evidence, Mr Bezuidenhout, 18 May 2018, pp 7-9; Evidence, Mr Karauria, pp 7-9; Evidence, Mr Richard Laws, General Manager, Parklea Correctional Centre, 18 May 2018, pp 7-9.

> we have had contraband in our correctional centre, just like every other correctional centre, but we make it our damnedest commitment to try to find that contraband, to detect that contraband.[122]

Actions since 2017

2.62 The GEO Group representatives advised the committee that as a result of CSNSW's wellbeing review, they had introduced to Parklea the Cellsense equipment to improve barrier controls and enable better detection of contraband, especially mobile phones. They also described their approach to staff security via an anti-corruption plan:

> In terms of GEO and Parklea, and Junee correctional centres as well as Correctional Services NSW facilities, we have an anti-corruption plan. That anti-corruption plan is not to target our staff; it is to protect our staff. We go through a process of carrying out random targets, searching of our staff, and we also do random drug testing of our staff and alcohol-testing of our staff as well.[123]

2.63 In other comments, Mr Bezuidenhout explained GEO's systems for detecting and addressing staff corruption in tandem with CSNSW, providing a recent example:

> As we said, every bit of intelligence we receive about staff corruption is immediately reported to the department and to the Corrective Services Investigation Unit [CSIU]. In a number of cases the Corrective Services Investigation Unit takes over the investigation because they do not want us to be compromised and they can do all sorts of things that we cannot do. The latest one that we had was a staff member who brought in tobacco. We had intelligence and we reported it. We kept her under surveillance inside the prison—because it was the thing that she was introducing there—and on a Sunday about three months ago, if I remember correctly, we saw that the person was acting suspiciously. We had her under CCTV surveillance. We saw her basically leave a parcel in a bin and a prisoner picked it up and we called the CSIU police who came in and arrested her. That was about three months ago.[124]

Private prisons

2.64 Mr Bezuidenhout also challenged a number of perceptions about private corrections. First, he countered the view that private operators do nothing to address the reoffending cycle because they have a vested interest in offenders returning to prison, as false and unsubstantiated. Instead, he argued that the GEO Group had demonstrated its commitment to addressing reoffending by running evidence based rehabilitation programs across the globe, both in terms of prison based programs and those that seek to establish inmates in the community and support them during reintegration, as reflected in GEO's Continuum of Care model. He cited the success of the Refrain reintegration program at Parklea, which had a recidivism rate of almost half that of its control group (16 per cent versus 30 per cent), as well as the Exit 180 program for Indigenous inmates at Junee (with a recidivism rate of 8 per cent), as demonstrating this commitment.[125]

122 Evidence, Mr Karauria, 18 May 2018, p 8.

123 Evidence, Mr Karauria, 18 May 2018, p 6.

124 Evidence, Mr Bezuidenhout, 28 May 2018, p 10.

125 Evidence, Mr Bezuidenhout, 18 May 2018, pp 1-2.

2.65 Mr Bezuidenhout also refuted the proposition that private operators are solely focused on making a profit as banal and without substance, noting that it is in GEO's commercial interest to deliver a quality service. He highlighted the outstanding performance of Junee on a number of benchmarks, noted his company's active compliance with oversight and scrutiny, and attested to its continuous improvement and innovation:

> Our priority is … to fully deliver on what we are contracted to provide and exceed our delivery targets and contractual obligations. I will go as far to state to you here that Junee is one of the top-performing prisons in the State. In fact … Junee is possibly the top-performing prison in the State across a whole range of benchmarks. Why is that so? Reputation and integrity is the foundation of our business, and our reputation rests solely on our compliance and service delivery of what we do. Apart from our own internal governance and compliance scrutiny, we also fully support the State's performance and reporting regimes under which we operate, including departmental oversights, such as onsite monitoring. Against these frameworks we strive for continuous improvements in actively introducing innovations, many of which are later implemented in State run prisons.[126]

Junee Correctional Centre

2.66 Asked to explain the differences in performance between Parklea and Junee when they are operated by the one company, Mr Bezuidenhout defended the performance of Parklea and pointed to the very different features of the two correctional centres, as well as the substantial challenges that accompany remand centres:

> Junee is performing better than Parklea on a number of benchmarks simply because of the nature of the prison. It is really difficult to compare a remand facility with 30,000 plus movement to a facility such as Junee, which has less than 10,000 movements per year … The minute you have got a prison with a population that is stable where prisoners have already been sentenced and know they are there to serve their time and will then be released, they are better behaved. It is acknowledged and recognised and research proves that remand facilities around the world have higher numbers of assaults, contrabands and everything else that they could have.[127]

Corrective Services NSW perspective

2.67 The committee now considers the perspective of CSNSW in respect of the various concerns raised by other inquiry participants. First it presents CSNSW's evidence in respect of accountability, then the challenges facing Parklea, then other factors contributing to the problems there.

Accountability

2.68 CSNSW defended its systems of oversight for Parklea prison (described in chapter 1), stating that it ensures the accountability of private operators through:

- robust and comprehensive service standards and performance indicators;

126 Evidence, Mr Bezuidenhout, 18 May 2018, p 2.

127 Evidence, Mr Bezuidenhout, 18 May 2018, p 12.

- strong performance management, monitoring and reporting frameworks; and
- mechanisms for ensuring a decisive response to any issues impacting on operational integrity and performance.[128]

2.69 In respect of its accountability regime, CSNSW told the committee that it 'stringently and proactively monitors the performance of the GEO Group in operating Parklea. Parklea is the most monitored prison in the state'.[129] In addition, 'its operator is held to rectify any identified issues or incidents of non-compliance in a swift and effective manner'.[130] CSNSW further defended its actions to identify and address the problems at Parklea:

> When non-compliance with the contract or any other incident or issue of concern has been identified, CSNSW has taken action including, but not limited to:
>
> - the issuing of formal notices requiring the immediate improvement of performance in a particular area and/or the rectification of a particular issue;
> - financial penalties; and
> - sending of a CSNSW Intervention Team into Parklea.
>
> Incidents of concern have occurred at Parklea in recent times, and those incidents have been reported in the media … CSNSW's monitoring regime worked as it was already aware of those incidents and taking action. This is a sign that the monitoring regime is successful.
>
> There are systems in place to reduce the risk of incidents occurring in the first place, and to ensure when they do, they are detected, reported, and examined so that any failings can be addressed and systems are continuously being improved.
>
> That is the role of CSNSW in managing the contract and performance of the GEO Group. To date the arrangement has worked robustly.[131]

2.70 Corrective Services advised that while it had escalated its interventions at Parklea over the past year, 'in CSNSW's view and upon advice it has received, there has never been justification under the terms of the contract for CSNSW to take the drastic move of stepping in and terminating the contract.'[132]

2.71 CSNSW further asserted that, 'While Parklea is operated by the GEO Group, it continues to remain under the strict control of CSNSW and is fully expected to achieve a standard of safety and security that is equivalent to or exceeds the public system.'[133]

Operational challenges

2.72 From the outset of the inquiry CSNSW emphasised to the committee the very substantial challenges affecting the prison. As noted in chapter 1, where we documented a list of specific aspects to Parklea's operational demands captured in CSNSW's submission (see paragraph 1.14),

128 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 52.

129 Submission 37, Corrective Services NSW, p 28.

130 Submission 37, Corrective Services NSW, p 19.

131 Submission 37, Corrective Services NSW, p 28.

132 Submission 37, Corrective Services NSW, p 7.

133 Submission 37, Corrective Services NSW, p 19.

CSNSW underscored that Parklea is distinguished from other prisons in the state owing to its dual function as both a remand and reception centre with large volumes of remand and sentenced inmates, maximum security inmates, and those requiring protection.[134] Commissioner Severin also highlighted these challenges, along with the size of the prison and the major building program that is underway there, which he described as one of the most complex that CSNSW is undertaking.'[135] CSNSW further advised that while the minimum security facility construction occurred outside the main centre had limited impact on Parklea's operations, the 500 maximum security beds project includes significant works both internal and external to the existing perimeter, so has generated substantial additional demands in respect of staffing and security.[136]

2.73 In defence of Parklea's track record, CSNSW asserted that:

> There is no doubt that prisons are difficult and often volatile places to manage, and that Parklea is one of the State's most complex prisons, in terms of its operations and the type of inmate it houses.
>
> On most key measures of prison safety and security, Parklea has performed on par or better than comparable publicly operated prisons. As one example, Parklea staff are less likely to be assaulted by an inmate than staff at comparable publicly operated prisons.[137]

Other contributing factors

2.74 With regard to other factors contributing to the crisis at Parklea, CSNSW disputed both the private operation of the prison and its staffing levels as significant. In respect of the former, it asserted:

> It would be incorrect to say [the contraband problem] exists at Parklea simply because it is a privately operated prison. Indeed, the GEO Group has very successfully operated the only other privately run prison in NSW – Junee Correctional Centre – for 25 years. In addition, issues of contraband and other security breaches have also occurred in other, publicly run prisons.[138]

2.75 In respect of the adequacy of Parklea's staffing, CSNSW suggested that applying the same staff to inmate ratios across prisons with different infrastructure, roles and functions, security levels and inmate cohorts is unworkable. However, it reasoned that when Parklea's staff to inmate ratios are compared with public prisons with similar characteristics, they are similar, and concluded that, 'Therefore it is CSNSW's view that Parklea's staffing levels are adequate.'[139]

2.76 Finally, based on its investigations, CSNSW underscored to the committee that the factors at play were complex and multiple, but localised to Parklea and largely related to the culture that existed there:

134 Submission 37, Corrective Services NSW, p 23.

135 Evidence, Mr Severin, 18 May 2018, p 23.

136 Submission 37, Corrective Services NSW, pp 23-27.

137 Submission 37, Corrective Services NSW, p 6.

138 Submission 37, Corrective Services NSW, p 6.

139 Submission 37, Corrective Services NSW, p 6.

> CSNSW's reports into Parklea's operations have identified a complex mix of factors that may contribute to the contraband issue, and to other security failings. These include, but are not limited to, the inexperience of staff due to high staff turnover, poor staff perceptions about career advancement prospects, and a lack of leadership at the prison. These appear to be localised issues linked to the "culture" of the prison.[140]

Committee comment

2.77 The fact that the problems at Parklea Correctional Centre escalated to the point of crisis is extremely troubling to the committee. Parklea plays a critical role in the provision of custodial services in New South Wales, and especially in Sydney as one of two major reception and remand centres, close to the courts, with a large capacity for maximum security inmates. Soon it will be the largest prison in the state, and indeed Australia. At this point the committee cannot emphasise strongly enough how critical it is that this correctional centre operate effectively into the future.

2.78 CSNSW escalated its actions in respect of Parklea via the wellbeing review from March 2017 and then took the very significant step of its intervention from July, in which it effectively seized joint control of the prison and mounted a wholesale review of its operations. Next it executed an action plan comprised of numerous remedies. These actions were most welcome and resulted in significant change, but it is concerning to the committee that in the face of escalating problems, evident across multiple indicators, CSNSW seems to have intervened later than it might have. Soon afterwards key staff departed and GEO was excluded from the tender for the new contract under which a different company will commence operating the centre in April 2019.

2.79 In addition, within the evidence before the committee, there is perhaps a disjuncture between CSNSW's concerns prior to early 2017 and its actions from that point, culminating in the intervention. While Corrective Services has been very careful to defend its oversight of Parklea's contract, and cautious in what it has stated on the public record about GEO's management of the centre, a careful reading of the evidence indicates that at the point of the intervention, CSNSW's concerns were very strong indeed and were thoroughly substantiated by the findings, recommendations and actions that flowed from it.

2.80 It is clear to the committee, based on the evidence before us, that there have been longstanding cultural and operational problems at Parklea, and that these escalated as the demands upon the prison increased from around 2014, before erupting in 2017, just as the significant increase in the state's prisoner population was peaking. The problems exhibited before, during and after the crisis were very serious, involving issues with contraband, breaches of and lapses in security, corruption on the part of corrections officers, and allegations of cover up, intimidation and violence on the part of managers.

2.81 The data we have been able to obtain from both GEO and CSNSW makes it clear that there were readily identifiable and escalating problems with contraband, excessive use of force and assaults at least from 2016. If it was true that during this time CSNSW had strict oversight of the operations at Parklea, then it is difficult to understand why more immediate interventions were not made then. This is especially so given what appears to be the widespread

[140] Submission 37, Corrective Services NSW, p 6.

acknowledgement that the overall culture at Parklea was creating a damaging environment for staff and prisoners. These kinds of cultural problems do not happen overnight, and any proactive regulator or monitor would have had to be aware of them well before the crisis struck in 2017.

2.82 Alongside the crisis played out in the media was a raft of other problems, less sensational but nevertheless very concerning, reported to us by inquiry participants. Further evidence was starkly reflected in the tables of figures included in this chapter that capture incidents in respect of contraband, excessive use of force, inmate assault, and staff investigations and terminations.

2.83 Both the scope and findings of CSNSW's wellbeing review, as well as the terms of reference and actions arising from its intervention, further attest to the extent of the systemic and serious failings at Parklea. Particularly concerning were the many issues identified by CSNSW in respect of staffing, including ongoing vacancies, low retention, high numbers of less experienced staff with inadequate supervision, and the movement of staff resources away from key security posts. Likewise, the concerns about poor standards of security were very troubling to the committee. No doubt all of these issues contributed to Parklea's significant problems with contraband, as well as other problems.

2.84 The committee appreciates the numerous challenges for the GEO Group arising from changes to Parklea's operating environment, including the growing complexity and sheer volume of its inmate population, as well as changes in its functions as a centre. But it is clear from the evidence before us that the reasons why Parklea reached crisis point were not simply about its ability to respond to change. Rather, they were very much about the culture and management of the prison.

2.85 CSNSW has acknowledged this fact, telling the committee that while the factors contributing to Parklea's problems were complex and multiple, they were about more than just resources and staffing levels (as important as these are) they were significantly about a lack of leadership and all linked to the culture of the prison.

2.86 These issues of culture are apparent at numerous points in the evidence gathered during our inquiry: in the wellbeing review's findings, which convey a lax approach to security; in the PSA/CPSU's evidence of management practices of short cuts and making do; in the multiple issues in respect of staffing, including ongoing difficulties recruiting and especially retaining staff; in the poor decisions about staff deployment to high risk posts; and in Commissioner Severin's evidence about the tighter security regime brought in after CSNSW's intervention, along with the stronger focus on middle management taking a much more active role in day to day operations. Further pointers to culture and management were present in stakeholders' evidence about Parklea staff's poor responsiveness to inmates' health needs as well as impediments to inmates' legal communications, along with the case study that so vividly depicted life in the minimum security area of Parklea. That all these cultural and management problems existed in the high risk prison environment – where the potential for violence and unrest as well as for mistreatment of inmates are all significant – is extremely troubling to the committee.

2.87 Given that many if not all correctional centres in New South Wales also faced the challenges that Parklea encountered, the extent to which Parklea's status as a private prison had a bearing on the cultural and other problems that occurred there emerged as a significant area of discussion in this inquiry. During this committee's numerous public hearings and multiple visits

to prisons it is difficult not to notice the systemic differences between the morale, professionalism and competence of the CSNSW public servants who staff our public prisons, and the responses of GEO regarding Parklea. In particular much of the critical material regarding Parklea had to be drawn from the private operator and staff who, even during this inquiry, failed to face up to the serious and systemic failings in that company's operation of the prison.

2.88 It is clear to the committee that while there are substantial risks for the effective operation of any prison, there are additional risks that accompany private prisons, and we saw those risks erupt into crisis at Parklea Correctional Centre in 2017.

2.89 The committee acknowledges the view expressed by several stakeholders that private prisons operate from a fundamentally different model to that of public prisons, in that they are not just accountable to government but also to their shareholders. While we do not take a position in respect of the privatisation of prisons, we do consider that a particular risk accompanying the private sector model is that standards of safety and quality may erode because of the inherent tension between minimising costs and ensuring quality, holistic service provision. Another factor in this risk is that private prisons are one step removed from government and thus less exposed to the values and ethos of public corrections, and arguably less answerable for them.

2.90 These observations lead the committee to a number of explicit findings with respect to the crisis that occurred at Parklea and CSNSW's responses to it.

2.91 First, the committee finds that the problems of security and contraband that erupted into crisis at the Parklea Correctional Centre in 2017 were symptomatic of more longstanding fundamental failures of leadership and culture in the private prison. Inevitably, without effective steps on the part of GEO and CSNSW to address the failures, it was only a matter of time before the ticking time bomb of the prison's toxic culture went off, and it did so in mid 2017.

Finding 1

That the problems of security and contraband that erupted into crisis at the Parklea Correctional Centre in 2017 were symptomatic of more longstanding fundamental failures of leadership and culture in the private prison.

2.92 Clearly, much of the fault for this failure lies at the feet of the GEO Group. The committee finds that GEO failed to meet its obligations in respect of the operation of Parklea Correctional Centre, failed to manage the prison effectively, and failed to recognise and address the significant and systemic problems that occurred there in a timely way.

Finding 2

That the GEO Group Australia failed to meet its obligations in respect of the operation of Parklea Correctional Centre, failed to manage the prison effectively, and failed to recognise and address the significant and systemic problems that occurred there in a timely way.

2.93 In the committee's view fault also lies with CSNSW, on whose watch the crisis occurred. Apart from the evidence the committee received about inadequacies in the contract with GEO (explored in the next chapter), and our own questions about the effectiveness of onsite monitoring and CSNSW's actions in response to it (explored in chapter 6), the committee does not know why CSNSW failed in this task. We do know that when Corrective Services did start to respond via the gently named 'wellbeing review' it was not enough, and faced with the media storm that erupted in July 2017 about the YouTube video, the Commissioner immediately ordered 'an intervention' which quickly revealed highly significant deficiencies in various aspects of Parklea's operations.

2.94 It is with great concern that we note our observation of a pattern in CSNSW's evidence to us, in which Corrective Services has downplayed the significance of the problems at Parklea and has been unwilling to take responsibility for its part in them. This is despite the mechanics of corporate governance arrangements for private prisons, as well as the principle that CSNSW is ultimately responsible for each private prison. This fundamental responsibility is discussed further in the following chapter.

2.95 As a key example of this pattern of recalcitrance, the committee is very concerned that in all the evidence that CSNSW furnished to the committee, its acknowledgement of problems of culture and leadership formed only two small lines, and even then, Corrective Services downplayed their significance with its observation that the problems at Parklea 'appear to be localised issues linked to the "culture" of the prison' (see the quote under paragraph 2.76). This seems extraordinary to the committee. Despite the fact that this must surely be among the most significant information shared with us during the inquiry, this is the only reference to the problematic culture of Parklea in CSNSW's 170 page submission. The committee did not see any further preparedness on the part of Corrective Services NSW to explore this highly significant issue with us, nor to take any responsibility for it.

2.96 The committee thus finds Corrective Services NSW did not exercise sufficient diligence in its governance over Parklea Correctional Centre and its operator, the GEO Group Australia, allowing the problems at Parklea to escalate to the point of crisis before intervening with sufficient strength to address them. Further, the committee considers that Corrective Services NSW has not taken sufficient responsibility for its part in the crisis that occurred at Parklea.

Finding 3

That Corrective Services NSW:

- did not exercise sufficient diligence in its governance over Parklea Correctional Centre and its operator, the GEO Group Australia, allowing the problems at Parklea to escalate to the point of crisis before intervening with sufficient strength to address them
- has not taken sufficient responsibility for its part in the crisis that occurred at the prison.

2.97 Our last finding is that the current independent oversight mechanism for prisons, the Inspector of Custodial Services, was inadequate to identify the significant and systemic problems that occurred at Parklea.

Finding 4

That the current independent oversight mechanism for the New South Wales corrections system was inadequate to identify the significant and systemic problems of leadership and culture that occurred at Parklea Correctional Centre.

2.98 We note that there are currently two, and soon will be three private prisons operating in New South Wales. Given this reality we believe it is essential to reform the way they are managed and oversighted. Together, these findings highlight that adequate systems of accountability and oversight must be built into the private prison system, to ensure that erosion of quality and standards does not occur.

2.99 Specifically, the committee considers that to manage the risks associated with private prisons, and ensure service quality and compliance with standards, several interlocking mechanisms are required, all of them functioning optimally. The first is a contract that provides better leverage and accountability in respect of the operator. The second is a system of performance measurement to operationalise that accountability. The third is qualitative oversight via onsite monitors and an independent inspectorate.

2.100 Based on the evidence before us, it is clear to the committee that one significant driver in respect of the problematic culture at Parklea was particular senior staff, now departed. It is also clear that inadequacies in the contract with GEO hindered the ability of CSNSW to maintain governance and accountability in respect of Parklea. The improved contractual arrangements for the new operator are explored in the next chapter, which focuses on Parklea Correctional Centre moving forward.

2.101 In chapter 4 the committee explores the mechanism of performance measurement as a means of ensuring accountability, both for private prisons and for public ones. Then in chapter 6 we examine the critical need for effective oversight of private prisons via the mechanisms of contract monitors and an Inspector of Custodial Services with enhanced powers and resources.

2.102 In the committee's strong view, each of these essential and complementary mechanisms must be functioning optimally in order to ensure that the cultural and management problems that occurred at Parklea do not recur, and indeed do not occur in other private prisons.

Chapter 3 The future of Parklea Correctional Centre

In the previous chapter the committee explored the problems that erupted into crisis at Parklea Correctional Centre in mid 2017, concluding that cultural and management issues lay at the heart of many of the private prison's problems. We drew a link between these cultural issues and Parklea's status as a private prison and underscored the critical need for optimal systems for both accountability and qualitative oversight. We also concluded that inadequacies in the contract with the GEO Group Australia (hereafter the GEO Group or GEO) hindered the ability of Corrective Services NSW (CSNSW) to maintain governance and accountability in respect of Parklea. Thus we identified that a contract providing better leverage and accountability in respect of the prison operator is one of several interlocking mechanisms that are essential to better manage the risks associated with private prisons in New South Wales and to ensure service quality and compliance with standards.

This second of two chapters focusing on Parklea Correctional Centre explores the steps that the government is taking to safeguard the prison's future, with a focus on enhanced governance via better contract arrangements for the private prison.

The new tender process

3.1 As noted in chapter 1, the new operator of Parklea entered into a contract with CSNSW in November 2018 and will commence management of the correctional centre from 1 April 2019. The tender process commenced in March 2018 and was determined in September 2018, with the announcement of MTC/Broadspectrum as the future operator.[141]

3.2 The GEO Group representatives told the committee that while GEO had submitted an expression of interest to continue to operate Parklea, it was not selected as one of the three entities who proceeded to tender. Mr Pieter Bezuidenhout, GEO's Managing Director, told the committee that, 'We were fairly disappointed and surprised when we were not even considered to go to the next stage of the tender process.'[142]

3.3 Asked for the basis on which it selected MTC/Broadspectrum, CSNSW advised that, 'The process for selecting the preferred tenderer was in strict compliance with NSW Government procurement procedures for contracting public services … The three shortlisted companies were evaluated based on their ability to deliver quality outcomes for community safety and MTC/Broadspectrum provided the strongest option.'[143]

3.4 CSNSW Commissioner Peter Severin insisted that the decision not to include the GEO Group beyond the first round of the tender was 'not because of any performance related issues. They simply did not provide an expression of interest that was as strong as their competitors.'[144]

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141 Media release, Hon David Elliott MP, Minister for Corrections, 'New operator for Parklea prison', 20 September 2018.

142 Evidence, Mr Pieter Bezuidenhout, Managing Director, The GEO Group Australia, 18 May 2018, p 14.

143 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, p 2; see also media release, Hon David Elliott MP, Minister for Corrections, 'New operator for Parklea prison', 20 September 2018.

144 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 18 May 2018, p 24.

Elsewhere, CSNSW advised, 'Due to the strength of responses from other bidders, the GEO Group was not shortlisted. The bid evaluation was based on responses by the bidders to the EOI criteria and not based on the operations of Parklea Correctional Centre under the GEO Group.'[145]

3.5 Mr Troy Wright, Assistant General Secretary, Public Service Association of NSW and Branch Assistant Secretary, Community and Public Sector Union NSW (hereafter PSA/CPSU), suggested that neither the union nor the public were advised that the tender for Parklea was limited to private operators, calling this a 'bloody disgrace'.[146] He pointed to a double standard in that the public sector was invited to participate in another recent tender process, and indeed was the successful bidder, but was not able to tender for Parklea:

> You may be aware that last year the John Morony Correctional Centre was put out to tender and bids were invited both from the public sector and the private sector, including the providers who have tendered for Parklea. The public sector won that bid on its merits. It beat the private sector on all terms of reference for the contractual process. However, the public sector was not invited to bid for the tender of Parklea. We have asked both the Minister and the Commissioner why that is the case. Both have considered it and said that they believe in a mixed market that it was not appropriate. They also cited that they would not have the workforce to cover Parklea Correctional Centre.[147]

3.6 Asked why CSNSW itself did not submit an expression of interest, the Commissioner responded that had the government wished the prison to be public, it would have been more efficient to have no tender and simply return it to public hands; however, the decision was made a long time ago that Parklea would be managed by a private operator:

> [I]t was very clearly decided that this [would be] a privately managed prison … in 2008. This is not one where Corrective Services had any ability to tender in a meaningful way because it was clearly decided that as part of the mixed market environment you wanted to have two facilities, soon to be three with Grafton, to be managed by the private sector. The exercise of having a competitive process for a privately managed centre would be—I would not go as far as saying a waste of money—but the Government would be far smarter to simply take the contract back and say, "Public sector: You run it."[148]

3.7 CSNSW subsequently emphasised that the decision to exclude CSNSW from the recent tender was a decision of the government of the day, just as the 2008 decision to privatise Parklea had been:

> This decision was made by the NSW Government. When Parklea Correctional Centre was privatised by a previous Labor Government, Corrective Services NSW was also not given an opportunity to bid for the contract.[149]

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145 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, p 3.

146 Evidence, Mr Troy Wright, Assistant General Secretary, Public Service Association of NSW and Branch Assistant Secretary, Community and Public Sector Union NSW, 2 August 2018, p 7.

147 Evidence, Mr Wright, 2 August 2018, p 7; see also Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 32.

148 Evidence, Commissioner Severin, 18 May 2018, p 29.

149 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, pp 3-4.

3.8 Mr Wright of the PSA/CPSU also challenged CSNSW's evidence that the decision to exclude the GEO Group from stage 2 of the tender was simply on the basis of GEO's submission, suggesting, 'That Corrective Services assessed the merits of who was going to run a correctional centre on behalf of the State for the next five years purely on a written submission defies belief. We do not know exactly why GEO was struck out.'[150] He went on to suggest that in this circumstance it is 'untenable' that GEO is considered suitable to run the centre until March 2019 and 'ridiculous' that the company has a contract to run Junee on an ongoing basis.[151]

3.9 Further, Mr Wright called into question the suitability of any of the three private providers of correctional services internationally, on the basis of each provider's poor track record:

> There are only really three providers of private correctional centres across the world. They are: Serco, G4S and GEO. Each of them equally have been subject to numerous investigations and scandals, both in Australia and across the world. If that was the performance criteria, I believe any government would struggle to pick any tenderer.[152]

Improving the contract for Parklea Correctional Centre

3.10 In chapter 1 (see paragraphs 1.26 to 1.34) the committee explained CSNSW's corporate governance regime in respect of Parklea and Junee Correctional Centres. During the inquiry CSNSW emphasised to the committee that it has a 'comprehensive, robust governance structure to ensure compliance of the GEO Group with both its contracts' via Corrective Services' Governance and Continuous Improvement Division.[153] In addition, while CSNSW did not explicitly indicate that the current contract for Parklea was overly problematic, it did emphasise to the committee the many improvements being built into the forthcoming one.

3.11 This section documents the information that CSNSW has provided about the enhanced provisions contained in the new contract, then explores inquiry participants' calls for greater transparency with respect to the contract.

The new contract

3.12 Mr Severin acknowledged before the committee the critical importance of effective corporate governance arrangements in private corrections, observing that, 'It comes down to accountabilities and how well the State monitors the performance of the private sector, because ultimately you can contract the operation of a centre out but you cannot contract out the ultimate responsibility of a centre to a private sector operator – that will always remain with the Crown.'[154] Appearing before the committee in May 2018, he foreshadowed that the new contract will embody a greater focus on the operator's performance and enable CSNSW to monitor that performance 'in an even more meaningful way.'[155] The CSNSW submission provided further details of the improved contract:

150 Evidence, Mr Wright, 2 August 2018, p 3.

151 Evidence, Mr Wright, 2 August 2018, p 3.

152 Evidence, Mr Wright, 2 August 2018, pp 3-4.

153 Submission 37, Corrective Services NSW, p 29.

154 Evidence, Mr Severin, 18 May 2018, p 24.

155 Evidence, Mr Severin, 18 May 2018, p 24.

> CSNSW is greatly strengthening its contract model for private operators of NSW prisons. This is to ensure more stringent performance measures and penalties for non-compliance. It is also to focus strongly on the delivery of security, safety and inmate rehabilitation outcomes rather than on the execution of process, which typified the contract model when Parklea's operations were originally outsourced in 2009.
>
> These enhancements encourage international best practice and innovation and align with current NSW Government policies and procedures around contracting of public services.
>
> The new contract model is intended to provide greater comparability between publicly and privately managed prisons and a more transparent picture of performance across the prison system in order to ensure community safety and reduce the rate of reoffending.
>
> This new contract model is in place for the new Clarence Correctional Centre (a public-private partnership prison that is under construction and will begin operating in 2020), and John Morony (which is now operated by CSNSW under a Management Agreement following market testing of the prison).
>
> The model will also apply to the future operations of Parklea after the existing contract expires on 1 April 2019.

3.13 The media release announcing Parklea's new operator in September 2018 stated that lessons learned under the current contract have informed the new agreement with MTC/ Broadspectrum:

> [The contract] will hold the new operator much more accountable for achieving best practice outcomes, including security, inmate safety and rehabilitation … Corrective Services NSW has developed a new contract that will improve the state's ability to hold the operator accountable for achieving outcomes. This approach will ensure positive impacts for the community by improving accountability across key performance areas including, safety, security, rehabilitation and reintegration.[156]

3.14 As to the specifics of how accountability for outcomes will be enhanced, CSNSW informed the committee of how the new contract arrangements will feed directly into the performance framework that will operate across private and public prisons (as examined in detail in chapter 4 concerning performance measurement via benchmarking), which will in turn enable the production and publication of a prison performance league table that compares the performance of all New South Wales prisons each year.[157]

3.15 Mr James Koulouris, then Assistant Commissioner, Governance and Continuous Improvement, CSNSW, told the committee that while the current Parklea contract 'is very much focused on outputs, there is no real focus on the quality of outcomes. We wanted to shift that to have it as an outcome based model.'[158] CSNSW advised that the new focus on outcomes will hold providers more accountable for the impact of their services rather than outputs, processes

156 Media release, Hon David Elliott MP, Minister for Corrections, 'New operator for Parklea prison', 20 September 2018; see also Submission 37, Corrective Services NSW, p 7.

157 Answers to questions on notice, Corrective Services NSW, p 52.

158 Evidence, Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 18 May 2018, p 30.

or activities, and allow service providers to be flexible in their use of resources and approach to service delivery.[159]

3.16 Other insights into the enhanced contractual arrangements emerged in response to a question from the committee as to the steps that CSNSW is taking to ensure that the problems at Parklea do not continue under the new operator. CSNSW advised that the contract provides for a new performance management regime that is aligned to a payment framework:

> The new operator of Parklea will manage the centre under new contractual arrangements including a new performance regime. The performance regime is aligned to a payment framework which includes charge events and financial abatements if the operator has incidents such as escapes from custody, unnatural deaths, erroneous detention or releases or major disruptions to correctional operations. Both charge events and abatements can be substantial and are powerful incentives to deliver quality services.[160]

3.17 Next, it referred to 'enhanced governance structures' via the contract to enable CSNSW to be fully aware of all aspects of private prisons' operations, with a focus on outcomes that enables providers to deploy resources flexibly:

> The new contract model also reinforces enhanced governance structures to ensure that Corrective Services remains aware of all aspects of operations at privately managed correctional centres. Mandated reporting requirements are embedded in contracts between Corrective Services and service providers, supporting the system of financial incentives. The approach is integrated and outcomes focused, with Corrective Services considering the impact of service delivery rather than the processes involved in service delivery. This allows service providers to deploy resources appropriately and remain agile and responsive to change.[161]

3.18 CSNSW's response also explained how key performance indicators will link to financial abatements, so as to provide incentives to meet targets:

> Under the new performance regime, service providers are assessed against quantitative Key Performance Indicators (KPIs) and Performance Indicators (PIs) as well as qualitative Outcome Specifications. KPIs are linked to financial abatements and if a service provider does not meet KPI targets, they do not receive full payment.[162]

Calls for greater transparency

3.19 Numerous inquiry stakeholders expressed significant concern to the committee that there was insufficient accountability to the public in respect of the GEO Group's current contract for Parklea. A particular issue is that the contract has never been published in full.

3.20 In the context of a broad call for greater accountability in respect of private prisons, Associate Professor Jane Andrew and Dr Max Baker of the University of Sydney Business School highlighted the Parklea contract's barriers to public accountability:

159 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 53.

160 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, pp 2-3.

161 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, pp 2-3.

162 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, pp 2-3.

> At the time of writing, the contracts for Junee and Parklea prisons are publicly available, but they remain heavily redacted. Critical information related to performance linked fees, KPIs and other measures used to establish good standards of service provision have been removed from the contract. This makes it impossible to assess the criteria used to measure the performance of these prisons.
>
> The use of commercial-in-confidence legislation continues to present a significant barrier to public accountability.[163]

3.21 Associate Professor Andrew and Dr Baker noted that other jurisdictions such as Western Australia do not afford private operators commercial-in-confidence protections. There, information in the contract regarding operating fees, performance linked fees and abatements are all published.[164] Accordingly, they recommended that 'contracts between private prison operators and the state should be publicly available in their entirety'.[165]

3.22 Asked what specifically has been suppressed in the present contract for Parklea that would enable proper comparison of the performance of private versus public prisons, Associate Professor Andrew advised that in addition to the redacted information, evidence as to what what the private operator actually does in terms of performance outcomes and KPIs is also critical to enabling an assessment of private prisons.[166] Associate Professor Andrew and Dr Baker further recommended greater transparency in relation to contract monitoring arrangements for private prisons,[167] as discussed in chapter 6 concerning onsite monitoring and independent oversight.

3.23 Professor Gary Sturgess, Professor of Public Service Delivery, Australia and New Zealand School of Government at the University of New South Wales, also called for greater transparency in respect of contracts for private prisons:

> I agree that there is far too little information in the public domain about prison contracting … There are very few details about the contracting process which are truly 'commercial-in-confidence', and in my view, almost all details of the contracts could be released after a short period of time. Profit margins are sometimes regarded as the most commercial information, but these can be estimated with reasonable accuracy by competitors, and thus a great deal of the financial information in the contract could also be released.[168]

3.24 Mr Wright of the PSA/CPSU went so far as to suggest that the contract for Parklea has been 'clouded in secrecy'.[169] As noted in the previous chapter, he also questioned CSNSW's position that they have carefully policed GEO's contract for Parklea, and further argued that without

163 Submission 11, Associate Professor Jane Andrews and Dr Max Baker, p 5.

164 Answers to questions on notice, Associate Professor Jane Andrew and Dr Max Baker, University of Sydney Business School, received 25 October 2018, p 1.

165 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

166 Evidence, Associate Professor Jane Andrew, University of Sydney Business School, 28 September 2018, p 37.

167 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

168 Answers to questions on notice, Professor Gary Sturgess, p 1.

169 Evidence, Mr Wright, 2 August 2018, p 2.

having published the contract in full, CSNSW is not able to demonstrate its claim to have rigorously supervised it.[170]

3.25 Justice Action also highlighted the lack of transparency with respect to the Parklea contract, with Mr James Hall, Assistant Coordinator, pointing out that, 'Despite this lack of publicly available evidence, continually we have heard justification for privatised prisons on the basis that they are more effective.'[171]

3.26 The committee pursued participants' calls for greater transparency with CSNSW representatives. Commissioner Severin assured the committee that the current contract with the GEO Group is publicly available on the government website, except for some redacted parts that relate to commercial-in-confidence arrangements, as with the contracts for Junee and Grafton.[172] Mr Carlo Scassera, Acting Assistant Commissioner, Governance and Continuous Improvement, CSNSW, further assured us that once signed, the new operator's contract will be published too, 'with the exception of minor commercial-in-confidence components.'[173]

3.27 As to exactly what is suppressed, Mr Scassera explained, 'These are internal workings. They are the formula of how you work out the inner workings of some of the KPIs. But the KPI is still listed and so are the outcomes. The achievement and the non achievement of the KPIs listed are formula only. They do not get listed.'[174]

3.28 With regards to the rationale for the suppression of these components, Mr Severin explained:

> It is not to withhold information from the public. They are the formula [for the KPIs], and if we go back and tender for another facility again, that would give bidders the ability to very clearly manipulate the desired outcome. This is done for entirely commercial reasons. It has nothing to do with the operator or the operation of the centre. We are talking about formulas for KPIs. We will publish … the KPIs and the abatement regimes.[175]

3.29 The committee challenged Mr Severin regarding the rationale of preventing future tenderers from manipulating the desired outcome, suggesting that when a subsequent tender does occur, the confidential information would be provided to all participants so that the current operator does not have an unfair advantage. Mr Severin concurred, and Mr Scassera advised that the procurement process would bind the tenderers to confidentiality, as occurs with all NSW Government tenders.[176]

3.30 The committee further challenged the rationale here, proposing that if all the key players who participated in the present tender already have the sensitive information, what possible damage could be done by releasing it to the public. Mr Scassera noted that new tenderers may emerge in the future and further stated:

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170 Evidence, Mr Wright, 2 August 2018, p 2.

171 Evidence, Mr James Hall, Assistant Coordinator, Justice Action, 2 August 2018, p 16.

172 Evidence, Mr Severin, 28 September 2018, p 31.

173 Evidence, Mr Carlo Scasserra, Acting Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 28 September 2018, p 48.

174 Evidence, Mr Scasserra, 28 September 2018, p 48.

175 Evidence, Mr Peter Severin, 28 September 2018, p 48.

176 Evidence, Mr Severin and Mr Scasserra, 28 September 2018, p 48.

> [The small components that are commercial-in-confidence] are the commercial components that make this contract particular to the tender we agree to. They are negotiated; we have not completed the tender yet. Again, if they were kept in the standard format, we would look at releasing as much as we possibly can. There are components that remain commercial-in-confidence, which gives the State its ability to leverage in terms of the outcomes we are achieving.[177]

3.31 CSNSW subsequently advised that the redactions in the published contracts for Parklea and Junee fall into three categories, and restated its position that these should remain confidential:

> The documents contain redactions to protect:
> - Information of commercial value;
> - Information for which the intellectual property belongs to the operator; and
> - Information which would compromise the safety and security of the correctional centre and the general public.
>
> Following further advice, CSNSW considers the redactions should remain on any of this material provided in the public domain.[178]

Transition to the new operator

3.32 The committee heard that there will be a five month transition period in the transfer to the new operator of Parklea Correctional Centre from 1 April 2019.[179] The Minister's media release emphasised that 'it is critical there is as little interruption as possible to Parklea operations during this period of change. Corrective Services will work closely with the GEO Group to ensure a smooth transition to the new operator.'[180]

3.33 Appearing before the committee in May 2018, Commissioner Severin acknowledged that the transition process is a demanding one, assuring the committee that he was playing a leading role in it, and that the GEO Group was responding appropriately:

> The transition of the current to a new operator is very complex. It is not something that you would like as a commissioner to do every day. I am confident we will manage that as well as we can. I am personally involved in that process at the more senior executive level. The GEO Group at this point in time has been very reliably responding to the requirements for transitioning out of the current contract.[181]

3.34 The Commissioner emphasised that from his perspective, continuity of staffing, with as many staff retained as possible, will be very important to a smooth transition.[182] Ms Gayle Robson, the Commissioner's Chief of Staff, advised that the enterprise bargain currently in place between

177 Evidence, Mr Severin and Mr Scasserra, 28 September 2018, p 48.

178 Answers to questions on notice, Corrective Services NSW, received 13 June 2018, p 11.

179 Evidence, Ms Gayle Robson, Commissioner's Chief of Staff, Corrective Services NSW, 18 May 2018, p 27.

180 Media release, Hon David Elliott MP, Minister for Corrections, 'New operator for Parklea prison', 20 September 2018.

181 Evidence, Mr Severin, 18 May 2018, p 24.

182 Evidence, Mr Severin, 18 May 2018, p 24.

Parklea and its staff expires late 2018.[183] In respect of the new provider, there is no requirement for continuity of employment, although the tender does require the new operator to give preference to existing staff, all other things being equal.[184]

3.35 Challenged as to why retention of staff should not be a requirement of the contract with the new provider, Mr Severin responded that fundamentally, it is the new operator's decision who they want to work for them, and they require flexibility to organise staff in the way they see fit.[185] Nevertheless he again acknowledged the imperative for continuity of staff at Parklea, within the broader context of a rapidly expanding prison system in which 1200 additional correctional staff will need to be employed in the near future, and assured the committee that he was actively managing this issue.[186]

3.36 The Commissioner also assured the committee that he is confident that there will be no erosion of staff entitlements or conditions, and emphasised the cautious transition process in place, which will be concluded well before the new facilities at Parklea are commissioned:

> My primary interest is to maintain the safe and secure operation of Parklea going forward and transition to the new operator. It is a very long transition period, longer than you would normally have. That is very much related to the fact that … GEO was not invited to tender. Otherwise the transition would be far shorter. The way that the contract is staggered is that we do not get too close to the commissioning of the new facility. We want a new operator well and truly established in the facility before we commission the additional infrastructure.[187]

3.37 Elsewhere CSNSW advised that as part of the transition process, it will review the approach proposed by the new operator, including its staff deployment plan, safety and security plan, emergency management plan, business continuity plan, quality assurance plan and operating manuals.[188]

3.38 For its part, the GEO Group told the committee of the steps it was taking to ensure a smooth transition for staff to the new operator for Parklea. It acknowledged that its employees were understandably concerned about their futures, and observed that settling them into positions will be the critical first step in keeping the facility safe and secure.[189]

Other issues

3.39 The committee pursued with CSNSW two further issues raised by inquiry participants and documented in the previous chapter: steps being taken to address the problems in Parklea's physical layout, and those it is taking to ensure that Junee Correctional Centre does not experience the problems at Parklea.

183 Evidence, Ms Robson, 18 May 2018, p 26.

184 Evidence, Mr Severin, 18 May 2018, p 26; Ms Robson, 18 May 2018, p 27.

185 Evidence, Mr Severin, 18 May 2018, p 26.

186 Evidence, Mr Severin, 18 May 2018, p 27.

187 Evidence, Mr Severin, 18 May 2018, p 28.

188 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, pp 2-3.

189 Evidence, Mr Bezuidenhout, 18 May 2018, p 12.

Parklea's physical layout

3.40 On the basis that during our visit to Parklea in May 2018 it was very apparent to the committee that the prison's physical layout was problematic, the committee sought information on what thought is being given to addressing the problems of the built environment there, especially the gatehouse and reception area. CSNSW advised that as 'part of the maximum security expansion at Parklea, extra holding cells were added to the reception area. Changes are also being made to the gatehouse, which is being redesigned and expanded to support the safe and secure entry and egress of an increased number of staff and visitors.'[190] Unfortunately the response did not address the five ways junction noted in the previous chapter as problematic.

Junee Correctional Centre

3.41 The committee also asked CSNSW what measures it has put in place to ensure that the problems at Parklea are not also problems for Junee Correctional Centre, given that that centre is also operated by GEO Group. CSNSW responded that it does this via the various governance mechanisms documented in chapter 1, and other means:

> Corrective Services continues to contract manage, monitor and report on operations at both Parklea Correctional Centre and Junee Correctional Centre. These activities include regular meetings with GEO Group. They also include the establishment of governance and project management frameworks related to construction and expansion works and changes in contractual arrangements.[191]

Committee comment

3.42 As we stated at the conclusion of the previous chapter, it is clear to the committee that deficiencies in the contract between GEO and CSNSW entered into in 2009 by or under the authority of the former Minister John Robertson significantly contributed to the problems at Parklea, and ultimately the crisis there, because they hindered the ability of CSNSW to maintain governance and accountability in respect of the prison.

Finding 5

That the deficiencies in the contract between the GEO Group Australia and Corrective Services NSW entered into in 2009 by or under the authority of the former Minister John Robertson significantly contributed to the problems at Parklea Correctional Centre.

3.43 While CSNSW has not explicitly acknowledged that this is the case, the fact that the Minister and Corrective Services have highlighted that the new contract, with its vast improvements, will hold the new operator much more accountable for achieving best practice outcomes, makes it clear that the levers available to government under the previous contracts were indeed deficient. One specific example drawn from the evidence presented in the previous chapter is that

190 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, p 3.

191 Answers to supplementary questions, Corrective Services NSW, received 16 October 2018, p 3.

apparently the GEO Group was only required to report to CSNSW serious staff misconduct that could result in termination or the withdrawal of authorisation – a very high threshold to be met before notification occurred, and which surely allowed the operator significant ability to keep Parklea's problems under the radar.

3.44 We are not persuaded by the reasons given by the government to exclude CSNSW from bidding for the tender of Parklea. In our multiple inspection of prisons in New South Wales, and from the evidence given in this inquiry, it is clear that the most professional and capable providers of corrective services in New South Wales is CSNSW. Especially when we consider the multiple failures of the existing private operator of Parklea we believe it was a very poor decision, driven by ideology and not good sense, to exclude CSNSW from the tender for the prison. Excluding CSNSW can only have produced a sub-par tender process that will have ongoing impacts on the New South Wales prison system when the new private operator takes control of the facility.

3.45 The committee underscores that there is an onus on government to ensure effective governance of Parklea in order to prevent the problems of the past. As we stated at the end of the previous chapter, we cannot emphasise strongly enough how critical it is that Parklea Correctional Centre operate effectively in the future given its pivotal role in the state's correctional system and that it is soon to become the largest prison in the state and indeed Australia. Ultimately, as CSNSW has acknowledged, it is responsible for the successful operation of this and other private prisons. By extension, CSNSW is also responsible for ensuring that effective governance arrangements are in place.

3.46 Looking to the future, CSNSW has indicated that the new contract is significantly improved in several ways. First, it will provide the platform for a new performance regime aligned to a payment framework which includes potentially substantial charge events and financial abatements for serious incidents that will act as powerful incentives to deliver quality services. Second, the linking of abatements to KPIs will provide incentives to meet targets, in that if the operator does not meet their targets, they will not receive full payment. Third, enhanced governance structures under the contract will enable CSNSW to be fully aware of all aspects of the private prison's operations, with mandated reporting requirements. Fourth, the contract will embody a new focus on the outcomes of the prison is achieving. According to CSNSW, shifting the focus away from process and onto impact will enable Parklea's operators to respond flexibly to change.

3.47 The committee acknowledges the significance of these improvements to the contract and is most hopeful that they will augment CSNSW's governance over Parklea by making the operator much more accountable to CSNSW, thereby ensuring that the problems of the past do not re-emerge there. Given the significance of the new contract for both CSNSW's governance of Parklea as well as the accountability of the operator, in the next chapter the committee recommends that as part of a broader review of its performance measurement framework in 2021 and 2024, CSNSW should specifically report on the effectiveness of the new contract for Parklea Correctional Centre.

3.48 Now that the improved contractual arrangements are being established, it is the committee's strong view that truly effective oversight of Parklea and other private prisons will only be achieved through the significant enhancement of two further mechanisms: first, performance measurement as a means of ensuring the accountability of the operator to CSNSW; and second, qualitative oversight via onsite contract monitors and an independent inspectorate as a means of preventing the erosion of quality and standards.

3.49 In chapter 4, focusing on performance measurement and benchmarking, the committee examines the performance framework that CSNSW is implementing across both public and private prisons to enable greater accountability. In the case of private prisons, this framework will be operationalised via CSNSW's contracts with private operators.

3.50 In chapter 5, focusing on onsite monitors and independent oversight, we explore how these mechanisms must be improved, so that they actually do ensure quality of services and compliance with standards.

3.51 Questions have been raised during this inquiry about the track record of Parklea's new operator, MTC/Broadspectrum, in delivering quality correctional services overseas, and indeed its track record in Australian corrections is limited.

3.52 In addition, as noted in earlier chapters, there are significant challenges for whoever operates Parklea: the growing complexity and sheer volume if its inmates; the demands that accompany its large cohort of remand inmates; the deficiencies in its physical environment; the major expansion and operational changes that will occur when the new building program is complete. It appears that appropriate handover arrangements are in place, but we do of course note the substantial risks, and the imperative to ensure continuity of staffing – an essential requirement for the good order and proper functioning of the centre. Given all these challenges, effective governance and oversight will be more important than ever as the new operator takes over, settles in and establishes its own operational regime at Parklea.

3.53 The committee is also concerned to enhance another aspect of accountability: that of the private operator – and the government, which retains ultimate responsibility for all prisons – to the public. While we appreciate the importance of protecting the safety and security of the correctional centre and the general public, we note the concerns of numerous inquiry participants that transparency and public accountability have been undermined by the non-publication of certain parts of the Parklea contract. In addition, the committee is eager to improve transparency about the performance based pay elements of contracts, so that the public can be satisfied that private operators are justifying the substantial public funds being paid to them.

3.54 The committee acknowledges Commissioner Severin's concerns to protect commercial-in-confidence information and the arguments that he has made about the need to maintain confidentiality over minor components. However, we were not convinced by the rationale that certain information must be kept confidential to ensure the integrity of any future tender process. Indeed, we find this rationale nonsensical when CSNSW has acknowledged that the information will ultimately be provided in a future tender, to ensure no participant is disadvantaged. If this is the case, we simply cannot see how releasing the information now might cause some sort of commercial damage. Noting Professor Sturgess' comment that profit margins are sometimes regarded as the most commercial information, we wonder if this lies at the heart of the matter, albeit that CSNSW is following the NSW Government's standard approach to tenders. The fact that the committee cannot get to the bottom of this simply illustrates the point about the absence of transparency here, and indeed impedes our ability to perform proper scrutiny on behalf of the Parliament.

3.55 One area that received limited attention in this inquiry was the decision to privatise the health services in Parklea along with the new prison tender. The obvious risks in this, with a private operator controlling all aspects of an inmate's life, without any external health services being on

call is troubling. This is a matter that both CSNSW and the NSW Government more broadly will need to pay close attention to as the new contract rolls out.

3.56 In principle the committee shares stakeholders' concerns that confidentiality hinders the public's ability to assess the performance of private prison operators, as well as the effectiveness of CSNSW's governance. Even more fundamentally, it undermines the right of the public and the Parliament to know the decisions, workings and costs of government. We also note that other jurisdictions including Western Australia make no provisions for commercial-in-confidence redactions. For these reasons, we recommend that the new contract for Parklea Correctional Centre and other contracts for private prisons be published in their entirety, apart from those aspects which might compromise the safety and security of the correctional centre and the public.

Recommendation 1

That in the interests of transparency and accountability to the public, the NSW Government publish the contracts for all privately operated prisons in full, apart from those parts which may compromise the safety and security of the correctional centre and place the public at risk.

3.57 As to Junee Correctional Centre, the committee remains uneasy about the duality of Parklea's and Junee's performance under GEO, noting that the contract for Junee is being renewed for a further five years. We can only emphasise again the importance of enhanced governance, accountability and oversight mechanisms, all functioning optimally, as the means by which problems of culture will be prevented.

3.58 Finally, the committee was concerned that we do not have the detail of information to ascertain whether the problems of the built environment at Parklea will be adequately addressed. The changes to the reception area and gatehouse are welcome, but we are very concerned that the highly problematic five ways junction will remain a substantial impediment to movements around the facility. With the very significant increase in maximum security beds due for completion in November 2019, it is imperative that all problems of access and egress be addressed.

Chapter 4 Performance measurement via benchmarking

In previous chapters the committee concluded that inadequacies in the contract for Parklea Correctional Centre hindered the ability of Corrective Services NSW (hereafter CSNSW) to maintain governance and accountability in respect of the prison. In Chapter 3 we expressed our sincere hope that the improved contractual arrangements being put into place with the new operator from 2019 will augment CSNSW's governance over Parklea, making the operator much more accountable to CSNSW, and thereby ensuring that the problems of the past to not recur there. We also flagged our strong view that alongside these new contractual arrangements, truly effective oversight of Parklea and other private prisons will only be achieved through the significant enhancement of two further mechanisms which must function optimally: first, performance measurement as a means of ensuring the accountability of the operator to CSNSW and the public; and second, qualitative oversight via onsite monitors and an independent inspectorate.

In this chapter we examine the performance measurement system that CSNSW is building to enable better accountability in respect of not only Parklea, but all private and public prisons in New South Wales.

Calls for greater accountability

4.1 The need for robust accountability in respect of both private and public prisons' performance was recognised during the 2009 Upper House inquiry, in which General Purpose Standing Committee No. 3 recommended that CSNSW report the results of all New South Wales correctional centres against common key performance indicators in the department's annual report and on its website.[192] Almost ten years later, this recommendation is soon to be implemented.

4.2 In this section the committee documents inquiry participants' call for greater accountability of both private and public prisons in New South Wales. While there was a tendency among participants to focus on private correctional centres in this context, the principle could also be taken to apply to public prisons.

4.3 Associate Professor Jane Andrew and Dr Max Baker of the University of Sydney Business School explored the issue of the accountability of private prisons in detail, based on their 2016 analysis of prison privatisation across Australia.[193] As noted in the previous chapter, they called for private prison contracts to be published in full, and for greater transparency in respect of contract monitors, whom they argued should be located onsite.[194] Further, they highlighted the lack of performance related information on private prisons presently in the public domain – both in terms of outcomes and key performance indicators – noting that information is produced by the department but not published. Thus these authors called for both kinds of data

192 Legislative Council, General Purpose Standing Committee No. 3, *Privatisation of prisons and prison-related services* (2009), p 93.

193 Associate Professor Jane Andrew, Dr Max Baker and Dr Philip Roberts, *Prison Privatisation in Australia: The State of the Nation*, The University of Sydney Business School (2016).

194 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

to be published, to enable greater understanding of what prison operators actually do.[195] In respect of performance measures, Associate Professor Andrew and Dr Baker specifically recommended:

- minimum standards that are transparent and as far as possible uniform across the sector to enable comparison
- the development and regular review of appropriate key performance indicators (KPIs) for each prison, in consultation with stakeholders including prison staff
- annual publication of performance against KPIs
- inclusion of professional development for staff within KPIs.[196]

4.4 In respect of the latter point, Associate Professor Andrew explained that staff training programs, safety conditions and related issues are not generally considered in respect of performance, but are nevertheless critical to the functioning of a successful gaol. She argued that quantifying and valuing this aspect of prison performance, for example via a requirement that all staff have an annual performance review, will help to build very well trained and dedicated prison officers who will make the system work effectively.[197]

4.5 With respect to performance outcomes, Associate Professor Andrew and Dr Baker recommended that CSNSW:

- compile and publish a single annual report on the performance of private prisons
- report performance linked fee payments against actual performance.[198]

4.6 Professor Gary Sturgess, Professor of Public Service Delivery at the Australia and New Zealand School of Government, University of New South Wales, advised that he supports the publication of performance measures for both private and public operators of prisons:

> I am also of the view that the relative performance of providers against their contractual KPIs, and against the rest of the prison system, should be made available to the public in a timely way.
>
> Equally, I can think of no reason why performance standards should not be specified for publicly-managed prisons or why these results and the details of financial management should not be also made available to the public.[199]

4.7 Professor Sturgess explained how this information enables public accountability and system improvement, asserting, 'We have got to be able to benchmark performance. We have got to be

195 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 8; Evidence, Associate Professor Jane Andrew, University of Sydney Business School, 28 September 2018, pp 37 and 39.

196 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 8; Evidence, Associate Professor Andrew, 28 September 2018, p 39.

197 Evidence, Associate Professor Andrew, 28 September 2018, p 39.

198 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 8.

199 Answers to questions on notice, Professor Gary Sturgess, 24 September 2018, p 1.

able to challenge people to say "This prison is achieving 7.5 hours out of cell; you are not. Can we talk to you about why that is a problem?"'[200]

4.8 Professor Sturgess, who chairs a committee advising CSNSW on its work on performance measurement and related initiatives, advised that this work has already enabled greater transparency within CSNSW, which will further increase when the information is published:

> 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.[201]

4.9 Other stakeholders calling for greater accountability to be built into the prison system in New South Wales included Legal Aid NSW, who noted that in 2016 the Audit Office of NSW recommended that CSNSW provide greater detail on private correctional centre performance in annual reports.[202] Legal Aid noted that these annual reports would be tabled in Parliament, as occurs in Western Australia, and recommended:

> Performance requirements for private correctional centres should be the subject of public consultation and review.
>
> Corrective Services NSW should report annually and publicly on individual private correctional centres' performance.[203]

4.10 Significantly, the GEO Group Australia (hereafter the GEO Group or GEO) expressed strong support for the publication of performance measures across public and private prisons, noting that such regimes exist in Victoria and the United Kingdom, enabling operators to demonstrate their performance:

> Where prisons are required to publicly report their performance against consistent standards, and have the performance reports independently validated, governments can reliably assess whether prisons are managed securely and effectively, that value for money is received and the community is kept safe.
>
> Such requirements for assessing prison performance already exist, including in Victoria and parts of the UK. Under these performance governance arrangements, any prison (including those operated by GEO) has been able to reliably demonstrate how specifically it has delivered value-for-money and raised the standard of correctional practice such as time-out-of-cell, access to education, training and work, and promotion of the decency agenda.[204]

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200 Evidence, Professor Gary Sturgess, Professor of Public Service Delivery, Australia and New Zealand School of Government, University of New South Wales, 2 August 2018, p 42.

201 Submission 22, Professor Gary Sturgess, p 10.

202 Audit Office of NSW, *Performance frameworks in custodial centre operations* (2016), Recommendation 10, cited in Submission 36, Legal Aid NSW, p 11.

203 Submission 36, Legal Aid NSW, p 11.

204 Submission 29, GEO Group Australia Pry Ltd, p 5.

4.11 Mr Pieter Bezuidenhout, the GEO Group's Managing Director, emphasised to the committee only by introducing a truly comparable benchmarking system will CSNSW be able to assess which prisons are performing well.[205] The GEO Group pointed to a lack of fairness in that public prisons in New South Wales are not currently subject to the same accountability requirements as private prisons.[206] Correspondingly, it recommended that:

- all New South Wales prisons be subject to common performance measures
- these common performance measures be regularly reported to NSW Parliament on a prison by prison basis
- prison performance be validated by an independent authority
- the validated performance of all prisons be reported publicly in a league table.[207]

Corrective Services NSW performance framework

4.12 As noted in Chapter 3, Mr Peter Severin, Commissioner, Corrective Services NSW, acknowledged to the committee that the ability of the state to hold private operators accountable is fundamental, because the government retains ultimate responsibility for corrections. He told the committee that in his view the system enabling such accountability is robust, and is being further improved.[208]

4.13 Mr Severin explained that CSNSW's performance framework will operate across all prisons, enabling greater comparability between publicly and privately managed prisons and a more transparent picture of performance across the prison system. It is being implemented on the one hand via the contracts for the private prisons and on the other, via benchmarking in the public sector prisons.[209] The committee examined the enhanced contract arrangements in chapter 3.

4.14 Ultimately, CSNSW's performance framework will enable publication of individual prisons' performance against defined outcomes and permit comparison of individual public and private prisons on a quarterly basis:

> We will introduce a very new accountability framework. That will be the same for public and private sector prisons. It will have key performance indicators [KPIs] and targets that are based on the role and function of individual correctional centres that these centres have to meet.
>
> These accountability outcomes will be published, so there will be a quarterly publication that will compare the performance of all centres across New South Wales, obviously based on their role and function based on the cohort of prisoners they are

205 Evidence, Mr Pieter Bezuidenhout, Managing Director, the GEO Group Australia, 18 May 2018, p 2.

206 Submission 29, GEO Group Australia Pry Ltd, p 5.

207 Submission 29, GEO Group Australia Pry Ltd, p 7; Evidence, Mr Bezuidenhout, 18 May 2018, p 2.

208 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 18 May 2018, p 24. See paragraph 3.12.

209 Evidence, Mr Severin, 18 May 2018, p 30.

> accommodating. There will be different targets but nevertheless they would moderate it to a point where you can draw conclusions between public and private.[210]

4.15 CSNSW further advised that within this system, individual performance will be assessed by qualitative and quantitative metrics grouped under the outcomes of rehabilitation and reintegration; safety and security; decency and respect; and professionalism and accountability. It stated that, 'New performance metrics target key risk areas and strategic priorities to drive quality service provision and the achievement of strategic outcomes.'[211]

4.16 Mr James Koulouris, then Assistant Commissioner, Governance and Performance Improvement, gave his perspective on the two key elements to the performance framework. The first is a set of clear operational service specifications, which outlines all the requirements of a prison:

> One is our clear articulation of operational service specifications … that outlines all the key elements that a provider of correctional services, or a prison, must deliver to ensure a whole range of positive operational outcomes, ranging from the reception of inmates into custody, right through the continuum of their care while they are incarcerated, and including their release from custody. Those essential elements will allow us to ensure that at a minimum prisons are operating ethically, humanely and in accordance with all the legislative requirements.[212]

4.17 In respect of the second element, the suite of KPIs focused on outcomes, Mr Koulouris explained:

> Those KPIs that we have developed centre around a number of key goals. The first one is around safety and security. That is of paramount importance to us in the correctional system. The other key outcome area is rehabilitation and reintegration. We want to maximise the opportunity that inmates have to undertake rehabilitation activities and to reintegrate into the community so that on their release they can lead more law-abiding lives. The other key outcome for us is around humane inmate management, decency and respect. There are a number of KPIs that would act as a measure of that within the prison system. Lastly, professionalism and accountability, which is the way in which staff and the operator, whether it be public or private, deliver correctional services.[213]

4.18 In terms of the implementation of the new performance framework, Mr Severin advised that once the benchmarking program (discussed in detail in the following section) is completed, CSNSW will commence reporting. He explained that while CSNSW already gets reports on John Morony Correctional Centre, and will soon get reports on some of the centres that have gone through benchmarking, CSNSW cannot commence measuring performance 'until we are actually giving [each] centre the opportunity to change its operation to be able to perform in accordance to the agreed KPIs and targets.'[214]

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210 Evidence, Mr Severin, 18 May 2018, p 24.

211 Answers to questions on notice, Corrective Services NSW, 28 September 2018, pp 52-53.

212 Evidence, Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, 18 May 2018, p 30.

213 Evidence, Mr Koulouris, 18 May 2018, pp 30-31.

214 Evidence, Mr Severin, 18 May 2018, p 30.

4.19 As of September 2018, CSNSW was in the process of finalising its performance measurement methodology framework, ahead of a staged rollout across benchmarked correctional facilities.[215]

4.20 These reforms in respect of accountability and transparency are being driven under CSNSW's *Better Prisons* program, announced in 2016. Key elements of the program include benchmarking and market testing. Benchmarking is discussed in detail below.

Benchmarking

4.21 Benchmarking is the strategy by which all publicly operated prisons in New South Wales are implementing performance measurement. Having commenced in mid 2016, it is expected to be implemented by the end of 2019.[216] In this section the committee explains the aims and elements of benchmarking, then explores stakeholder views about it. The following section documents CSNSW's responses to those views.

Genesis

4.22 Benchmarking was introduced following a 2016 report of the Auditor-General which found that while CSNSW reported on outcomes across the organisation, there was no clear means of measuring the performance of individual centres. The report's key findings included that:

- the effectiveness of CSNSW's performance framework was limited because organisational KPIs did not cascade to individual public prisons
- because CSNSW did not set clear KPIs or targets for prison governors, they were unclear about expectations of their centre
- individual prisons could not be assessed on how well they contributed to overall CSNSW objectives, and it was difficult to vary performance expectations in response to changing operating environments
- CSNSW did not publicly report on publicly operated prison performance and provided only limited information for privately operated prisons, which limited transparency and accountability.[217]

4.23 In addition, there was a recognition that publicly operated prisons had developed staffing levels in an ad hoc manner over a long period, creating inconsistency in staffing for key activities and posts.[218]

Aims and elements

4.24 According to CSNSW, benchmarking has been introduced across all publicly operated prisons to improve their productivity, lift performance standards and increase accountability, by

215 Submission 37, Corrective Services NSW, p 17.
216 Submission 37, Corrective Services NSW, p 9.
217 Submission 37, Corrective Services NSW, p 122.
218 Submission 37, Corrective Services NSW, p 122.

providing consistent performance measurements to show the outcomes that prisons are delivering. Benchmarking comprises two key elements:

- KPIs that outline what prisons need to achieve to perform at their best
- resources, including staffing, required for a centre to perform efficiently and effectively.[219]

4.25 KPIs will apply across prisons, according to the four outcomes of safety and security, rehabilitation and reintegration, decency and respect, and professionalism and accountability. While the same KPIs will apply to all prisons, the performance thresholds (targets) have been moderated to reflect a prison's size, security classification, role and function, so that the expected performance is realistic for that prison.[220]

4.26 According to CSNSW, 'This will be the first time individual prison performance outcomes are measured in such a transparent way, and individual prison performance will be publicly reported, encouraging the take-up of best practice across the system.'[221] Once benchmarking is implemented, the performance of individual publicly operated prisons will be published for the first time across the system. In time, privately operated prisons will also be compared.[222]

4.27 In CSNSW's view, in respect of staffing, benchmarking has introduced:

- a leaner prison management structure
- a new shift formula for frontline officers.[223]

4.28 CSNSW advised that the broad purpose of benchmarking is 'to drive innovation, reward and recognise prisons that are performing to best practice, and identify where prisons need to be improved. Those prisons that need support to improve will get it, as benchmarking is about achieving sustained improvements over time rather than a "big stick" approach that punishes prisons for poor performance.'[224]

4.29 According to CSNSW, benchmarking is being introduced as an alternative to market testing more public prisons. However, prisons whose performance does not improve even with significant support may ultimately proceed to market testing as a last resort:

> CSNSW has chosen benchmarking as an alternative to market testing more public prisons. Prisons will be given extensive support to continuously improve and meet their performance targets. While a sustained and serious failure of a prison to meet its performance outcome targets could ultimately result in market testing, it has been communicated very clearly to staff that this would be a last resort and that a series of escalating support measures would be exhausted before any such decision is made.[225]

219 Submission 37, Corrective Services NSW, p 9.

220 Submission 37, Corrective Services NSW, p 123.

221 Submission 37, Corrective Services NSW, p 119.

222 Submission 37, Corrective Services NSW, p 9.

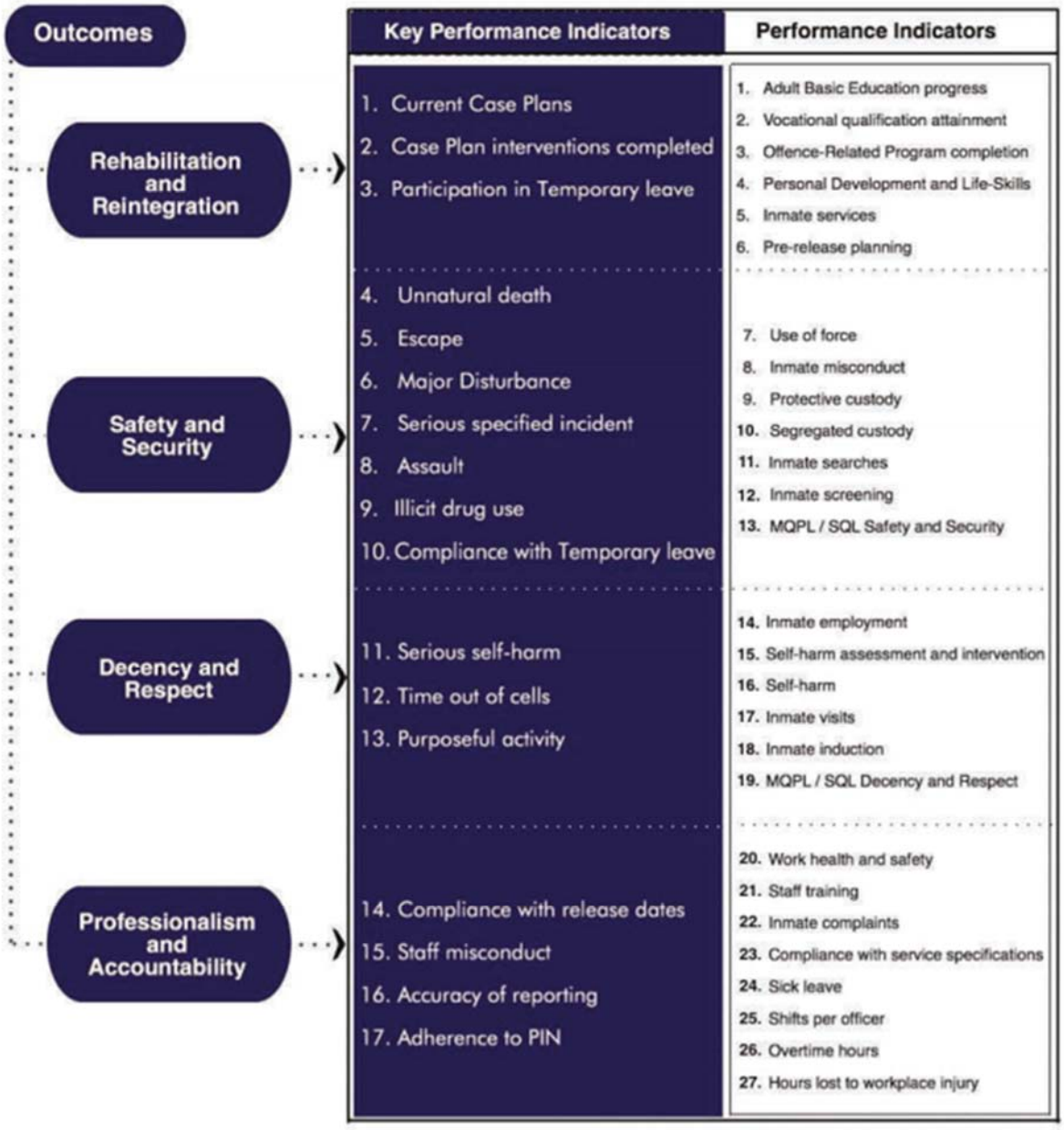
223 Submission 37, Corrective Services NSW, p 119; Submission 37a, Corrective Services NSW, p 16.

224 Submission 37, Corrective Services NSW, p 9.

225 Submission 37, Corrective Services NSW, p 120.

4.30 The outcomes, KPIs and performance indicators being introduced via benchmarking are captured in the chart below.

Benchmarking of New South Wales prisons: Outcomes and key performance indicators



Source: Submission 37, Corrective Services NSW, p 123.

Other stakeholder perspectives

4.31 While, Associate Professor Andrew and Dr Baker called for greater accountability in the part of private prisons, they expressed some cautions about benchmarking. First, they expressed 'serious concerns' that benchmarking itself and the representation of performance in league tables might actually erode the quality of practices in gaols, referring to research they have conducted in other states indicating that a focus on 'getting the report right has replaced any real interest in the actual conditions within gaols.'[226]Associate Professor Andrew elaborated, highlighting the danger that a prison's benchmarks might look good, but do not reflect the underlying dynamics of the centre, which may wear down over time :

> The work that Dr Baker and I have done in terms of interviewing [prison staff], there is a huge disconnect between what is actually being done and what is being reported to be done in many of these gaols. This is why benchmarking will be a big issue for New South Wales. There will be a lot of push towards reporting around benchmarks and to make benchmarks look good but actually the underlying dynamics within the gaols will be disconnected from that reporting. That may last for a while. So maybe for a while we think gaols are improving because our benchmarks look better and we are making gaols compete with each other to meet their benchmarks, but the underlying realities and the dynamics of the gaol over time are likely to erode in our view. I would say that is the biggest warning around trying to come up with league tables that compare. Competition can be represented through reports and accounts … in a way that does not reflect the reality.[227]

4.32 Associate Professor Andrew emphasised that in this context, contract monitors are 'absolutely critical' to having a sense of what is really occurring inside a private prison.[228] The role of monitors is discussed in detail in chapter 6, along with independent oversight, which Associate Professor Andrew and Dr Baker also highlighted as essential for scrutiny of the qualitative aspects of correctional centre performance.[229]

4.33 Asked about the difficulty of adequately taking account of each individual prison's operational characteristics in the design of benchmarks, Associate Professor Andrew agreed that this is a very significant challenge, especially in remand centres, in which the work is staff intensive and very expensive. For any prison, costs associated with transport, health and rehabilitation all vary on the basis of security levels, the gender of inmates and so on.[230]

4.34 Professor Sturgess expressed confidence to the committee that performance measurement via benchmarking will deliver greater accountability and transparency in the New South Wales corrections system. He explained that as an alternative to market testing and outsourcing, benchmarking is aimed at giving CSNSW, Treasury and the Government confidence that the public's investments in prisons are justified because they produce a good result.[231] He also reasoned that it is very useful for government to 'put a peg in the wall' in terms of its expectations of individual prisons – for example in respect of hours out of cell per day – and to make it clear

226 Evidence, Associate Professor Andrew, 28 September 2018, p 35.

227 Evidence, Associate Professor Andrew, 28 September 2018, pp 39-40.

228 Evidence, Associate Professor Andrew, 28 September 2018, p 40.

229 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, pp 5-6.

230 Evidence, Associate Professor Andrew, 28 September 2018, p 36.

231 Evidence, Professor Sturgess, 2 August 2018, pp 45-46.

to prison managers that if they do not achieve this standard, CSNSW will engage them in discussions about why.[232]

4.35 At the same time, Professor Sturgess emphasised that benchmarking needs to proceed cautiously and intelligently, in close consultation with local management, staff and unions, and he noted that, 'Poorly managed, benchmarking can do as much damage as competitive tendering that is badly done.'[233] Recognising that no two prisons are alike, he also cautioned that care must be taken in how the information is built, interpreted and utilised.[234] As an example, he noted the very negative outcomes for the United Kingdom's prison system as a result of benchmarking there being driven by an agenda to reduce costs, being implemented too quickly, with inadequate consultation:

> 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. 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.[235]

4.36 In respect of reporting performance data, Professor Sturgess emphasised that this must also be done carefully and responsibly, in a way that contextualises the information such that it does not simply highlight the difference between two individual prisons.[236]

4.37 Professor Sturgess advised the committee that he considers CSNSW's *Better Prisons* benchmarking strategy has proceeded carefully, over a relatively long period, with appropriate consultation with staff, unions and each individual prison. He also reported that the model emphasises supportive early intervention with those who are not performing as well as they should in order to build the capability of prison managers:

> I think the important element of the Better Prisons work is that a relatively long period of time has been taken to go and talk to management, staff, unions, prison by prison and say, "Let's talk to you about what this means here now." It is not only that but one of the other important elements is that the early interventions are not about whacking people who have not met performance measures; it is about having a conversation about what support they need in order to achieve those measures. The point of this has got to be to try to support people. They have got to understand that eventually if they cannot respond then management may be replaced but the point of the exercise is not

232 Evidence, Professor Sturgess, 2 August 2018, p 39.

233 Submission 22, Professor Gary Sturgess, pp 6-7.

234 Submission 22, Professor Gary Sturgess, p 6; Evidence, Professor Sturgess, 2 August 2018, p 39.

235 Submission 22, Professor Gary Sturgess, pp 6-7.

236 Evidence, Professor Sturgess, 2 August 2018, p 44.

> to whack people and to feel good about having the media off their back. The point of the exercise is to try to help build capability in management within the prison.[237]

4.38 Notably, Professor Sturgess advised the committee that there has been a historical lack of management training for prison governors as managers of a correctional system, not just in New South Wales but internationally, although this is now being addressed. Thus he identified that 'one of the benefits of good quality benchmarking, nuanced benchmarking, is that you are getting early information that these people are struggling or they may be struggling and we need to go and look at [the management of the prison] more closely.'[238]

4.39 Representatives of the Public Service Association of NSW/Commonwealth Public Sector Union NSW (hereafter PSA/CPSU) expressed great concerns with benchmarking, both in terms of the process and its impact on prison staffing, dismissing it as 'pure sophistry … a term for job cuts, and that is all it is'. [239]

4.40 In respect of process, PSA/CPSU representatives were especially critical about CSNSW's consultation efforts, although they acknowledged that the union had been invited to comment on the KPIs and had done so, subsequently achieving one change in respect of contraband.[240] Specifically, Mr Troy Wright, Assistant General Secretary of the PSA and Branch Assistant Secretary of the CPSU, protested that the Macksam Report which commenced the benchmarking initiative was never provided to the union.[241] He thus accused the process of lacking in transparency and furnishing no ability for the union or others to understand the comparisons inherent to the benchmarking arrangements:

> We have no idea what our centres are being compared against and why they are being compared. Has that been a reasonable comparison? Has that comparison been properly made? That is our major concern from the outset of benchmarking. It should be transparent, and for us to participate in it we need it to be transparent.[242]

4.41 The impact of benchmarking on staffing levels was also a very significant concern for the PSA, with Mr Wright decrying any cuts in the context of the substantial increase in the prisoner population in New South Wales as 'ridiculous' and 'negligent'.[243]

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237 Evidence, Professor Sturgess, 2 August 2018, pp 42-43.

238 Evidence, Professor Sturgess, 2 August 2018, p 45.

239 Evidence, Mr Troy Wright, Assistant General Secretary, Public Service Association of NSW and Branch Assistant Secretary, Community and Public Sector Union NSW 2 August 2018, p 9.

240 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 32; Evidence, Mr Wright, 2 August 2018, p 9; Evidence, Ms Nicole Jess, Chairperson, Prison Officers Vocational Branch, and Senior Vice President, Public Service Association of NSW, 2 August 2018, p 11.

241 Evidence, Mr Wright, 2 August 2018, p 9. Macksam Consulting was engaged by CSNSW to undertake a desktop analysis of staffing levels for like functions across all New South Wales prisons, as the first step in the development of staffing benchmarks. Its report provided a general review of staffing and other requirements in the state's publicly run prisons. See Submission 37, Corrective Services NSW, pp 125-126.

242 Evidence, Mr Wright, 2 August 2018, p 9; Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 32.

243 Evidence, Mr Wright, 2 August 2018, p 9.

4.42 The PSA/CPSU estimated that 378 staff across various grade levels will be taken out of the corrective services system across the state under benchmarking, and highlighted the deletion of the entire assistant superintendent rank.[244] Ms Nicole Jess, Chairperson of the Prison Officers Vocational Branch and Senior Vice President of the PSA, suggested that this figure represents the highest job cuts ever experienced at CSNSW, an estimated 10 per cent of the Corrective Services workforce, and underscored the loss of skilled staff that these reductions will entail.[245] As an example, she referred to the Metropolitan Remand and Reception Centre's anticipated loss of around 30 posts, in the context of the centre's 33 per cent increase in the use of force in the past three years, 230 per cent increase in assaults on staff, 147 per cent increase in assaults on inmates and 108 per cent increase in contraband detected.[246]

4.43 The NSW Nurses and Midwives Association was also concerned about cuts to staffing, arguing that this will 'reduce the capacity to provide a safe, secure and humane custodial environment and to provide suitable programs for offenders', whilst increasing risks to the safety of both correctional and health staff.[247]

4.44 The PSA/CPSU further argued that the move from a '209 roster' formula for staffing to a '195 roster' formula has had the effect that even if a correctional centre notionally received more staff in its benchmarking proposal, many have actually lost posts (that is, staff on the ground), giving rise to greater risk to inmate and staff safety.[248] In light of these losses, the union predicted increases in serious incidents such as preventable inmate deaths, injuries and violence, citing figures from the UK system as a result of its benchmarking experience.[249]

4.45 Other concerns on the part of the PSA/CPSU in respect of the staffing aspects of benchmarking include that:

- The methodology used to ascertain new staffing levels is not known.
- Benchmarking is being coordinated from head office and those involved may not have sufficient custodial experience to understand safety concerns.
- PSA/CPSU members' staffing proposals are routinely dismissed as too high, and that they must make CSNSW's levels work, such that valid work, health and safety concerns are being ignored.
- While CSNSW has announced that it will appoint 1,100 new correctional officers over the next two years, it 'does not acknowledge it is replacing experience with inexperience', and it is not known whether these will be casual or permanent roles.

244 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 33.

245 Evidence, Ms Jess, 2 August 2018, p 9; see also Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 33.

246 Evidence, Ms Jess, 2 August 2018, p 9.

247 Submission 31, NSW Nurses and Midwives Association, p 9.

248 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 39.

249 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 38.

- CSNSW is not recognising that older facilities such as Long Bay, Bathurst and Goulburn do not have the technology to compensate for reduced numbers of staff, and their reductions will have a proportionately greater effect on safety.
- Managers have been told that there is no funding available for increases in infrastructure.
- Weekend staffing and supervision will be greatly reduced, despite this being a prime time for inmate visits, with greater risks in respect of security and contraband.
- The simultaneous introduction of benchmarking and construction of new correctional centres means that CSNSW is cutting staff numbers when it will soon need to increase them. It would be more logical to retain the staff to work in the new centres when completed.[250]

4.46 In addition, the PSA/CPSU's concerns about the KPI aspects of benchmarking include:

- The KPI for time out of cell 'has been designed to fail' owing to unpredictable staff shortages arising from sick leave. CSNSW will require more out of cell hours with fewer staff, but this is not possible.
- The KPI for recidivism programs will be adversely affected by lockdowns necessary for safety and security reasons.
- There are numerous problematic aspects to KPIs in respect of non custodial staff involved in reducing reoffending.
- There is insufficient detail on how some specialist programs will fit under benchmarking, such that specialist staff are concerned they may have to be involved in centre based programs to the detriment of their specialist roles.[251]

4.47 Former correctional officer Mr Domenic Pezzano expressed concern that the targets being set under benchmarking do not take into account the unique circumstances surrounding any specific correctional centre, and proposed that the reforms will have a detrimental impact on staff morale and performance as a result of pressure to meet unrealistic targets within an already volatile and unpredictable work environment.[252]

Corrective Services NSW perspective

4.48 The committee pursued a number of a matters in respect of benchmarking and the broader performance framework during its two hearings with CSNSW representatives. Their perspectives on cuts to staffing, the process of developing the KPIs, individualising targets, and measuring reoffending are documented below. In addition, CSNSW's account of the benchmarking process at Wellington Correctional Centre is presented as a case study.

250 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 32-34.

251 Submission 38, Public Service Association of NSW and Community and Public Sector Union NSW, p 36.

252 Submission 16a, Mr Domenic Pezzano, p 7.

Staffing

4.49 In respect of the PSA/CPSU's concerns about the reduction of an estimated 378 staff under benchmarking, CSNSW representatives told the committee that it had initially estimated a loss of 312 staff, but this has since been modified to 215. They further clarified that these were not reductions in staff as such, but reductions in roles. In addition, they advised that taking account of the broader context of newly built prisons, expansions to existing prisons, reducing reoffending reforms and other work, an anticipated 1,562 new roles will be created across the correctional system, over and above the July 2016 benchmarks, including case managers and senior assistant superintendents.[253]

4.50 CSNSW defended benchmarking as having introduced a leaner prison management structure that deploys resources more efficiently and supports staff specialisation and development. It further advised that the new structure for staff establishes a consistent model that better reflects the size and complexity of individual centre operations.[254] While the Assistant Superintendent rank has been removed, the new model has established dedicated functional manager roles at the Senior Assistant Superintendent rank to augment responsibility for core functions and eliminate rotation through management roles.[255]

4.51 According to CSNSW, throughout the benchmarking process it has implemented recruitment processes that support internal access to roles, retention of expertise and limited displacement. In addition, it has aligned the rollout to complement the prison infrastructure expansions as well as the new case management model to further reduce displacement and retain experienced staff.[256]

4.52 In respect of the shift formula, CSNSW advised that the previous formula operated on an assumption that an officer would perform 209 shifts per year, when in reality they performed 190. The difference resulted in staff shortages on rosters and contributed to lockdowns of inmates. CSNSW considers that the new formula more accurately reflects leave and other time away from duties, will enable better staff coverage for each post, will minimise gaps in the roster, and will reduce lockdowns and the need to reallocate posts to cover staff shortages. CSNSW acknowledged that the 195 formula will for some centres require more staff attendance, stating that it 'continues to work to improve staff attendance.'[257]

Development of key performance indicators

4.53 In respect of how the KPIs were developed, Mr Koulouris advised that this was done on the basis of international research, the result being a robust set of standards by which to measure and compare performance:

253 Evidence, Ms Gayle Robson, Chief of Staff, Commissioner's Office, Corrective Services NSW, 28 September 2018, p 50; Evidence, Mr Glen Scholes, Director, Custodial Corrections North, Corrective Services NSW, 28 September 2018, p 50; Evidence, Mr Severin, 28 September 2018, p 51; Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 55.

254 Submission 37, Corrective Services NSW, p 119; Submission 37a, Corrective Services NSW, p 16.

255 Submission 37a, Corrective Services NSW, p 16.

256 Submission 37a, Corrective Services NSW, p 16.

257 Submission 37a, Corrective Services NSW, p 17.

> There are 17 KPIs. They were internationally benchmarked. We looked at jurisdictions across the world to take the learnings from various correctional jurisdictions to ensure that we have a set of KPIs that could give us a very definitive view of the quality and operational performance of prisons and allow us to compare prisons, both in the public and private operating sphere.[258]

Consultation and implementation

4.54 The committee visited Wellington Correctional Centre and was briefed on the process of consultation and implementation there and the resultant staffing profile. This process is captured in the case study below, provided by CSNSW.

Case study – Benchmarking at Wellington Correctional Centre[259]

Consultation

Benchmarking consultations commenced at Wellington in March 2017. All members of staff were invited to take part in the consultation phase, which also involved ongoing discussions with the prison's Local Board of Management, Prison Officers Vocational Branch and Commissioned Officers Vocational Branch of the Public Service Association.

After the initial consultation meetings a core team made up of a cross section of centre staff was established. Guided by the centralised CSNSW Benchmarking Team they developed their own benchmarking plan over the next three months. The plan considered the centre's activities, potential risk factors, the proposed benchmarks and the resources required to achieve performance outcomes. During the three month consultation period, local staff were able develop innovative ways of achieving efficiency, while also having the opportunity to provide extensive feedback and suggest changes to the draft benchmarks. At Wellington, as is the case in an overwhelming number of correctional centres, changes were made following consultation with staff and the union.

Implementation

After three months planning and consultation the local benchmarking proposal was approved. Implementation began in July 2017 with the new roster and staffing model taking effect in October 2017.

Following consultation the proposed reduction of 19 roles was reduced to 15. Over and above benchmarks new roles have been added to account for the growth that has occurred since draft benchmarks were set in mid 2016. Wellington retained nine roles to support the increased inmate population and subsequently added an additional four roles to support an increase in the number of inmates on remand.

258 Evidence, Mr Koulouris, 18 May 21018, p 31.

259 Submission 37a, Corrective Services NSW, pp 14 and 45.

Staffing profile

Whilst benchmarking resulted in the reduction of 13 custodial and two services and programs roles, staffing across the centre has actually increased since the implementation of benchmarking, as follows:

- 10 new case management roles - a professional team to concentrate on offender management
- 19 new roles to operate the High Intensity Programs Unit
- 4 new custodial roles to facilitate the placement of remand inmates
- 9 custodial roles to facilitate three out cell placements, that is, bed increases after benchmarks were set in June 2016.

4.55 During the committee's site visit, there was significant concern about the impact of benchmarking and the reduction in staff numbers at Silverwater Women's Correctional Centre. This concern focused on the particularly complex needs of women prisoners and how these complex needs were being met under the benchmarking process.

Measuring reoffending and recidivism

4.56 In addition to the concerns raised by stakeholders about various aspects of benchmarking, the committee sought to understand whether new KPIs for individual prisons will include a measure of recidivism.

4.57 Mr Severin advised that they will not, because reoffending is an effect that can only be measured via a longitudinal study. While CSNSW does collect data measuring return to corrections on an annual or biennial basis, thus is not an outcome that is attributable to an individual centre because offenders tend to move around the system it is quite difficult to isolate the impact of one custody experience. Instead, measuring reoffending is an outcome for the organisation under CSNSW's strategic plan and State Government objectives, in that Corrective Services and the Commissioner have a clear KPI of reducing reoffending by 5 per cent by 2019.[260]

4.58 At the same time, Commissioner Severin told the committee that he would welcome the ability to measure impact on recidivism at the correctional centre level, were it possible, and emphasised that reducing reoffending is Corrective Services' focus in whatever it does.[261]

4.59 Responding to the criticism that this most important measure is not a KPI for individual prisons, Commissioner Severin argued that, '[The prisons] are very much responsible for it because all the things they need to do are the things we know make a difference. More programs make a difference, more engagement in work makes a difference, more time out of the cell makes a difference. All these things matter when it comes to reducing reoffending.'[262]

4.60 In the same vein, Mr Koulouris assured the committee that a number of KPIs are geared towards rehabilitation and reintegration to the community, advising that, 'They have been designed to ensure that each prison undertakes activities that are proven by evidence,

260 Evidence, Mr Severin, 18 May 2018, pp 32-33.

261 Evidence, Mr Severin, 18 May 2018, p 33.

262 Evidence, Mr Severin, 18 May 2018, p 32.

internationally and in Australia, will lead to a positive outcome when that inmate is reintegrated into the community.'[263]

4.61 To illustrate this, Mr Koulouris explained that when an inmate is received into custody and sentenced it is known that it is very important for them to have a detailed case plan that has identified their needs and the factors that have led to their offending behaviour, along with the interventions to be made with the inmate while they are in custody in respect of programs, education or training. A KPI will capture whether inmates have such a case plan. In terms of interventions, historically, measures (for example as set out in contracts) have focused on outputs, that is, whether an inmate participated in a program, but not the impact it had on their learning. The new KPIs will measure for each intervention recommended by specialist staff for an inmate, first, that the inmate is given the opportunity to participate in those programs during the course of their sentence and second, that they have completed them and there has been a discernible improvement in their skills or capability.[264]

4.62 In respect of KPIs for time out of cell, Mr Koulouris further explained that it is known that inmates' engagement in purposeful activity is positively linked to reintegration, but a key impediment to that is not having time out of cell. The relevant KPI measures the amount of time inmates have out of cell and for privately operated prisons there is a financial abatement where they do not meet their target. In addition, for private sector providers there are incentive payments so they have to do more to assist reintegration on release from custody, such as by linking with non government organisations to assist the person to find stable accommodation and employment.[265] The contract for Grafton Correctional Centre, for example, contains incentives for the operator to reduce the rate of reincarceration by three percentage points below the State rate.[266]

Committee comment

4.63 Ultimately, the objective of every prison is to keep inmates safe and contained and to enable inmates to leave custody with the capacity to successfully reintegrate into society. It is critically important that individual prisons, and the corrections system as a whole, be continually accountable to the public in all aspects of their role.

4.64 In the interests of robust accountability for both public and private prisons, the committee welcomes the performance framework that CSNSW is putting into place across the state's correctional system. There have been calls for such a system for a long time. Another Upper House committee recommended almost ten years ago that all correctional centres report against common performance indicators, and that this be publicly reported. Since that inquiry, stakeholders have continued their calls, especially for transparency in the performance of privately operated prisons, and in 2016 the NSW Audit Office furnished a detailed critique and way forward for CSNSW to measure and report on publicly operated prisons.

263 Evidence, Mr Koulouris, 18 May 2018, p 33.

264 Evidence, Mr Koulouris, 18 May 2018, p 33.

265 Evidence, Mr Koulouris, 18 May 2018, p 33.

266 Answers to questions on notice, Corrective Services NSW, received 13 June 2018, p 14.

4.65 In the committee's view, the Parklea Correctional Centre experience has highlighted the critical need for greater accountability in the private system, and it is entirely reasonable – and indeed desirable – that the public sector be equally accountable. Moreover, there is significant value and common sense in the establishment of a system across both sectors that holds all prison operators to the same minimum standards and will ultimately enable comparison between and within sectors. Publication of this information is fundamental for transparency.

4.66 Like others, the committee sees value in government setting the 'peg in the wall', that is, establishing minimum standards via benchmarks which serve as constant targets to be met and maintained, so that prison operators are answerable for what occurs in their centre. We also recognise the value in an outcomes focus that values impacts over inputs and process and encourages flexibility and innovation in service delivery.

4.67 The committee acknowledges the substantial work involved in the systemic reforms that are required to enable full accountability via CSNSW's performance framework. We look forward to viewing the performance information when it is published and to making our own comparisons of prisons' performance, both public and private.

4.68 At the same time, the committee shares a number of concerns raised by inquiry participants. First, while we do believe comparisons of individual prisons are fundamentally important, we underscore the need to build, interpret and utilise the information judiciously and responsibly. Concerns among some witnesses about the difficulty of tailoring operational requirements to the unique characteristics of each centre were borne out in our site visits, such that we understand the anxiety of some that their operational challenges may not be fully appreciated, may not have been sufficiently resourced, and may leave them vulnerable to perceptions of underperformance. We were somewhat reassured by the information from CSNSW on the process of consultation in individual centres, by the time allowed for benchmarking to roll out, and by the strong message that CSNSW's intention, once benchmarking is fully implemented and those prisons performing less well become apparent, is not to punish but to support and equip prison governors and their teams to perform better. However the committee is of the view that there is something wanting here as CSNSW has not advised us of any plan to ensure that the individual characteristics of each centre will be adequately taken into account.

4.69 The committee is also very mindful of the warning that league tables of performance may actually have the counterproductive effect of reducing standards by encouraging a focus on that which is captured in KPIs, rather than on the dynamics and culture of a prison, which profoundly affect the experience of inmates. It would be very troubling if benchmarking encouraged a tick a box process that diluted the interactions between corrective services staff and inmates. Like Associate Professor Andrew and Dr Baker, we recognise both onsite monitors and the Inspector of Custodial Services to be critical safeguards to quality and standards within prisons, both of which provide an essential counterbalance to the tendency to focus too much on achieving targets and not enough on holistic quality service provision and compliance with standards.

4.70 In a similar vein, we are wary as to how effectively the performance framework will in the first instance measure outcomes, and much more importantly, improve them. Will it live up to its promises of valuing and rewarding impact, and encouraging flexibility and innovation? Will it actually contribute to improvements to rehabilitation and reintegration, safety and security, decency and respect, and professionalism and accountability?

4.71 For all these reasons, the committee encourages CSNSW to proceed in its task of establishing a performance framework for the NSW correctional system, but to do so with care and caution. Given the size of the reforms underpinning the performance framework, along with its significance for the entire correctional system, and the risks involved, the committee considers that it would be valuable for CSNSW to report to the Parliament, through the Minister, once it is fully implemented. Specifically, the committee sees value in CSNSW reporting on the effectiveness of the framework, lessons learned from the process, and improvements to be made. Recognising that benchmarking is to be rolled out by the end of 2019, we consider that two years hence would be an appropriate reporting period by which valuable insights could be gained. Following that, a further report should occur after two more years.

Recommendation 2

That by the end of 2021, and again in 2023, the Minister for Corrective Services table in Parliament a report by Corrective Services NSW on the implementation and effectiveness of its performance framework, the lessons learned and future improvements to be made.

4.72 The committee recognises the PSA/CPSU's concerns about loss of positions that has occurred under benchmarking in the context of the increase in the prison population, and that the new roster formula has resulted in changes in staff on the ground. At the same time we acknowledge CSNSW's rationale for the changes it has made to staffing arrangements, which appear to be focused on system improvements. It will be important to monitor any negative effects from these changes over time.

4.73 With regard to the outcome of reducing reoffending, the committee appreciates the inability to isolate individual prisons' impact on reducing reoffending, and the way that a number of KPIs for all correctional centres, as well as incentives and penalties for private prisons have been designed to encourage and measure this outcome. We wonder what further insights might be gained here as the performance framework is implemented.

4.74 Taking account of all these considerations, the committee recommends that in the two reviews we have recommended Corrective Services NSW undertake on the implementation of its performance framework, CSNSW should specifically examine:

- the effectiveness of its new contract for Parklea Correctional Centre
- how adequately the characteristics of individual centres have been recognised and accommodated within the framework
- how well the key performance indicators have captured the dynamics of prison life and the experience of inmates
- any evidence of erosion of standards
- any evidence of adverse outcomes from staffing changes during the benchmarking process, such as greater risks to staff and inmate safety
- the effectiveness of interventions with those prison governors' whose centres are identified as underperforming
- potential improvements in the ability to encourage and measure reductions in reoffending

- any further steps to be taken to enhance accountability across the public and private corrections systems
- the private provision of health services at Parklea.

Recommendation 3

That Corrective Services NSW, in its report on the implementation and effectiveness of its performance framework, specifically consider:

- the effectiveness of its new contract for Parklea Correctional Centre
- how adequately the characteristics of individual centres have been recognised and accommodated within the framework
- how well the key performance indicators have captured the dynamics of prison life and the experience of inmates
- any evidence of erosion of standards
- any evidence of adverse outcomes from staffing changes during the benchmarking process, such as greater risks to staff and inmate safety
- the effectiveness of interventions with those prison governors whose centres are identified as underperforming
- potential improvements to encourage and measure reductions in reoffending
- any further steps to be taken to enhance accountability across the public and private corrections systems
- the private provision of health services at Parklea Correctional Centre.

4.75 On a final point, the committee sees value in Associate Professor Andrew and Dr Baker's contention that well designed KPIs in respect of professional development have significant potential to improve the standards and effectiveness of the prison system. We note that staff training is listed as a performance indicator under benchmarking but have no further information on this, and we point to these academics' suggestion for annual performance reviews to be built into requirements of all centres. We recommend that CSNSW incorporate performance reviews for all correctional staff into its performance framework by December 2019, to improve service delivery.

Recommendation 4

That Corrective Services NSW incorporate performance reviews for all correctional staff into its performance framework by December 2019, to improve service delivery.

Chapter 5 Rapid build dormitory prisons

As noted in chapter 1, the two rapid build dormitory prisons, Macquarie Correctional Centre in Wellington, and Hunter Correctional Centre in Cessnock, commenced operation in early 2018. Both were funded via the NSW Government's 2016 injection of $3.8 billion over four years to increase the capacity of the prison system through a major expansion of prison infrastructure necessitated by the significant growth of the New South Wales prison population between 2014 and 2017.

This chapter examines the rapid build dormitory prisons, both in terms of the unique model itself and its implementation at the two centres. In doing so, the committee draws on the views of inquiry stakeholders including inmates and community groups, as well as our own insights gained from site visits to both centres in August 2018, in which we spoke to inmates and staff, observed activities and toured the facilities.

Establishment

5.1 According to CSNSW, the rapid build prisons came about due to two key drivers: the need to provide additional capacity for the state's inmate population in a short timeframe, and the desire to deliver facilities that are modern, fit for purpose and suited to engage inmates to reduce reoffending.

5.2 Both facilities are maximum security and have 400 beds. Together they represent around 13 per cent of the expansion of beds occurring under the Prison Bed Capacity Program.[267] Occupancy rates as at May 2018 were approximately 380 each.[268]

5.3 Construction of both facilities commenced in August 2016. Macquarie was completed in August 2016, accepted its first inmates in December 2017, and was fully operational from February 2018. Hunter was completed in October 2017, accepted its first inmates in February 2018, and was fully operational from March 2018.[269] According to Commissioner Peter Severin, the two facilities were delivered in record time:

> I think we can say that following risk assessments and international validation of our concept we realised the fastest procurement of any correctional maximum security infrastructure ever undertaken from the day we turned the sod to the day we got the keys to the facility was 12 months. That has never been done before.[270]

5.4 The rapid build of the facilities was enabled by a number of factors:

- the dormitory style accommodation instead of traditional cells
- the preconstructed accommodation pods
- being sited on existing prison grounds.[271]

267 Submission 37, Corrective Services NSW, pp 7-8 and 85.

268 Evidence, Mr Glen Scholes, Director, Custodial Corrections North, Corrective Services NSW, 18 May 2018, p 42.

269 Submission 37, Corrective Services NSW, p 115.

270 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 18 May 2018, p 24.

271 Submission 37, Corrective Services NSW, p 85.

Features

5.5 The rapid build prisons have a number of distinguishing features:

Accommodation

- Each has four accommodation blocks. Inside each block are four separate dormitories, each with 25 cubicles.
- Each dormitory has a set of eight lockable bathrooms with combined toilet, shower and sink, providing a greater degree of privacy and safety than other prisons.
- Individual cubicles comprise a bed, desk, fixed stool, lockable storage under the bed, headphones and night/reading light.
- Each cubicle has a 'touch screen internet protocol digital television with kiosk functionality', providing inmates with greater autonomy with respect to personal tasks and activities via Offender Digital Services. The system is a secure internal network with no traditional internet access.
- Each dormitory has two inmate telephones that can be used until 10.00 pm, on which prisoners can make ten minute phone calls.[272]

Security

- These prisons have a higher staff to inmate ratio than traditional prisons.
- A full custodial staff complement around the clock, as well as inmates' long structured day (see below), are also important elements.
- Elevated catwalks overlook the dormitories so that staff can observe what is occurring within a dormitory without having to enter it.
- Surveillance is higher than in traditional prisons, with a comprehensive high technology CCTV and alarm system with both 360 degree cameras and thermal cameras covering all areas occupied by staff and inmates, such that inmate movements can be monitored 24 hours a day.
- Unlike a traditional prison, inmates are not confined to cells without camera coverage.
- Immediate Action Teams are on site 24 hours a day comprised of four officers trained in emergency response.
- In the event of a large scale incident that cannot be otherwise deescalated, staff can deploy standard Corrective Services gas munitions into a dormitory. The gas can be quickly cleared by powerful inbuilt extraction fans.[273]

272 Submission 37, Corrective Services NSW, pp 95-96.

273 Submission 37, Corrective Services NSW, pp 98-100 and 105.

Structured day

5.6 Intrinsic to the rapid build prison model the 'structured day', in which inmates are occupied from 6.30 am to 10.00 pm, with the aims of engaging all prisoners in a purposeful day via meaningful employment and learning activities as well as programmed leisure activities. The structured day also enables maximum time out of the dormitory. According to CSNSW, 'This will not only ensure inmates make the best use of their time in custody, but also ensures dynamic security because inmates are engaged in productive, rather than harmful, activity and are ready to rest at the end of a full day.'[274]

5.7 Each inmate is required to participate in five hours of employment each day, facilitated by Corrective Services employment industries, including light engineering, heavy engineering, laundry, furniture, facilities maintenance, market garden, café and kitchen.

5.8 Each inmate must also participate in five hours of structured learning and program activities facilitated via CSNSW EQUIPS programs to address offending behaviours, and a variety of education programs including TAFE and vocational education and training courses.[275]

Inmate selection

5.9 Because of the various features and aims of the rapid build prisons, placement is offered as a privilege. Inmates are carefully screened for suitability for placement in that environment and the rehabilitation opportunities provided, with the cohort based largely on:

- a recent history of good behavior and compliance
- a willingness to participate in work and training
- basic literacy and numeracy, to ensure capacity to participate in programs and training
- suitability for criminogenic programs.[276]

Noise reduction

5.10 According the CSNSW, the potential for high noise levels was identified as a potential issue during the planning and design phase of the rapid build prisons. In order to mitigate this:

> Each inmate has a screen to watch television programs with earphones to reduce noise and a range of other noise attenuation solutions have been incorporated into the building fabric of each dormitory to reduce noise and therefore aggravation to inmates.
>
> Inmates are able to access the recreation yards attached to the accommodation pods after hours to ensure that if they wish to have conversations after hours they do not disturb others trying to sleep.[277]

274 Submission 37, Corrective Services NSW, p 86 and 101; Submission 37a, Corrective Services NSW, p 33.

275 Submission 37a, Corrective Services NSW, p .

276 Submission 37, Corrective Services, p 86.

277 Submission 37, Corrective Services NSW, p 91.

Expectations

5.11 According to CSNSW, while the centres facilitate a higher level of privilege than other maximum security facilities, inmates behaviour is expected to be at a higher level. The activities and amenities are seen as a privilege, and poor behavior results in loss of those privileges and removal from the centre if the inmate's behaviour does not improve.

5.12 CSNSW also emphasised the 'community living' aspects to the prison:

> The dormitory-style and shared living spaces provide an opportunity for inmates feel part of a community. It is often said that what happens inside a correctional centre is a reflection of society. The aim … is to impress upon the inmates the idea of community, choice and personal responsibility.[278]

Longevity

5.13 According to CSNSW, while the rapid build prisons were initially planned to operate for five to seven years, 'the strength and quality of the materials chosen for construction mean that they can comfortably service CSNSW's future needs for the next 20-30 years.'[279]

Performance to date

5.14 CCSNSW provided the following table comparing data from Hunter and Macquarie with the combined rates from other maximum security facilities over the same six month period. It concluded that while it is too soon to be definitive, early indicators are positive, with assault and use of force rates lower than other maximum security centres.

Table 5 Rapid build prisons – early comparative data

	Macquarie Correctional Centre January – June 2018	Hunter Correctional Centre February – June 2018	Other maximum security January – June 2018
Average use of force rate per 100 inmates	3.87	3.07	11.69
Average inmate assault rate per 100 inmates	7.04	4.78	16.68
Average inmate assault on staff rate per 100 inmates	0.35	0	1.44

Source: Submission 37a, Corrective Services NSW, p 8.

[278] Submission 37a, Corrective Services NSW, p 31.

[279] Submission 37, Corrective Services NSW, p 85.

5.15 When the committee visited Hunter Correctional Centre in August, staff advised us that since opening:

- there had been no assaults
- no chemical munitions had been deployed
- rates of misconduct in June were 6.5 per 100 inmates, compared with 20 per 100 in other maximum security centres in June.[280]

5.16 At our visit to Macquarie Correctional Centre we were advised that since opening:

- there had been only one minor staff assault
- chemical weapons had been deployed twice, but not inside the accommodation areas
- rates of misconduct in June were 16.6 per 100 inmates, compared with 20 per 100 in other maximum security prisons.

5.17 In addition, as of August 2018, there had been no deaths, no escapes and only one self harm incident since both prisons had opened.[281]

Future plans for evaluation

5.18 CSNSW is conducting a five year research and evaluation project to measure the outcomes and benefits achieved by the rapid build prisons, compared with traditional prisons. This will occur via a longitudinal study conducted by Corrections Research Evaluation and Statistics (CRES). According to CSNSW, the evaluation framework is aligned with the program logic of the rapid build model, which articulates how the features and innovations built into the model act as mechanisms of change that in turn have an impact on five identified outcomes:

- social climate
- operational outcomes
- purposeful activity
- cost/benefit analysis
- reoffending outcomes.[282]

5.19 With regard to research design and analysis, the evaluation proposal prepared by CRES states that a number of research designs and strategies were being considered, and the majority will aim to compare the immediate, intermediate and post release outcomes of rapid build prison inmates with those expected if they were in traditional prisons. Research designs being considered include:

- in depth interviews with inmates and staff
- assessment of social climate

280 Submission 37a, Corrective services NSW, p 26.

281 Submission 37a, Corrective services NSW, p 37.

282 Submission 37, Corrective Services NSW, pp 116-117.

- repeated assessment using psychometric and other measures
- analysis of operational outcomes, evaluation of reoffending outcomes
- analysis of within-cohort variance in reoffending outcomes
- economic modelling and evaluation.[283]

Accounts of inmate perspectives

5.20 The Community Justice Coalition, which represents a group of organisations concerned with prisoner rehabilitation, prison reform and conditions in prisons, inspected the Hunter Correctional Centre in May 2018, represented by Mr John Dowd AO QC, Ms Elizabeth Evatt, AO and Mr Brett Collins, Coordinator of member organisation, Justice Action. Their account of the visits, including inmate perspectives, was documented in two reports provided to CSNSW and to the committee.

5.21 The concerns listed in the first report included:

- Inmates were strongly opposed to the dormitory style accommodation, in which older and quieter inmates must co-reside with younger, more troublesome inmates. For some, there is a fear of being attacked or assaulted in their sleep, especially as there is a no transfer policy between pods, such that 'there is no escaping the threats and abuse'.[284]
- CSNSW had not delivered on a number of undertakings to prospective inmates including 10 minute phone calls, access to 50 movies per month, computer access and incentive payments for participation in work and life skills programs.
- There are inadequate medical and other health care services, with lengthy delays in medical appointments and no therapists on site. The absence of any dental service at the prison means that inmates must transfer into Cessnock Correctional Facility next door to access this service.
- The 'structured day' of compulsory activities is onerous for older inmates. Anyone who does not participate is placed in 'solitary confinement at the clinic for up to eight hours.'
- The lights are on too long and night lights emit sufficient light as to inhibit peoples' sleep.[285]

5.22 The first report concluded:

> This centre has been a big disappointment and all the inmates that we have spoken to can't wait to transfer out of here, the majority of inmates here are medium and low security who have been relocated here to a maximum security prison. This is a major step backwards in progressing through the system. In addition to this, inmates are

283 'Evaluation Framework – Rapid Build Prisons', Appendix B, Submission 37, Corrective Services, pp 166-167. The date of this document is not given.

284 'Report from prisoners at Hunter Correctional Centre', tendered by Mr Brett Collins, Coordinator, Justice Action, and Mr John Dowd AO QC, President, Community Justice Coalition, 2 August 2018, p 1.

285 'Report from prisoners at Hunter Correctional Centre', p 2.

> forced to participate in irrelevant programs in a hope to reduce recidivism, however, with the level of resentment as described above the programs will have the opposite effect and increase resentment against those in authority. To reduce recidivism inmates must want to change and this change should be encouraged and not forced. There needs to be more resources made available to those inmates who want to change and have demonstrated a willingness to change and not be repressed and held back.[286]

5.23 The second report on the same visit stood in significant contrast to the first. While it identified a number of concerns on the part of the Community Justice Coalition, it noted a greater level of satisfaction among the inmates,[287] and stated:

> Prisoners were generally happy with the accommodation although everyone agreed that they would prefer to have the privacy of their own normal cells where they could relax and behave without others' observation. Snoring was an issue for many. They all knew who the snorers were. The noise of a cough could be heard in the whole dormitory. A sharp step on the concrete floor reverberated in the steel/concrete area. The same problem was mentioned in the Central Support area through which all prisoners had to pass.
>
> No-one expressed concern about risk of attack in the night, but there was social pressure to respond in front of others. No protocol for moving pods without written complaint was mentioned. They liked to go outdoors and see the stars - some for the first time in decades. The shower/toilet rooms were well designed and appeared easy to keep clean. The prisoners have access to them during the night.[288]

Corrective Services NSW responses to these accounts

5.24 CSNSW responded to the two reports of the Community Justice Coalition visit. The response, from Mr Luke Grant, Assistant Commissioner, Corrections Strategy and Policy, CSNSW, who attended the same visit, was subsequently provided to the committee by both the Community Justice Coalition and Justice Action. The committee notes that Mr Grant's response states that his experience of the visit, including conversations with inmates he participated in or overheard, was overwhelmingly positive, and challenged the accuracy of the two reports, especially the first.[289]

5.25 Mr Grant acknowledged teething problems that have required rectification, 'as might be expected in the early post commissioning phase of a correctional centre with many novel and unique characteristics', and advised that other external observers 'have been positive and complimentary about the efforts taken by staff to create a functional and humane environment for inmates.[290]

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286 'Report from prisoners at Hunter Correctional Centre', p 3.

287 'Report: CJC visit Hunter Correctional Centre', tendered by Mr Brett Collins, Coordinator, Justice Action, and Mr John Dowd AO QC, President, Community Justice Coalition, 2 August 2018, p 4.

288 'Report: CJC visit Hunter Correctional Centre', p 4.

289 Correspondence from Mr Luke Grant, Assistant Commissioner, Corrections Strategy and Policy, Corrective Services NSW, to Community Justice Coalition, 27 July 2018, tendered by Mr Brett Collins, Coordinator, Justice Action, and Mr John Dowd AO QC, President, Community Justice Coalition, 2 August 2018, p 1.

290 Correspondence from Mr Grant to Community Justice Coalition, 27 July 2018, p 2.

5.26 Specific comments in a table documenting CSNSW's responses to individual statements in each of the first and second reports included:

- The centre has not received complaints from inmates about snoring or noise in the accommodation units, all of which are fitted with noise dampening systems that appear to be effective. Comments about snoring were not raised by inmates themselves but elicited by one of the visitors.[291]
- Many inmates have actually expressed a preference for 'the open style of living and the freedom of movement this facilitates'.[292]
- The statement that no inmates wish to remain at the centre is 'completely false'. More than 35 requests have been received by minimum security inmates to complete the custodial component of their sentence at the centre.'[293]
- Inmates are genuinely not concerned for their safety at night. Levels of staffing and surveillance in the rapid build centres are surpass all other centres. Staff can initiate an immediate response when a problem arises and inmates are very aware of this.[294]
- 10 minute phone calls are in place, and inmates have a choice of 32-40 movies per month.[295]
- Inmates are housed in accordance with their classification and risk assessment. Those who express safety concerns are counselled by staff and if they have outstanding concerns they may be relocated to another accommodation pod, pending bed availability, or removed to the multipurpose unit awaiting classification to another correctional centre.[296]
- The new custodial case management system that had not been bedded down at the time of the CJC visit will ensure that inmates are allocated to programs commensurate with their risk and needs. Motivation to change will be an important element of the new system and staff at the centre have received training on 'motivational interactions' to enhance their skills to support the change process.[297]

291 Response to the report of the Community Justice Coalition visit to Hunter Correctional Centre, appended to correspondence from Luke Grant, Assistant Commissioner, Corrections Strategy and Policy, Corrective Services NSW, to Community Justice Coalition, 27 July 2018, tendered by Mr Brett Collins, Coordinator, Justice Action, 2 August 2018, and Mr John Dowd AO QC, President, Community Justice Coalition, pp 4 and 5.

292 Response to the report of the Community Justice Coalition visit to Hunter Correctional Centre, p 5.

293 Response to the Report from prisoners at Hunter Correctional Centre, appended to correspondence from Luke Grant, Assistant Commissioner, Corrections Strategy and Policy, Corrective Services NSW, to Community Justice Coalition, 27 July 2018, tendered by Mr Brett Collins, Coordinator, Justice Action, 2 August 2018, and Mr John Dowd AO QC, President, Community Justice Coalition, p 6.

294 Response to the report of the Community Justice Coalition visit to Hunter Correctional Centre, p 5.

295 Response to the report from prisoners at Hunter Correctional Centre, p 2.

296 Response to the report from prisoners at Hunter Correctional Centre, p 2.

297 Response to the report from prisoners at Hunter Correctional Centre, pp 6-7.

Inspector of Custodial Services perspective

5.27 The Committee sought the views of Ms Fiona Rafter, Inspector of Custodial Services, on the Hunter and Macquarie Correctional Centres. She advised that she has formed her views based on her visit to each centre, as well as confidential discussions with inmates and the reports of official visitors.[298]

5.28 Ms Rafter advised that ideally a prison will have single cell occupancy, with a long time out of cells, and that despite her concerns about safety and privacy, both Hunter and Macquarie 'seem to be operating quite well'. Indeed, she reported that the inmates she spoke to 'said that they would rather be there than anywhere else in the system.'[299]

5.29 In respect of specific comments from inmates, Ms Rafter recounted that lack of privacy and noise were both raised. The committee asked about snoring and she confirmed that this had been mentioned to her, suggesting that issues with noise were inevitable in a space shared by 25 individuals. Accordingly, she called on CSNSW to examine ways that it can better soundproof the dormitories.[300]

5.30 In terms of positives, Ms Rafter underscored that inmates appreciated the privacy of the bathrooms compared to provisions in a shared cell, as well as the access to outside areas, and especially 'the length of time out of cells … because of the structured day.'[301]

5.31 Ms Rafter underscored the full structured day with meaningful programs, the high staffing levels, and the careful selection of inmates, as all critical to the model's success:

> [T]he implementation of the structured day at that centre … I think is critical. If you are going to have dormitory style I think there are grave risks associated with having lots of people in one dormitory and them not being fully occupied. That would cause issues but that is not the case. There is a full structured day with employment and programs and education on offer. I saw evidence of this at both of those centres and that seems to be appreciated by the inmates who are there … The staffing complement at the rapid builds is high and it needs to be for safety … The other thing that they have done, and I think this was important to do, is they have been very selective in who goes there and that needs to continue to occur. In my opinion, the rapid builds are only suitable for those who have already displayed very good institutional conduct … And continue to do so.[302]

Other stakeholder perspectives

5.32 Other inquiry participants expressed their views on various aspects of the rapid build dormitory prisons, including the issue of privacy and proximity in which inmates reside, surveillance, the structured day, and monitoring and oversight. Each of these is discussed in turn below.

298 Evidence, Ms Fiona Rafter, Inspector of Custodial Services, 8 September 2018, p 10.

299 Evidence, Ms Rafter, 8 September 2018, pp 10 and 11.

300 Evidence, Ms Rafter, 8 September 2018, p 10.

301 Evidence, Ms Rafter, 8 September 2018, p 10.

302 Evidence, Ms Rafter, 8 September 2018, p 10.

Privacy and proximity to others

5.33 Justice Action's detailed critique of the rapid build prisons focused on concerns about privacy and proximity to other inmates, and the problems that could arise from these. Mr Brett Collins, Coordinator, emphasised to the committee his significant concern that the dormitory accommodation's fundamental reduction in inmates' privacy will inevitably have a negative psychological effect for all individuals incarcerated there,[303] asserting:

> It is degrading of the entitlement to privacy. It is one thing for a person to be locked up in an area with two or three people with whom they can negotiate, but at least they can communicate with one another and move around as they want. In the dormitory cell, there are 25 people together … You have damaged people who are in disarray. But they need to have at least privacy. Everybody has their entitlement to return to their room, to have a bedroom where they can sit by themselves and even think. In this dormitory, you do not have that. The psychological effects will be enormous. It is damaging on every prisoner.[304]

5.34 Mr Collins advised that upon inspecting the Hunter Correctional Facility, and speaking with inmates as a member of the Community Justice Coalition, Justice Action formed the view that the dormitory accommodation 'was an unacceptable living area'.[305] Linked to this, Mr Collins was very concerned about the problems that exposure to snoring would generate, telling the committee, 'A common complaint was snoring. They knew who was the worst snorer'.[306] He referred to the death of a prisoner at Grafton Correctional Centre, who was beaten by a cell mate because of his snoring, to underscore the potential for this to be a serious issue in the custodial environment.[307]

5.35 Justice Action subsequently provided research evidence to substantiate its representatives' concern about snoring, citing a study which found that 'sleep disruption is a neglected contributor to aggressive behaviour within correctional facilities' and that 'individuals with disrupted sleep are more likely to engage in verbal or physical reactive aggression once provoked'.[308] According to Justice Action, these findings were corroborated by a 2006 study of incarcerated male adolescents which found that increases in aggression could be predicted by both a reduction in the quality and quantity of inmates' sleep.[309]

5.36 With regard to inmate safety, the committee sought Justice Action's perspective on CSNSW's evidence that the design of the prison allows officers the reach inmates much more quickly than if the inmates were in individual cells. Mr Collins insisted that the very act of having to cohabit with 24 other individuals significantly raises the risks to inmates' safety:

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303 Evidence, Mr Brett Collins, Coordinator, Justice Action, 2 August 2018, p 18.

304 Evidence, Mr Collins, 2 August 2018, p 19.

305 Evidence, Mr Collins, 2 August 2018, p 15.

306 Evidence, Mr Collins, 2 August 2018, p 15.

307 Evidence, Mr Collins, 2 August 2018, pp 15-16.

308 Zlatan Krizan and Anne D Herlache, 'Sleep disruption and aggression: implications for violence and its prevention' (2016) 6(4), *Psychology of Violence* pp 542, 543 and 548, quoted in Answers to questions on notice, Justice Action, received 10 October 2018, p 7.

309 Jane L Ireland and Vicki Culpin, 'The relationship between sleeping problems and aggression, anger and impulsivity in a population of juvenile and young offenders' (2006) 38 *Journal of Adolescent Health* p 649, cited in Answers to questions on notice, Justice Action, received 10 October 2018, p 7.

> The reality is that you have 24 other people around you at any one time. You could very easily shield someone else whilst they were being bashed, or you could stab someone under the cover of somebody else. If you have, I think they said, 17 cameras overhead, you could definitely conceal an assault. Then it becomes it could have been any one of those 24 other prisoners who had caused the damage. I do not think there is any suggestion that you are safer inside a dormitory prison. I think that is an outrageous idea. You are less likely to be safe. I could imagine not feeling comfortable about going to sleep at all when you knew that an opposing gang member looked at you in a wrong way. You would have trouble sleeping easy in that situation.[310]

5.37 Representatives of the Community Justice Coalition were similarly concerned about the potential for dysfunction and violence as a result of the dormitory model, which it described as 'an unacceptable pressure cooker'.[311] It argued that the prisons 'will cause more violence, physical and sexual assault, mental disturbance and bullying' by fostering a violent atmosphere that leaves no refuge for victims as a result of a lack of privacy and continual close proximity to others.[312] Like Justice Action, its representatives raised the potential for snoring to heighten tensions among inmates to the point of violence, with Mr John Dowd AO QC, President, confirming that individual prisoners from the Hunter facility had raised snoring as an issue with him.[313]

5.38 Referring to the research evidence on dormitory style accommodation, the Community Justice Coalition summarised:

> International experiences regarding the use of dormitory-style complexes have revealed significant problems for the security and safety of individuals inside them. In the United States and Romania, it has been reported that issues such as group and personal tension, increased assault against prisoners and staff, sexual assault and theft have increased within these prisons. The lack of privacy and personal space for prisoners in these facilities has exacerbated mental illnesses, which ultimately diminish a prisoners' capacity for reintegration upon release.[314]

5.39 Dr Carolyn McKay, Lecturer in Law at the University of Sydney, acknowledged the evidence before the committee that for many of the prisoners selected for Hunter and Macquarie, the experience has been positive. At the same time, she advised the committee that, 'The literature shows that dormitories are a negative experience overall and they certainly diminish privacy, they diminish health, they diminish the feeling of safety and security.'[315] She summarised the research as indicating that 'prison dormitories are contentious and problematic' and advised that:

310 Evidence, Mr Collins, 2 August 2018, p 17.

311 Submission 30, Community Justice Coalition, p 1.

312 Submission 30, Community Justice Coalition, p 3; see also Evidence, Mr John Dowd AO QC, President, Community Justice Coalition, 2 August 2018, p 23.

313 Evidence, Mr Dowd, 2 August 2018, pp 23 and 27.

314 Submission 30, Community Justice Coalition, p 3.

315 Evidence, Dr Carolyn McKay, University of Sydney Law School, 28 September 2018, p 13.

- In the United States, dormitory style prisons have been found to promote violence, gangs, increased death rates among older prisoners, increased stress and drug use,[316] and uncontrollable and unpredictable noise is a significant problem.[317]
- A 2003 analysis identified a number of positives to dormitories: they can provide companionship, and high cubicle partitions can be almost as effective as a single cell. More negatively, they reduce personal and interpersonal space and privacy, and increase the potential for intimidation, bullying and disturbances.[318]
- In the Australian juvenile justice system, dormitories were demolished and replaced with 'the more humane standard of individual cells',[319] and the 1996 report of the NSW Ombudsman's inquiry into juvenile detention centres found that reliance on dormitory accommodation was not conducive to detainees' safety or privacy.[320]

5.40 More positively, a number of inquiry participants including Mr Dowd and Dr McKay praised the bathroom arrangements in the facilities, precisely because of the privacy they provide in comparison to those in cells. For example, Dr McKay spoke of the 'more humane and hygienic forms of toilets and bathroom facilities.'[321]

Human rights

5.41 Participants linked the issues of privacy and proximity to human rights standards. Relevant human rights instruments and standards were set out in chapter 1.

5.42 The Australian Human Rights Commission submission to the inquiry posited that 'imprisonment in a rapid build dormitory prison carries its own particular human rights risks'

316 J Peguese and R Koppel R 'Managing high-risk offenders in prison dormitory settings' (2003) *Corrections Today* 65 (4), pp 82-85; VC Cox, PB Paulus and G McCain, 'Prison crowding research: The relevance for prison housing standards and a general approach regarding crowding phenomena' (1984) *American Psychologist* 39(10), p 1148; RG Leger 'Perception of crowding, racial antagonism, and aggression in a custodial prison' (1988) *Journal of Criminal Justice* 16(3), pp 167-181; E Grant and P Memmott, 'The case for single cells and alternative ways of viewing custodial accommodation for Australian Aboriginal peoples', (2008) *Flinders Journal of Law Reform* 10, pp 631-647, cited in Submission 37, Dr Carolyn McKay, p 4.

317 C Zoukis, *Inmate Housing in the Federal Bureau of Prisons* (2013), https://www.prisonerresource.com/inmate-housing/inmate-housing-federal-bureauprisons/, accessed 08/02/18, cited in Submission 37, Dr Carolyn McKay, p 4.

318 L Fairweather and S McConville, *Prison Architecture: Policy, Design and Experience*, Architectural Press, (2003) cited in Submission 37, Dr Carolyn McKay, p 4.

319 N Wallace and G Jacobsen, 'Young lives trapped inside the system: Reiby Juvenile Justice Centre is the only home some boys know, such is the level of reoffending', *Sydney Morning Herald*, 28 April 2012, http://www.smh.com.au/nsw/young-lives-trapped-inside-the-system-20120427-1xq62.html, Accessed 15 October 2017, cited in Submission 37, Dr Carolyn McKay, p 4; see also evidence, McKay, 28 September 2018, p 14.

320 Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report 84, (1997) https://www.alrc.gov.au/publications/report-84 https://www.alrc.gov.au/publications/20-detention/living-conditions-services-andprograms-detention, cited in Submission 37, Dr Carolyn McKay, p 4.

321 Evidence, Dr McKay, 28 September 2018, p 12.

and set out a number of concerns, including in relation to the possibility that the design increases risk of violence, bullying and fear among inmates, reduces privacy, and may ultimately impede rehabilitation.[322] Both it and the Community Justice Coalition questioned whether the facilities complied with the UN S*tandard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules) requirements, including that each prisoner must have his or her own cell.[323]

5.43 Dr McKay advised that the Mandela Rules provide that where dormitories are used, the mix of prisoners must be carefully considered to prevent bullying or intimidation that may arise from inadequate separation of groups or the mismatch of inmates.[324]

5.44 The Community Justice Coalition asserted that, 'At their core, dormitory prisons contradict existing standards and the institutional culture of Australian single cell prisons, which allow privacy and personal control … as well as articles 17 and 22 [concerning the rights to privacy and to freedom of association] in the *International Covenant on Civil and Political Rights*. Occupants should have a say in where they feel safe and whom they sleep beside.'[325]

Surveillance

5.45 Another concern was the rapid build prisons' greater emphasis on remote surveillance, with the possibility of less personal interactions with staff than in traditional custodial environments. Dr McKay commented that, 'For the more law-abiding prisoners, that feeling of constantly being surveilled would be a fairly tough one, although I assume you get used to it.'[326] She noted the physical separation created between guards and inmates via the raised viewing platforms, and the research evidence that 'direct supervision' with intermingling and contact between guards and prisoners 'has been found to lead to increased positive relationships, allowing more effective surveillance and better security' in terms of less conflict and violence among inmates and between inmates and staff. [327] Justice Action expressed a similar concern,[328] as did the Community Justice Coalition, which argued that the 24 hour surveillance in the prisons fosters among inmates a heightened sense of unease and suspicion of their surroundings.[329]

Structured day

5.46 The mandatory long structured day of work and learning activities which is intrinsic to the operation of both Hunter and Macquarie was widely recognised as positive. Dr McKay, for example, suggested that it should suit most inmates and commented that, 'There would be nothing worse than being in a prison with nothing to do', while attesting that, her research interviews with inmates in other facilities indicated that a lack of structure and the sense of

322 Submission 23, Australian Human Rights Commission, p 2.

323 Submission 23, Australian Human Rights Commission, p 2.

324 Submission 17, Dr Carolyn McKay, pp 2-3.

325 Submission 30, Community Justice Coalition, p 4.

326 Evidence, Dr McKay, 28 September 2018, p 12.

327 Submission 17, Dr Carolyn McKay, p 5.

328 Evidence, Mr James Hall, Assistant Coordinator, Justice Action, 2 August 2018, p 18.

329 Submission 30, Community Justice Coalition, pp 3-4.

having very little to do is very much an issue.[330] Like others participants, Dr McKay called for structured day approach not to be limited to dormitory prisons, but implemented across the system more broadly, because of its rehabilitative potential:

> [U]ltimately if we are going to be incarcerating people we want to be putting them in a situation where they can hopefully improve their lot in life. Obviously, having structured programs and access to all of those great programs during the day is a very positive aspect of these, but I do not understand why that cannot be made available to other prisons as well.[331]

5.47 Similarly, Mr Michael Pezzano, a former correctional officer of 30 years, argued that a structured day of meaningful activities and minimum time in cells should be available across all prisons.[332] Mr Dowd told the committee that in his view the structured day works well, in that 'keeping them busy is a very good thing'.[333]

5.48 With regard to the education programs undertaken as part of the structured day at Hunter Correctional Centre, Ms Elizabeth Evatt AC, member of the Community Justice Coalition, expressed concern that these were not necessarily tailored to the individual inmate. She called for better assessment of individuals' needs, and better availability of programs to address them.[334]

Selection of inmates

5.49 There was a recognition among participants that a significant aspect of the smooth operation of the facilities to date has been the careful selection of inmates.

5.50 Ms Nicole Jess, Chairperson of the Prison Officers Vocational Branch and Senior Vice-President of the Public Service Association of NSW, pointed out that inmates with significant mental health needs are screened out for selection to the rapid build prisons, and that the inmate population of Hunter is primarily comprised of Special Management Area Placements [SMAP] inmates, that is, protection inmates such as sex offenders, child sexual assault offenders and high profile offenders.[335]

5.51 Mr Dowd made some observations about selection of inmates, suggesting that the environment will suit some and not others. Older inmates, for example, tend to want to live quietly. He suggested, 'That means that if you are careful in selecting, they can work.'[336]

5.52 Ms Evatt proposed that the rapid build prisons are a limited model because of the need to carefully select each inmate:

330 Evidence, Dr McKay, 28 September 2018, p 13.

331 Evidence, Dr McKay, 28 September 2018, p 16.

332 Evidence, Mr Domenic Pezzano, 28 September 2018, p 20.

333 Evidence, Mr Dowd, 2 August 2018, p 25.

334 Evidence, Ms Elizabeth Evatt AC, Member, Community Justice Coalition, 2 August 2018, p 26; Evidence, Mr Dowd, 2 August 2018, p 27.

335 Evidence, Ms Jess, Chairperson of the Prison Officers Vocational Branch and Senior Vice President of the Public Service Association of NSW, 2 August 2018, p 11.

336 Evidence, Mr Dowd, 2 August 2018, p 23.

> It cannot be seen as the long term future for prisons for no other reason than that the prisoners sent there have to handpicked and sorted out so that they can get on with each other. It would not work if all prisons were like that.[337]

Cost

5.53 The Community Justice Coalition also highlighted the very substantial cost of the prisons to the public purse, stating, 'Corrective services claim that this type of prison is the quickest option to address the failure to supply sufficient cells. The project costs over $188 million for each prison, which is nearly half a million dollars per prisoner – the same cost as a normal prison. While these prisons are to be built for the same cost as a normal prison, they are "temporary", supposedly due to be demolished after 5-7 years.'[338]

Other positives

5.54 Mr Dowd acknowledged to the committee other positive aspects to the rapid build prisons, especially the outdoor areas with barbecues that provide a relaxed environment for interactions into the evenings, and the ability to see the sky. He also commented that in his view the attitudes of the staff were very good, from the Governor down.[339] He suggested that the key success of Hunter and Macquarie is that they were built rapidly, within 12 months.[340]

5.55 Dr McKay commended the provision of information technology to each prisoner via the consoles in their cubicles, saying, 'Access to online platforms of legal information and rehabilitation programs are vital for all prisoners … Having digital literacy and programs on digital platforms is very important in contemporary prisons.'[341] She did, however, raise a question as to whether inmates could realistically participate in more sensitive online rehabilitation programs in the limited privacy of their cubicles, should such an expansion of the use of technology occur in the future.[342]

Monitoring and oversight

5.56 There was a recognition among participants that this innovative model needs careful and effective monitoring over time, to identify emerging issues and ensure that problems are addressed.

5.57 Dr McKay, for example, underscored the need for close and rigorous monitoring and assessment of what occurs in the facilities, for example in respect of bullying and intimidation.[343]

337 Evidence, Ms Evatt, 2 August 2018, p 28.

338 Submission 30, Community Justice Coalition, p 3.

339 Evidence, Mr Dowd, 2 August 2018, pp 23 and 24.

340 Evidence, Ms Evatt, 2 August 2018, p 28; Evidence, Mr Dowd, 2 August 2018, p 28.

341 Evidence, Dr McKay, 28 September 2018, p 12.

342 Evidence, Dr McKay, 28 September 2018, p 12.

343 Evidence, Dr McMay, 28 September 2018, p 14.

Mr Dowd recommended an anonymous complaints mechanism as well as independent and regular – perhaps annual or biennial – surveys of both inmates and guards.[344]

5.58 Ms Rafter advised that as Inspector of Custodial Services, she intends to inspect both Hunter and Macquarie Correctional Centres next year, and that each of the two facilities have one official visitor who attends the centre once per fortnight.[345]

5.59 The Australian Human Rights Commission urged the NSW Government to ensure that its rapid build dormitory prisons comply with the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment* (CAT) prior to inspection under the recently ratified *Optional Protocol for the CAT* (OPCAT) (see paragraphs 6.31 to 6.34 in the next chapter concerning the Inspector of Custodial Services' intentions with regard to this inspection regime across all of the state's prisons). The Commission recommended 'that the NSW Government ensure that rapid build dormitory prisons are compliant with Australia's international human rights obligations and with the United Nations *Standard Minimum Rules for the Treatment of Prisoners*. To that end, it should facilitate regular inspection of … [those] prisons.'[346]

Evaluation and future decisions

5.60 Two stakeholders addressed the issues of evaluation and future decisions about the rapid build prisons.

5.61 Dr McKay emphasised the need for ongoing and independent research focusing on inmates' experience, that looks well beyond assaults to other behaviours and the culture that builds within the prisons, and which feeds directly into organisational responses.[347] In this regard she stated:

> [The level of assaults] is obviously an important thing to look at but I do not think it is the only benchmark that we should be looking at because I think we need to be engaging with the actual prison population as well as the prison officers. I think there is going to be a range of other behaviours that may not be so necessarily publicly seen, or available for the prison officers to see. I think we need to be able to have some ongoing independent research with the prison population to find out if there have been issues of standing over, intimidation or bullying that may not necessarily result in assault. I think if we only look at assault figures it may not be very telling about the culture that is developing within the dormitory situation.[348]

5.62 Asked for his response to CSNSW's figures indicating lower rates of assaults among inmates compared with other prisons (see later section in this chapter), Mr Dowd expressed caution that that the Hunter facility is still in its early days, and it could take some time for tensions to rise to the point of violence.[349] He and Ms Evatt argued that there should be no more such centres built at all, and certainly no further decisions about their continuation or replication prior to the publication of evidence from Hunter and Macquarie including longitudinal survey results,

344 Evidence, Mr Dowd, 2 August 2018, pp 25-26.

345 Evidence, Ms Rafter, 28 September 2018, p 2.

346 Submission 23, Australian Human Rights Commission, pp 2-3.

347 Evidence, Dr McKay, 28 September 2018, pp 14 and 15

348 Evidence, Dr McKay, 28 September 2018, p 14.

349 Evidence, Mr Dowd, 2 August 2018, p 24.

reports of complaints mechanisms and of governors, staff and their unions, as well as studies of recidivism rates.[350]

Alternatives to additional prisons

5.63 On a different but related point, Dr McKay highlighted the sheer economic cost of imprisonment on the government as well as the costs borne out in the lifelong impacts of incarceration on people and their future prospects, with its ripple effects on their families, children and communities. Noting the 'massive financial expense' of the rapid build prisons as well as the ongoing costs of incarcerating each prisoner, Dr McKay observed that, 'There are more socially responsible ways of spending $3.8 billion trying to keep people out of prison and with their families and [in] work'.[351] Specifically, she proposed that it would be more productive to:

- ensure imprisonment is used as a last resort
- develop policies that address the root causes of criminal offending
- concentrate funding on diversionary programs and the development of effective non-custodial sanctions
- develop custodial rehabilitation, education and reintegration programs
- further support prisoners post release in terms of housing and employment and continuity with any required rehabilitation programs.[352]

5.64 Dr McKay further highlighted the need for strategies other than incarceration, especially for nonviolent offenders, given that the growth in the prison population is not the result of increased crime. She noted the Department of Justice's work to enhance the use of community corrections orders, commending this as a credible alternative to incarceration that will help to reduce the prison population.[353]

Corrective Services NSW perspective

5.65 While the section at the start of this chapter described the rapid build prisons, this section briefly documents the perspective of CSNSW representatives on a number of matters.

5.66 Mr Severin highlighted to the committee the 'outstanding results' in terms of inmate on inmate assaults documented at the start of this chapter, saying, 'They are so much lower than in any other comparable facility—and this is maximum security. That is quite impressive.'[354]

5.67 Mr Glen Scholes, Director, Custodial Corrections North, underscored the level of engagement among inmates, telling the committee:

350 Evidence, Ms Evatt, 2 August 2018, p 28; Evidence, Mr Dowd, 2 August 2018, p 28.

351 Evidence, Dr McKay, 28 September 2018, p 12; Submission 17, Dr Carolyn McKay, p 8.

352 Submission 17, Dr Carolyn McKay, p 8.

353 Submission 17, Dr Carolyn McKay, p 8; Evidence, Dr McKay, 28 September 2018, p 12.

354 Evidence, Mr Severin, 18 May 2018, p 42.

> I was actually a sceptic for it when they were first being designed … It is a totally different arrangement for those guys in terms of structured day. They are engaged. You can walk through and look at the classrooms that are brimming with inmates. They go into work. All of them work during the day … It is really amazing in terms of the culture and the environment. It is almost a campus-type environment, which is much better in terms of managing inmates. The staff absolutely love it as well. It is really something else.[355]

5.68 Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, attested to a functional culture among inmates, stating, 'We find with the dormitory style that they are falling into little communities and making all their own rules about how they operate in terms of the use of the bathrooms and those types of things.'[356]

Specific issues

5.69 With respect to the issue of snoring, as of September 2018, Mr Corcoran advised that he had received no complaints at all from inmates about this. He also reported that during a recent meeting between he, Mr Scholes and the inmate delegates from Macquarie as part of a review of the rapid build centres, and the issue of snoring was not raised. He went on to highlight the positive feedback gained:

> In fact, it was quite amazing to hear some of the things that they were saying about wanting to stay in these rapid builds, and what they had done for them in terms of changing their lives. Some of these people were very hardened criminals who had extensive and violent histories in prison. Their behaviour had changed to [a very great] extent … [357]

5.70 With respect to privacy and safety, according to CSNSW, 'Rapid Build Prisons are a safer alternative to double-bunking and triple-bunking existing cells, for both staff safety and inmate amenity.'[358] Privacy is enhanced by inmates having their own cubicle, touch screen televisions, lockable storage, as well as the lockable bathrooms which do not exist in traditional prisons.[359]

5.71 With regard to inmates' feedback about their sense of security, Mr Scholes told the committee that in his recent consultation with inmates, they responded very positively when asked about this:

> That was really important … the other day when we were there talking to the inmates we actually asked the question straight up, "How do you feel in terms of your personal security?" There were 30-odd inmates there who were the delegates for their units. They said, "It's great; not a problem." That was actually the terminology. We said, "What would you do to improve it?" The head delegate said, "You guys have really got this right. This is working. We're actually doing something." We said, "What is there that we

355 Evidence, Mr Scholes, 18 May 2018, p 42.

356 Evidence, Mr Scholes, 18 May 2018, p 42.

357 Evidence, Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, Corrective Services NSW, 28 September 2018, pp 52-53.

358 Submission 37, Corrective Services NSW, p 8.

359 Submission 37, Corrective Services NSW, p 8.

should otherwise do differently?" The answer was, "Could we get some access to tertiary studies?"[360]

5.72 As an indicator of inmate satisfaction with the facilities, the committee sought information from CSNSW on the numbers of inmates at Hunter and Macquarie who had sought to be transferred out of them. As of March 2018, 19 inmates had sought to transferred from Macquarie, while 24 had sought to be transferred from Hunter.[361]

5.73 Asked whether these requests were made because the nature of a dormitory style prison was difficult for those inmates, Mr Corcoran responded, 'I think mainly it was the level of activity in those facilities. There is a 15-hour structured day. For some people who have been used to being locked up for 18 hours a day, that level of activity was just way too much for them.'[362]

Committee comment

5.74 The evidence that the committee received from CSNSW about the rapid build dormitory prisons was they are working exceptionally well, as evidenced in highly positive feedback from inmates and markedly lower rates of assaults and use of force. When the committee visited both centres in August 2018 we saw for ourselves that they seemed to be operating effectively and the inmates we spoke to attested to a positive experience there. On the other hand, other inquiry participants were cautious about the model.

5.75 While some participants took a highly sceptical, indeed critical position based at least in part on the overseas literature, the Inspector of Custodial Services advised that the centres seem to be operating well, and that the inmates she had spoken to expressed a strong preference to be there. At the same time, she also relayed to the committee inmate concerns about lack of privacy and noise, including snoring – the very concerns which were the focus of other inquiry participants. While these concerns do not appear to have reached the tipping point of violence, they must still be acknowledged, carefully watched, and as far as possible, addressed.

5.76 Like both the Inspector and the CSNSW, the committee is in little doubt that the success of the centres to date is founded on several essential features of the rapid build prison model: the structured day of work and learning which keeps inmates fully and productively occupied and out of cells for long hours and which tires them out; the high intensity, comprehensive security and surveillance systems; the high staff levels; and the very careful vetting of each inmate to ensure that only those who are suitable for this novel environment are selected.

5.77 We emphasise that each of these features is essential to the success of the rapid build dormitory prison model. In addition, we recognise that the temptation to downgrade even one element places the whole model at risk, with the potential for very serious consequences in a prison environment.

5.78 It is early days in the life of both centres, and while we acknowledge the numerous positive indicators to date, the committee underscores that this is a work in progress. Its risks must be managed, and the experience of inmates and staff must be carefully monitored and evaluated.

360 Evidence, Mr Scholes, 28 September 2018, p 53.

361 Answers to questions on notice, Corrective Services NSW, received 13 June 2018, p 24.

362 Evidence, Mr Corcoran, 18 May 2018, p 42.

5.79 In terms of managing risks, we recommend that the NSW Government ensure that each of the defining features of the rapid build dormitory model, including its structured day, extensive security, high staffing levels and careful selection of inmates, remain for the life of these prisons.

Recommendation 5

That the NSW Government ensure that each of the defining features of the rapid build dormitory model, including its structured day, extensive security, high staffing levels and careful selection of inmates, remain for the life of these prisons.

5.80 It appears that the structured day is especially important to the model's success, but it is, and should be, heavily reliant on investment in quality education programs and employment programs. It is essential that these activities not just be programs for the sake of occupying inmates, but be meaningful, with a long term purpose that will benefit inmates in the real world when they re-enter it. The signals we received in this respect during our site visits were positive, and CSNSW's commitment to this principle is evidenced in its submission to the inquiry, but again we warn against any cost cutting or fading of commitment to it. The committee thus recommends that the NSW Government ensure that the employment and training elements of the structured day be meaningful, with the long term purpose of equipping inmates for life in the community, and that these remain for the life of these prisons.

Recommendation 6

That the NSW Government ensure that the employment and training elements of the rapid build dormitory prisons' structured day be meaningful, with the long term purpose of equipping inmates for life in the community, and that these remain for the life of these prisons.

5.81 Given the risks, and the novelty of the rapid build dormitory model, the committee considers that it will be very important that there be independent and close monitoring of the prisons' operations as well as inmate experiences via either the Inspector of Custodial Services or another independent third party. It was not clear from CSNSW's submission that these new prisons would be subject to any more than the standard levels of monitoring and oversight, and the Inspector of Custodial Services advised that her plan is to inspect each of the rapid build next year, with official visitors attending once per fortnight.

5.82 In the committee's view, this monitoring must be much more rigorous and exacting than that for which the Inspector is currently resourced. In the following chapter the committee makes two recommendations regarding oversight that will enable appropriate oversight of the rapid build prisons (recommendations 12 and 13 on page 107).

In addition to monitoring and oversight, we underscore the need for a comprehensive independent evaluation of the rapid build dormitory prisons. The proposed evaluation envisaged by CSNSW and conducted by its Corrections Evaluation Research and Statistics branch on the face of it seems promising, but we were not advised what has been decided, and like other stakeholders, we see the value in the involvement of an independent body in this

evaluation to ensure impartiality. We emphasise that this evaluation must gather detailed information from the perspectives of inmates and staff, and we consider that the need for transparency is such that all evaluation reports should be tabled by the Minister in both Houses of Parliament within one month of receipt.

Recommendation 7

That, with respect to the evaluation of the rapid build dormitory prisons, Corrective Services NSW:

- formally engage the input of an independent research body, to ensure impartiality
- include detailed information gathered from the perspective of both inmates and staff.

Recommendation 8

That the Minister for Corrective Services table all evaluation reports on the rapid build dormitory prisons in Parliament within one month of receipt.

5.83 With regard to the recurring concern about noise among stakeholders who had spoken with inmates, like the Inspector of Custodial Services, we recommend that Corrective Services NSW investigate and implement ways to better mitigate the problem of noise in dormitories.

Recommendation 9

That Corrective Services NSW investigate and implement ways to better mitigate the problem of noise in the rapid build prison dormitories.

5.84 Our visit to both centres also highlighted to the committee that the communal areas that form part of the dormitory, including outside areas, to which inmates have continual or extended access, afford the inmates a great deal of time 'out of cell.' This, as well as the barbecue areas, the extended access to telephones and ability to make longer phone calls than at other centres, and by no means least, the private showers, are very welcome features as they add dignity and humanity to people's experience of custody. In addition, it makes sense that by encouraging 'prosocial behaviour', these features are likely to assist inmates' reintegration into their families and communities when they are released, which will in turn likely help reduce reoffending.

5.85 In light of the emerging evidence of the significant value of the structured day, with its meaningful employment and education activities at the rapid build dormitory prisons, the committee considers that it should be available for all inmates capable of it across the prison system. This will address the pervasive problem of boredom and also improve inmates' skills. While we acknowledge the inherent expense of such a reform, and that there will be some for whom it is not appropriate, we anticipate that if implemented well, it will yield strong results in terms of improving inmates' experience of prison, improving prison safety and security, as well as reducing reoffending.

Recommendation 10

That the NSW Government implement the structured day model that currently operates in the rapid build dormitory prisons, with meaningful employment and training programs, across the prison system.

5.86 Finally, we are of the belief that the rapid build dormitory prisons can only ever be a small, or boutique, part of the prison system. They are not best practice for the prison system at large. Best practice was identified by the Inspector of Custodial Services as secure single cell accommodation and maximum time out of cell in structured engagement.

Chapter 6 Onsite monitors and independent oversight

The major theme of this report has been the need for better governance, accountability and oversight in respect of private prisons, and the committee recognises that this will also benefit the broader correctional system. In chapter 2, where the committee highlighted how problems with Parklea Correctional Centre's culture lay at the heart of the crisis that occurred there, we drew a link between organisational culture and the quality and standards of care provided in prisons. We also observed that a particular risk accompanying the private sector model is that standards of safety and quality may erode, because of the inherent tension between minimising costs and ensuring quality, holistic service provision. There the committee made the finding that the current independent oversight mechanism for the NSW corrections system was inadequate to prevent and respond to the significant and systemic problems of leadership and culture that occurred at Parklea Correctional Centre.

In this chapter the committee explores the critical need for more effective oversight in the New South Wales correctional system via the mechanisms of onsite contract monitors and the Inspector of Custodial Services.

First it sets the scene by documenting the relevant findings and recommendations of the 2009 Legislative Council inquiry into privatisation of prisons, then it considers the role played by onsite contract monitors of private prisons. It then turns to an examination of the current functions and resourcing of the Inspector of Custodial Services.

2009 Legislative Council inquiry

6.1 The significance of rigorous qualitative monitoring and oversight of private prisons as a means of ensuring quality service delivery in private prisons was well recognised in the 2009 Upper House inquiry into the privatisation of prisons. A brief overview of the inquiry was provided in chapter 1.

6.2 Highlighting the value of onsite monitors as a means of increasing the accountability of private operators, the General Purpose Standing Committee No. 3 recommended that the then Department of Corrective Services employ onsite monitors at all private prisons in New South Wales.[363]

6.3 In addition, the committee underscored the critical importance of an independent prisons inspectorate, and recommended that the NSW Inspector General of Prisons be reinstated to report on both public and private prisons. It further recommended the establishment of a parliamentary oversight committee to enhance independent oversight via the taking of evidence and inspection of public and private prisons.

6.4 The first and third of these recommendations were implemented. The second was subsequently implemented via the establishment of the Inspector of Custodial Services from 2012.

[363] Legislative Council, General Purpose Standing Committee No. 3, *Inquiry into the privatisation of prisons and prison-related services* (2009), pp 97-100.

Onsite monitors

6.5 As noted in chapter 1, CSNSW's contract monitors, situated in its Operational Performance Review Branch (OPRB), are an important component of its corporate governance system for private prisons. The role of monitors is explained in paragraphs 1.31 to 1.34.

Stakeholder perspectives

6.6 Associate Professor Jane Andrew and Dr Max Baker of the University of Sydney Business School raised a number of issues in respect of monitors. As noted in chapter 4, they identified onsite monitors as 'absolutely critical' to the ability of CSNSW to see what is going on inside a correctional centre, and argued that monitors also provide an important counterforce to the tendency in private prisons to focus on meeting key performance indicators at the expense of attention to the dynamics of a prison.[364]

6.7 At the same time, these participants raised a number of concerns about the current system for contract monitoring. Associate Professor Andrew suggested to the committee that '[W]hile there is much talk of monitoring, it was impossible for us get an accurate picture of the role of the monitors in the prisons, including the amount of time they spend there and with whom. Further, any reports produced by the monitors are quarantined from the public view.'[365] She and Dr Baker observed that it is difficult to determine how contract monitors undertake their duties and whether they are onsite with the regularity required to provide proper oversight.[366] In addition, monitoring practices are not uniform across the current contracts or the sector more broadly.[367]

6.8 Associate Professor Andrew told the committee that, 'We think there should be transparent and uniform monitoring arrangements across the sector. That would be something that we would be pushing very hard for, and that they are on site. I read the evidence previously in this inquiry and I was really confused about what they actually do and how long they spend time there. They are a critical feature of the success of any private jail.'[368] Accordingly, the researchers recommended that:

- transparent and uniform monitoring arrangements should be in place to provide effective and comparable oversight across all private prisons in New South Wales
- monitors should undertake their work onsite and the details of time spent at each prison should be publicly available.[369]

6.9 In response to a question from the committee as to whether contract monitors must have sufficient seniority and authority to be effective in their role, Associate Professor Andrew enthusiastically concurred:

364 Evidence, Associate Professor Jane Andrew, University of Sydney Business School, 28 September 2018, pp 38-39.

365 Evidence, Associate Professor Andrew, 28 September 2018, p 35.

366 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 9.

367 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

368 Evidence, Associate Professor Andrew, 28 September 2018, p 38.

369 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

> We agree 100 per cent. That is the only way they can do their job. They have to be able to talk to whoever they want at whatever point they want. It cannot be a curated insight into the gaol … It has to be a real substantive engagement.[370]

6.10 Interestingly, Mr Pieter Bezuidenhout, General Manager of the GEO Group Australia, called for CSNSW monitors to be employed across the entire correctional system, in the interests of true accountability and fairness:

> What has happened at Parklea and Junee is we have departmental monitors on site so they will know whether we do the right thing, whether we report whatever happens and make sure that we follow all operational procedures … That same model should be implemented: if you want a true comparison, make sure that everybody is reporting the facts and reporting accurately. For that reason they will have to employ monitors across the public system.[371]

Corrective Services NSW perspective

6.11 As noted in chapter 2, as part of a broader defence of its actions in response to the security and contraband problems at Parklea, CSNSW asserted that Parklea is the most monitored prison in the state. It argued that the monitoring regime there worked effectively because CSNSW was already aware of the correctional centre's contraband and security problems and taking action via the wellbeing review when media alarm prompted by the You Tube video arose (see paragraphs 2.1 to 2.5 for the sequence of events). Corrective Services insisted that, 'This is a sign that the monitoring regime is successful.'[372]

6.12 Similarly, whilst defending the accountability of private prisons more broadly, Mr Severin underscored the presence of onsite monitors as a key aspect of its accountability regime, stating, '[T]he reality is we have onsite monitors seven days a week, between 12 and 16 hours a day, who monitor the performance of the operator in situ and obviously report accordingly.'[373]

6.13 Mr Severin further advised that CSNSW has one monitor onsite at Junee at any point in time, and up to three at any point in time – although not consistently – at Parklea.[374]

6.14 CSNSW subsequently provided further details of monitors' role and working arrangements:

> In accordance with section 242 of the Crimes (Administration of Sentences) Act 1999, monitors have free and unfettered access at all times to all parts of the correctional centre, to all correctional centre records, to all offenders held in custody in the correctional centre and to all persons employed at the correctional centre.
>
> Monitors are full-time employees and are on duty for an eight hour shift/five days per week. Monitors are rostered across varying shifts, including weekends. Varied rostering ensures that operational performance and contractual compliance is monitored across

370 Evidence, Associate Professor Andrew, 28 September 2018, p 40.

371 Evidence, Mr Pieter Bezuidenhout, General Manager, 18 May 2018, p 9.

372 Submission 37, Corrective Services NSW, p 28.

373 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 18 May 2018, p 24.

374 Evidence, Mr Severin, 28 September 2018, p 46.

> all time periods on a cyclic basis. Shift patterns depend on a number of factors including risk, the operational area being assessed and the availability of resources.
>
> Although Monitors are not deployed 24 hours per day, they can attend the prison or other relevant locations at any time.
>
> Monitoring positions at Parklea and Junee are also backfilled to cover leave and planned absences.[375]

6.15 In light of information contained in Associate Professor Andrew and Dr Baker's 2016 report on the private correctional systems across Australia suggesting that Corrective Services NSW has not always opted to provide an onsite monitor at Junee Correctional Centre despite this being provided for under the contract with the operator,[376] the committee questioned Mr Severin as to whether monitors are actually onsite on a full time basis at Junee.[377] CSNSW subsequently advised that based on an assessment of the risk profile of Junee, the monitor has 'at times' attended on a visiting basis only:

> At least one full-time Corrective Services Monitor has … been dedicated to monitoring Junee Correctional Centre since 2009. For the majority of this period, the Junee Correctional Centre Monitor has been deployed onsite; however, at times this has occurred remotely, with the Junee Monitor attending the centre on a visiting basis.
>
> At all times, the monitoring of Junee Correctional Centre has met requirements, including the review of Performance Linked Fees and the development of regular performance reports.
>
> The decision to allow monitoring to occur on a visiting basis was based on Junee's risk profile. Throughout the life of the contract, Junee has achieved the majority of performance targets and only minor compliance issues have been identified. As a regional correctional centre, Junee also has a stable workforce and is not located in a high density built environment. The inmate cohort at Junee is also more stable than Parklea, since Parklea fills a metropolitan remand function. From time to time additional staff are deployed to undertake monitoring functions at both Parklea and Junee.[378]

6.16 CSNSW also emphasised to the committee the experience and qualifications of monitors and other OPRB staff:

> The OPRB consists of a highly qualified team of correctional staff with extensive operational experience, who monitor and report on correctional centre operational performance and delivery. [The monitoring] teams and senior CSNSW contract management staff have a combined total of more than 285 years of front line operational service with CSNSW and have worked across a number of operational and specialist custodial roles within CSNSW.[379]

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375 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, p 49.

376 Jane Andrew, Max Baker and Philip Roberts, *Prison Privatisation in Australia: The State of the Nation*, The University of Sydney Business School (2016), p 22.

377 See evidence, Mr Severin, 28 September 2018, pp 45-46.

378 Answers to questions on notice, Corrective Services NSW, received 16 October 2018, pp 48-49.

379 Submission 37, Corrective Services NSW, p 29.

Inspector of Custodial Services

6.17 The role, functions and powers of the Inspector of Custodial Services are documented in chapter 1. The oversight over the Inspector, provided by NSW Parliament's Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (hereafter the Joint Committee) is also explained there.

6.18 As they did with contract monitors, Associate Professor Andrew and Dr Baker underscored the importance of the Inspector of Custodial Services in scrutinising the qualitative aspects of prison operations and keeping private prisons accountable to the public:

> The Inspector of Custodial Services deals with the nature, processes and outcomes of incarceration and reviews conformity with KPIs set for prisons. As well as compliance with quantitative targets, attention is also paid to qualitative factors including workplace culture and satisfaction of prisoners' needs … This work provides an important public accountability function.[380]

6.19 Associate Professor Andrew and Dr Baker advised the committee that as of 2017 the Inspector of Custodial Services had published no reports on either Parklea or Junee Correctional Centres as reviews of those prisons had not yet taken place. They concluded that, 'whilst the accountability of private prisons in New South Wales may improve in the near future, a crucial form of oversight is still not in use.'[381] Accordingly, they recommended that:

- the government increase resources available to the Inspector of Custodial Services to ensure appropriate oversight
- the Inspector undertake and report publicly on a minimum of four prisons per year
- inspections include routine discussions with custodial staff about working conditions and training.[382]

6.20 Dr Carolyn McKay of the University of Sydney Law School also identified a need for additional resources to enable the inspectorate to provide an appropriate level of oversight in respect of the rapid build dormitory prisons which were the focus of Dr McKay's submission:

> Models of prison oversight should be independent, transparent, accessible as well as responsive. New South Wales … has the Inspector of Custodial Services and perhaps the first consideration ought to be whether this service could be further resourced and expanded to support regular and independent assessment, monitoring, reporting and response to specific rapid build prison/dormitory issues, given the experimental nature of these new facilities.[383]

6.21 With regard to the official visitors, who as noted in chapter 1 fall within the functions of the Inspector of Custodial Services, Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, alluded to deficits in the capacity of official visitors to receive and satisfactorily respond to complaints from people in custody:

380 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 5.

381 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, p 12.

382 Submission 11, Associate Professor Jane Andrew and Dr Max Baker, pp 5-6.

383 Answers to questions on notice, Dr Carolyn McKay, University of Sydney Law School, received 12 October 2018, p 3.

> I can certainly say that I know of clients who have complained to the Official Visitor, who is under the auspices of the Inspector of Custodial Services. That is typically the first port of call for any inmate with a grievance that they cannot resolve locally. I know that in some instances that has happened and something we often hear, unfortunately from our clients, is that they have spoken to someone locally at the jail and it has fallen on deaf ears, then they have had to make numerous calls to the Official Visitor. Sometimes they are able to help and other times they are not. I think there are recognised barriers for what they can do to intervene.[384]

6.22 The Inspector, Ms Fiona Rafter, gave evidence to the committee in September 2018. Ms Rafter emphasised that her organisation's role is not investigative, but rather, one of inspection:

> The Inspector's role is not specifically an investigative function. Those functions are performed by a number of other agencies. We are an inspectorate. We have standards that we inspect to. Our role is to inspect those centres once every five years. We do that in accordance with our standards ... We are not resourced and we do not have the remit to investigate every incident that happens within Corrective Services; there are others that have that jurisdiction … The focus of the inspectorate is around system improvements and not investigation of individual matters.[385]

6.23 Ms Rafter further explained that a 'theme methodology' is currently employed in inspections, with the themes determined on the basis of complaints data and potential issues emerging across the system.[386]

6.24 As noted in chapter 1, Ms Rafter advised that under the Inspector's official visitor program, Parklea Correctional Centre has four official visitors who each visit the centre once a fortnight, such that the prison is visited by an official visitor twice per week.[387]

6.25 Beyond inspections, the committee asked Ms Rafter about her ability to take a more proactive role and initiate investigations under section 6(1)(e) of the *Inspector of Custodial Services Act 2012* (the Act), which expresses a function 'to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interests of any person or in the public interest to do so'. Ms Rafter responded that while she does have this ability she has not exercised it, citing the Act's specific requirements in section 6(1)(a) and (b) to inspect each adult correctional centre once every five years, and each juvenile correctional centre once every three years as the rationale for her approach, along with inadequate resourcing.[388]

6.26 Asked how the inspectorate's thematic review of one part of any prison's operation satisfies the Inspector's obligations under section 6(1)(a) of the Act, Ms Rafter acknowledged her own concerns that the thematic approach impeded the full inspection of prisons. She advised that she has modified the methodology over time so that while onsite, the inspection team examines not only the issues related to the chosen theme, but all aspects of a correctional centre.[389] She

384 Evidence, Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, 2 August 2018, p 35.

385 Evidence, Ms Fiona Rafter, Inspector of Custodial Services, 28 September 2018, p 4.

386 Evidence, Ms Rafter, 28 September 2018, p 5.

387 Evidence, Ms Rafter, 28 September 2018, p 2.

388 Evidence, Ms Rafter, 28 September 2018, p 4.

389 Evidence, Ms Rafter, 28 September 2018, p 6.

explained that the thematic reviews are carried out by a team of four or five people, and described the current methodology, used in 2018, by way of example:

> [W]e have just finished an inspection of seven centres where we have been looking at rehabilitation services. That has involved being on site at those seven centres for multiple days. As part of that inspection we would be focused on the areas of employment, education and program delivery. But, in addition to that, we would look at their reception function, the accommodation and all of the matters that would affect the treatment and conditions of the inmates at that centre.[390]

6.27 Ms Rafter further advised the committee that she intends to revise the approach to inspections once the first five year cycle for inspections concludes in October 2018, moving away from purely thematic reports to standalone prison inspections instead. She explained that the reason she continued with the thematic methodology, even though she had moved away from the very narrow approach that the first inspector had introduced, was because of the number of centres required to be inspected after she commenced in the role in order to meet the statutory time limit of October 2018. Only ten out of the required 60 inspections had taken place when she took up the role. When she appeared before the committee, five inspections of smaller facilities remained, and Ms Rafter gave an assurance that these would be completed to time.[391]

6.28 In addition, Ms Rafter advised that for the next five year cycle she intends to improve the monitoring of correctional centres' progress in implementing her recommendations, explaining that, '[W]hen we commence the new methodology we will be able to obtain a better baseline of what is happening at a centre and then monitor the progress of that individual centre.'[392]

6.29 Ms Rafter advised the committee that she would welcome additional resources for the inspectorate, stating that when she commenced in the role, the inspectorate had four staff (excluding herself), and that this has increased to 12.2 full time equivalent staff (including herself). The majority of these staff are focused on inspections.[393]

6.30 Indeed, Ms Rafter indicated that she does not have sufficient resources to fully deliver on her statutory functions, and advised that she had a made a submission to the NSW Government, under consideration at the time of her hearing, seeking additional funds to enable her to do so.[394]

6.31 Specifically, Ms Rafter advised that her submission was framed in the context of the *Optional Protocol to the Convention Against Torture* (OPCAT), which was ratified by the Australian Government in December 2017 and is now to be implemented throughout Australian jurisdictions by 2020, under which she desires her organisation to implement OPCAT style inspections for New South Wales.[395]

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390 Evidence, Ms Rafter, 28 September 2018, p 6.

391 Evidence, Ms Rafter, 28 September 2018, p 6.

392 Evidence, Ms Rafter, 28 September 2018, p 9; Correspondence from Ms Rafter to committee providing clarifications to evidence, received 15 October 2018, p 3.

393 Evidence, Ms Rafter, 28 September 2018, p 6; Correspondence from Ms Rafter to committee providing clarifications to evidence, received 15 October 2018, p 3.

394 Evidence, Ms Rafter, 28 September 2018, p 8.

395 Evidence, Ms Rafter, 28 September 2018, p 8.

6.32 As noted in chapter 1, OPCAT is a human rights instrument that builds on the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishmen*t (CAT), whose key aim is to prevent the mistreatment of people in detention. OPCAT assists in the implementation of CAT and helps signatories to meet their obligations under it. As a signatory, Australia has committed to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments.[396] The Australian Government has indicated that multiple bodies from the federal, state and territory governments will fulfil the NPM inspection function in Australia. Each Australian jurisdiction will be responsible for determining which body or bodies will undertake this function in respect of its own places of detention.[397]

6.33 Notably, in its submission to our inquiry, the Australian Human Rights Commission called on the NSW Government to fulfil its human rights obligations under CAT and OPCAT and 'ensure that its rapid build dormitory prisons comply with the CAT prior to inspection under OPCAT. Further, the Commission emphasised that the NSW Government should also conduct regular inspections to ensure that prisons are compliant with human rights standards as a matter of good practice.'[398]

6.34 Dr McKay addressed OPCAT at some length in her submission, and like the Australian Human Rights Commission, highlighted its potential to protect the rights of inmates of the rapid build dormitory prisons. She noted that at the time of her submission to the inquiry (February 2018) she understood that 'no current [New South Wales] prison oversight body has a specific mandate pursuant to OPCAT.'[399]

Committee comment

6.35 Almost ten years on from the 2009 Upper House inquiry that recognised the importance of rigorous oversight to ensure quality service delivery in private prisons, the committee considers that our systems for qualitative monitoring and oversight in New South Wales are not yet nearly effective enough. As we noted in chapter 2, the crisis that occurred at Parklea highlights what can go wrong when there is both insufficient accountability and inadequate qualitative oversight of a correctional centre.

6.36 The committee has underscored at several points of this report that optimally functioning qualitative oversight of private prisons is essential to managing the risk associated with the private sector model, that standards of safety and quality may erode. There is a great deal at stake in the custodial environment, in terms of inmates' safety and wellbeing, if service quality is not adequately protected.

396 'OPCAT: Optional Protocol to the Convention against Torture', Australian Human Rights Commission (19 June 2018), https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture.

397 Australian Human Rights Commission, *OPCAT Consultation Paper*, Stage 2 – June 2018, p 5, https://www.humanrights.gov.au/sites/default/files/document/publication/20180618_OPCAT_Stage2_ConsultationPaper_Interim_report.pdf

398 Submission 23, Australian Human Rights Commission, pp 2-3.

399 Answers to questions on notice, Dr Carolyn McKay, received 12 October 2018, pp 3-5.

6.37 The very fact that human rights instruments have been developed to protect the rights and freedoms of people in custody highlights the fact of their vulnerability to cruel, inhuman or degrading treatment and the imperative to protect their safety and dignity. Indeed, the risks of abuse or simply the erosion of standards of care are high in any prison, given that they are closed and highly controlled institutions characterised by fortified lines of power and authority. One can easily recognise the potential for a problematic culture to grow there, as they did at Parklea.

6.38 In this context, highly effective mechanisms of monitoring and oversight are essential to act as counterforces to some of the very problems exhibited at Parklea Correctional Centre including poor leadership and decision making, low level corruption, staff misconduct, lapses and breaches in security, and underpinning all of these systemic issues, a highly problematic culture.

6.39 While apparently matters are now under control at Parklea, the period of transition and consolidation under a new operator will escalate the risks for some time that problems will recur. In addition, the state will soon have its third private prison, the Clarence Correctional Centre, which will commence operating in 2020. In the committee's view is absolutely critical that we have more effective systems of qualitative oversight in place for the private correctional system in New South Wales.

6.40 Looking beyond private prisons, the committee recognises that that improvements in oversight – especially via more effective independent inspections – will also benefit the rapid build dormitory prisons, as well as the broader public correctional system. In chapter 5 the committee concluded that independent and close scrutiny of the Hunter and Macquarie Correctional Centres' operations as well as inmate experiences there will be critical, given the novelty of the rapid build dormitory model and the risks to inmates' safety and wellbeing that accompany it. In chapter 4 we validated participants' concern that the performance measurement system being put into place across the corrections system, although valuable, carries the risk of reducing service quality and standards by encouraging too great a focus on achieving key performance indicators, rather than the dynamics and culture of a prison. Thus, as performance measurement becomes embedded across the correctional system, onsite monitors and independent inspections will be more important than ever to mitigate this risk.

6.41 Looking specifically at contract monitors in private prisons, the committee was satisfied with the powers of monitors within a correctional centre, and we take at face value their significant experience in corrections. However we were provided with little information regarding their seniority, as well as the level of authority that they exercise in practice. Evidence of the lack of adequate oversight via monitors in the lead up to the crisis at Parklea is CSNSW's allocation of a single monitor there until 2017, despite escalating problems in 2016 and a surge of serious misconduct investigations, when it increased to three monitors. The very fact that three monitors were required from 2017 raises questions as to the adequacy of only one in the years before that time. Had there been more monitors before 2017 would the problems at Parklea have escalated to the point that they did?

6.42 In respect of the monitor at Junee, following our final hearing the committee was informed that at times this role has not actually been located on onsite, but rather, has been provided on a visiting basis. The committee acknowledges that this decision was based on a risk assessment taking account of a number of factors, but we question its appropriateness and have not been informed as to whether this remains a visiting role. This is frustrating and concerning, and it fits with a broader pattern in the information we received from CSNSW about the contract

monitors, which was at times defensive, confusing and contradictory. In the committee's view, this is not good enough.

6.43 Like Associate Professor Andrew and Dr Baker, we are of the view that arrangements in respect of monitors, the way they work, what they actually do and very importantly, what they report back to CSNSW are all opaque. Also impervious are the processes within the OPRB in which the monitors sit, in terms of what is done with the information monitors gather and feed back to CSNSW, and decision making about the actions then taken. Surely what occurred in this space in 2016 and early 2017 as the problems at Parklea escalated would illuminate much for this inquiry, but the committee has had little information here beyond CSNSW's assurances that its monitoring was effective because it was already aware of the prison's contraband and security problems and was addressing them when the YouTube scandal broke. However, the fact that the YouTube video prompted much more significant intervention by CSNSW, means significant questions remain for the committee about the effectiveness of CSNSW's governance systems.

6.44 While CSNSW has furnished the committee with information about monitors, we nevertheless believe that the Parliament and the public need to know more about this aspect of the governance of private prisons. In addition to keeping private operators more accountable, greater transparency in respect of the activities and findings of monitors, and CSNSW's decisions and actions in respect of them, will also keep Corrective Services itself more accountable to the public for its governance of the private corrections system.

6.45 With all these considerations in mind, the committee recommends that Corrective Services NSW provide detailed information each year to the Minister for Corrective Services on the activities and observations of its contract monitors, and on Corrective Services NSW's own decisions and actions in response to monitors' observations, and that this report be tabled in Parliament within one month after it is received by the Minister.

Recommendation 11

That Corrective Services NSW report annually to the Minister for Corrective Services detailed information on the activities and observations of its contract monitors for privately operated prisons, and on Corrective Services NSW's own decisions and actions in response to monitors' observations, and that the report be tabled in Parliament within one month of receipt by the Minister.

6.46 Turning to independent inspections, it is clear to the committee that at present the Inspector of Custodial Services is not able to provide the standard of oversight necessary for the New South Wales correctional system, both public and private. This is evident in the narrow interpretation applied to its functions, in the thematic rather the rigorous methodology for inspections, and in inadequacies in official visitors' capacity to receive and resolve complaints.

6.47 It is also evident in the extraordinarily long delay – well over two years – in finalising the Inspector's report on the use of force, separation, segregation and confinement in juvenile justice centres, a matter which the committee pursued at length via the Budget Estimates process before the report was published in November 2018.

6.48 The committee welcomes the Inspector's intention, in the new five year cycle under the Act, to move from thematic reviews to standalone prison inspections, and the improvements Ms Rafter flagged to monitoring progress on the implementation of her recommendations. We also support her intention to conduct OPCAT-style inspections, in which we see great merit. Evidently, OPCAT-style inspections will be more systematic and rigorous, and the committee appreciates that they will be framed around human rights standards. The committee has not been advised of any decisions yet made in New South Wales with respect to implementing OPCAT, however, in our view, at a minimum, the NSW Government must fund the inspectorate to implement the OPCAT inspections framework.

Recommendation 12

That the NSW Government resource the Inspector of Custodial Services to implement the state's obligations under the *Optional Protocol to the Convention Against Torture* via its inspections regime.

6.49 Beyond the issue of adequate resourcing for the inspectorate, the committee recognises that the deficits in the oversight the Inspector of Custodial Services is able to provide also reflect issues with the functions, and potentially also the powers, of the Inspector, as defined in the Act. The committee considers that at the end of the Inspector's first five year cycle of inspections, it is reasonable and sensible that a review of the Inspector's functions and powers occur. In order to consider the best model, we recommend that the performance of the inspectorate to date be examined.

6.50 One potential model is that the inspectorate become an arm of the Law Enforcement Conduct Commission, in order to make use of that organisation's expertise and resources, whilst remaining at arm's length from the corrections system. Further models will exist in other jurisdictions. It is not for the committee to determine the most appropriate model; we simply recommend that a review of the performance, functions, powers and resourcing of the Inspector of Custodial Services occur as soon as possible, in the first half of 2018, with a view to building a more effective model of independent oversight for the New South Wales corrections system. Further, we consider that legislation enabling this model should be introduced by the end of 2019.

Recommendation 13

That the NSW Government:

- review the performance, functions, powers and resourcing of the Inspector of Custodial Services, in order to enhance the effectiveness of that office
- conduct the review in the first half of 2019
- ensure that any resultant legislative changes are introduced to Parliament by the end of 2019.

Chapter 7 Other issues

In this final chapter the committee examines two further and related issues that emerged during the inquiry: the under resourcing of health services across the New South Wales corrections system, and poor resourcing of mental health services, especially forensic mental health beds.

Under resourcing of Justice Health

7.1 In chapter 2 the committee documented evidence of inadequate health care provided at Parklea Correctional Centre (see paragraphs 2.21 to 2.23). It was clear to the committee, however, that beyond any particular issues at Parklea itself, the adequacy of health care services across the entire correctional system is a significant issue of concern.

7.2 As a rule, health care services for people in the correctional system or in the forensic mental health system are provided by the Justice Health and Forensic Mental Health Network (hereafter Justice Health).[400] Justice Health is part of the broader health system and reports to the Minister for Health.

7.3 The NSW Nurses and Midwives Association (NSWNMA) highlighted to the committee that the health care needs of the prison population are both significant and complex, with rates of mental health conditions, drug and alcohol issues and hepatitis C all substantially higher than in the general community. It noted the well-substantiated evidence that the lives of those in contact with the criminal justice system are often characterised by multiple disadvantage in terms of disrupted family background, abuse and trauma, parental incarceration, poor educational attainment, limited employment opportunities, unstable housing, domestic violence, and previous episodes of imprisonment. The Association cited a Justice Health report which observed that, 'With these multiple risk factors for poor health, it is hardly surprising that prison inmates are further characterised by physical and mental health far below that enjoyed by the general population.'[401] It also noted the highly demanding nature of health care delivery in the correctional environment, including the risks to staff safety.[402]

7.4 The NSWNMA challenged the adequacy of resources across the Justice Health system, pointing to the significant differential between the increase in the prison population between 2014 and 2017 and the increase in Justice Health nurses over that period. It told the committee that Justice Health annual report data shows that while between June 2014 and June 2017 the NSW adult prisoner population increased by 17 per cent, the number of full time equivalent nursing staff grew by only 2.5 per cent.[403]

7.5 The union argued that this discrepancy between increased demand and resourcing impacts on prison safety due to the reduced capacity among staff to assess and treat mental health and drug

400 As noted in chapter 1, health services at Parklea will be provided by the new operator, MTC/Broadspectrum from 1 April 2019.

401 Devon Indig, Libby Topp, Bronwen Ross, Hassan Mamoon, Belinda Border, Shalin Kumar and Martin McNamara*, 2009 NSW Inmate Health Survey: Key Findings Report*, Justice Health and NSW Health, quoted in Submission 31, NSW Nurses and Midwives Association, p 2.

402 Submission 31, NSW Nurses and Midwives Association, p 10.

403 Submission 31, NSW Nurses and Midwives Association, p 10.

and alcohol matters in a timely way. In addition, it advised that nurses report that the increased volume of work associated with undertaking reception screening assessments on new admissions and responding to medical emergencies reduces their capacity to provide more planned primary health services for inmates in a timely manner.[404]

7.6 These systemic issues are reflected in the following testimonial from a Justice Health nurse provided by NSWNMA, presented below as a case study. The nurse attested to primary health care (as would be provided by a general practitioner or community based nurse outside of prison) daily being overtaken by the health care demands arising from assaults and other medical emergencies, at the expense of preventive health care. They documented extraordinarily long delays for routine health care, and described the care in this 'failing system' as 'reactive and relentless'.[405]

Case study - Comment on staffing levels and wait times for basic medical care[406]

I work for Justice Health as a registered nurse. My concerns are the unsatisfactory wait times inmates experience for basic medical care; the lack of staff to meet those basic needs; the lack of ability for an inmate to get on an opioid substitution program, leading to further illegal drug use and unsafe practices (due to no clean needle exchange); the amount of illegal drugs within prison (I believe often being brought in by visitors) and lack of staff to meet the needs of those withdrawing from illegal drug use when 'supply' in prison dries up/or is found as contraband.

Below are some examples of inadequate waitlist times straight off the computer system:

- Patient wanting STI (sexually transmitted infection) screening - 136 days
- Patient requesting BBV (blood borne virus) screening- 168 days
- Metabolic Monitoring - 216 days
- Patient requesting reading glasses - 123 days
- Review of Diverticulitis- 147 days
- Pathology and 2hr OGTT (glucose tolerance test)- 179 days
- Blood pressure check- (patient on antihypertensives)- 74 days
- Patient requesting 2nd hepatitis immunisation- 261 days

I have seen clinic nurses attempt day in and day out to get through a daily patient waitlist of routine issues for basic medical needs, only to be bombarded with triaging numerous assaults and medical emergencies. There is very limited ability to exercise preventive care, to educate and inform. The nursing care is reactive and relentless. This nursing care does not facilitate rehabilitation.

All this is occurring in a public prison. In my opinion if tenders are won on most economical price, then standards of care will undoubtedly be lower. An already failing system is not repaired by reducing costs.

404 Submission 31, NSW Nurses and Midwives Association, p 10.

405 Submission 31, NSW Nurses and Midwives Association, p 11.

406 Submission 31, NSW Nurses and Midwives Association, pp 10-11.

7.7 As noted in chapter 2, Legal Aid NSW raised very significant concerns about health care provided at Parklea Correctional Centre, going so far as to argue that it does not comply with obligations contained in human rights instruments, nor statutory obligations under the *Crimes (Administration of Sentences) Act 1999*. At the same time it emphasised that these problems go well beyond Parklea and indeed are system wide.[407]

7.8 Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, acknowledged the hardworking individuals who deliver health care services in very difficult circumstances, then identified what he called a litany of systemic issues in health care delivery in New South Wales prisons:

- unreasonable waiting times for basic medical care
- plainly inadequate access to mental health professionals, including mental health nurses psychologists and psychiatrists
- limited preventive care
- lack of continuity of care between prisons
- poor release planning
- limited access to the clinics themselves
- lack of, or frequently cancelled, medical escorts
- lack of access to specialist care and allied health care.[408]

7.9 Mr Levin told the committee that, 'Legal Aid's primary concern is that despite the best efforts of health staff within the system, prisoners do not enjoy health services commensurate with community standards … because often they cannot access the clinic to see a medical officer who must form an opinion about their state of health.' Acknowledging the challenges associated with a custodial environment are indisputable, he observed that these challenges have become more difficult as correctional centres became overcrowded and housed more people with a high prevalence of chronic disease and mental health conditions. Noting that from a criminological perspective, health is a recognised variable affecting reintegration into the community, Mr Levin argued that if neglected, a person's health may adversely affect their emotional resilience, their substance use, engagement with services, employment prospects and even their housing. Thus Mr Levin argued that adequate health care services in prisons not only protect public health but should be recognised as crucial to people's prospects for rehabilitation and reintegration into the community.[409]

7.10 Legal Aid NSW included in their submission the case study of Patrick, presented below, who died of skin cancer in 2014, and whose story points to multiple failures on the part of health and corrections staff to respond to his medical needs. In addition, the case study of Chioke points to a health care system that does not seem to take his heart disease seriously.

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407 Evidence, Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, 2 August 2018, p 38; Submission 36, Legal Aid NSW, p 9.

408 Evidence, Mr Levin, 2 August 2018, p 38.

409 Evidence, Mr Levin, 2 August 2018, pp 37-38.

Case study – Patrick[410]

Patrick was a 40 year old man who died after he developed skin cancer in his left cheek which spread to his neck and lungs over a period of approximately 11 months. Between his entry into custody at Cessnock Correctional Centre in November 2012 and his death in December 2014, Patrick was transferred multiple times between seven 11 correctional facilities. During this time, he spent a total of 53 days at Parklea Correctional Centre in April-May and July-August 2013.

Patrick told Legal Aid NSW that each time he was transferred to a new correctional facility, he was forced to rejoin the waiting list for specialist consultation and treatment. He stated that frequent transfers between gaols contributed to his difficulties in obtaining adequate, consistent and continual medical treatment in custody.

Sometime in January 2013 while located at Lithgow Correctional Centre, Patrick noticed a lesion on his left cheek. From that moment on, he repeatedly and proactively sought medical treatment on the issue, requesting attention almost daily when he attended the clinic to collect his medication for depression. Despite his persistent requests, the only treatment he obtained between January and June consisted of superficial dressings, antibiotics and painkillers.

In late June 2013, Patrick was examined by a doctor at the clinic at Cessnock Correctional Centre and advised that the lesion on his face could be cancerous. He was referred for a biopsy and chest x-ray, and Patrick requested to be placed on a medical hold (that is, to remain in location for clinical reasons). Despite that request, on 1 July 2013, he was transferred to Parklea. Eleven days later he saw a nurse who cleaned and dressed his facial lesion. During this second period of incarceration at Parklea, Patrick noticed a hole had developed in the side of his face which was oozing clear liquid.

In July, Patrick attended the clinic at Parklea again, where a doctor prescribed him antibiotics and iron tablets, and again referred him for assessment. When he was eventually escorted to hospital in August, officers from Parklea failed to bring his medical records. Patrick told Legal Aid NSW that the doctor did not have the information he needed and did not seem to know what was going on.

Between late August and October 2013, a lump the size of a golf ball had begun to form on Patrick's neck which was growing and spreading rapidly. A biopsy was performed on 5 November 2013, over five months after the initial referral. At that stage, Patrick was informed that it was terminal cancer (metastic pleomorphic spindle cell sarcoma) which had, by then, spread to his glands and lungs.

When Patrick finally underwent surgery in December 2013, the surgeons removed the facial tumour, 32 lymph nodes from his neck and part of his ear. After the operation, he told Legal Aid that he was only given Panadeine Forte for pain management.

Patrick remained in custody until December 2014, when Legal Aid NSW applied on his behalf for early parole on the basis of his medical condition. Parole was granted, but by that stage, his condition had deteriorated to the extent that he had to be transferred by ambulance to a hospice rather than being able to travel home with his parents. Five days following his release on parole, Patrick passed away.

410 Submission 36a, Legal Aid NSW, pp 11-12.

Case study – Chioke[411]

In July 2016, Chioke, an inmate at Parklea Correctional Centre, was experiencing chest pains and asked to attend the clinic, where a nurse took his blood pressure and administered an electrocardiogram (ECG) test. Chioke rated his chest pain an 8 out of 10, describing the pain as radiating from the central left side of his chest all the way to his left back and shoulder. Medical records suggest he was given 250 mg of anginine.

He told Legal Aid NSW that a nurse told him it was 'just stress' regarding his forthcoming court appearance. He was advised to remain in the clinic for observations, but he declined in order to call his partner.

At about 5.25 pm on the same day, Chioke buzzed up from his cell to see the nurse again with the same symptoms. On this occasion, he was given Panadeine and remained in the clinic cell for a few hours for observation before returning to his cell.

At 1.15 am on 31 July, Chioke was woken by sharp pain radiating from his left breast into his arm and the back of his neck. He buzzed up and was immediately taken to the clinic after collapsing into the officer's arms, sweating profusely. ECG tests indicated myocardial infarction (heart attack) and Chioke was taken to hospital where a stent was inserted in his heart.

Up until May 2017, he was conveyed to hospital for treatment another 11 times. At least two 'Request for Unplanned Transfer for Healthcare' forms completed during this period indicate he now has a 'life-threatening condition'.

However, Chioke instructs that despite advice he received from nursing staff at hospital, he has not had access to cardiac therapy in custody and does not really understand his treatment plan.

7.11 In respect of whether New South Wales is meeting its obligations with regard to health care in prisons, Mr Levin made the comparison with health care in the community:

> I would say that if the minimum standard is for a person in custody to enjoy the highest attainable standard of physical and mental health that is commensurate with the community, then no, we are not meeting that standard. Because it does not take four months to see a general practitioner in the community and a person does not wait eight weeks to deal with severe toothache, which is well in excess of the NSW Health policy directive for waiting list management for oral health care. For example, if a person has a toothache and it keeps you up at night, it is a week maximum recommended time. If it is waking hour pain, it is a month, but not eight weeks. In that respect I can draw on countless case studies where a person has experienced a far longer period to access health care.[412]

7.12 Mr Levin underscored that that it is not just toothaches at issue, but also chronic and life threatening conditions, such as in the case of Patrick, above, and everything in between.[413] He

411 Submission 36a, Legal Aid NSW, pp 11-12.

412 Evidence, Mr Levin, 2 August 2018, p 33.

413 Evidence, Mr Levin, 2 August 2018, p 33.

advised that in his view, other Australian jurisdictions provide much stronger statutory protections in respect of inmates' health:

> I would add that it is valuable to compare what other jurisdictions are doing. Notably, Victoria and the Australian Capital Territory have, in my view, far stronger protections for a reasonable standard of health care in custody. For example, the Corrections Act in Victoria explicitly states that a person has a right of access to reasonable medical care and treatment. The Australian Capital Territory's Corrections Management Act explicitly states that a detainee should have a standard of health care equivalent to that available to other people in the Australian Capital Territory. Those Acts go further than the *Crimes (Administration of Sentences) Act* does.[414]

7.13 Other evidence of systemic issues in the provision of health services in correctional centres is reflected in contacts with and complaints to the NSW Ombudsman. The Ombudsman's most recent *Annual Report* indicates that contacts about Justice Health services rose from 643 in 2016-17 to 876 in 2017-18, an increase of 36 per cent.[415] Of all complaints concerning correctional centres and Justice Health, medical issues were the second highest category of main complaints received, comprising 17 per cent. By way of comparison, the highest proportion of main complaints concerned daily routine, comprising 18 per cent.[416]

7.14 The committee took evidence from Mr Gary Forrest, Chief Executive of Justice Health, and asked him about a death that occurred at Parklea Correctional Centre in December 2017, in which a patient undergoing drug and alcohol detoxification died while under the supervision of Justice Health staff. Mr Forrest acknowledged that it is the responsibility of health staff to ensure that a patient undergoes supervised withdrawal safely, and advised that the death occurred while the patient was housed in the clinic observation cell. He told the committee that the staff nurses on duty failed to implement the drug and alcohol treatment plan provided by the drug and alcohol doctor. An investigation was undertaken by Justice Health of all the staff on both the evening and afternoon shifts. Three staff were suspended on pay and terminated as a result of their failure to provide adequate patient care. A first and final warning was issued to one of the other staff and some licence restrictions were put on the others. Mr Forrest concluded that Justice Health has taken the necessary steps in response to the shortcomings of the staff on duty. The death is yet to go before the Coroner, but in keeping with NSW Health's policy of open disclosure, Justice Health has provided information to the person's family, including about the steps taken against the members of staff.[417]

7.15 The committee also asked Mr Forrest about a more recent death, this time at the Outer Metropolitan Multipurpose Centre, one of a number of correctional facilities at Windsor on 1 September 2018. In this incident a 36 year old Aboriginal man who had a pre-existing asthma

414 Evidence, Mr Levin, 2 August 2018, p 35.

415 NSW Ombudsman, *Annual Report 2017-18*, p 80. The report notes that the number of contacts about Justice Health accepted as formal complaints started to decrease from January 2018 when the Justice Health Patient Health Inquiry Line went live. This line enables inmates to make enquiries about waiting lists and other issues relating to their access to health care. In most cases – if a complaint is about health-related issues – Ombudsman staff are able to refer callers to the enquiry line or to the Health Care Complaints Commission. Attachment to answers to written questions, Mr Michael Barnes, NSW Ombudsman, received 1 November 2018.

416 NSW Ombudsman, *Annual Report 2017-18*, p 82, attachment to answers to written questions, Mr Michael Barnes, NSW Ombudsman, received 1 November 2018.

417 Evidence, Mr Forrest, 28 September 2018, p 27;

condition died after difficulties breathing on 1 September 2018. Concerns had been raised with committee members that the inmate's request for medical assistance was not responded to promptly, with perhaps 40 minutes passing between the time the man asked for medical assistance and when he was attended by a nurse.[418]

7.16 Mr Forrest advised that the night staff nurse on duty for the Windsor complex took action as soon as Justice Health became aware of the incident, at about 11.00 pm, and that the time from the nurse's notification to arrival at the patient's location was 15 minutes, a period which he understood to be reasonable.[419] Mr Forrest stated that on his understanding, the inmate had access to his asthma medication and that Justice Health's root cause analysis would determine whether there was anything further that could have been done to prevent the incident itself or the outcome of death. Asked whether he had any knowledge of how long it took between when the inmate sought assistance and the time that Corrective Services staff notified Justice Health, Mr Forrest advised that he did not, but that this would form part of his agency's investigation, noting that any questions of delay on the part of Corrective Services staff's should be directed to CSNSW.[420] While the committee requested further information from Justice Health about the incident, the agency advised that it could not provide this as the matter was still under investigation, as at October 2018.[421] This death will also be examined by the Coroner.

Poor resourcing for mental health

7.17 As a separate but indivisible issue, numerous participants raised with the committee that there is currently very poor provision for inmates' mental health conditions. The committee heard that Justice Health figures indicate that close to 50 per cent of all people in custody in New South Wales have a diagnosable mental health condition,[422] and that there has been a very substantial increase in inmates with serious mental health issues over time.

7.18 Mr Domenic Pezzano, a former correctional superintendent who served in corrections for 30 years until 2014, told the committee that the increase in inmates with serious mental health issues is one of the largest trends he saw, and attested to the pressure this has created within the corrections system:

> There is a saying that Corrections in New South Wales has become the biggest mental health facility in the State … I believe in that because, unfortunately, a number of inmates come into the system that require mental health assessments. We have health assessment units in the system and they are doing a great job but they are overloaded …[423]

7.19 Representatives of the Public Service Association of NSW and Commonwealth Public Sector Union, NSW Branch (hereafter PSA/CPSU) agreed that the proportion of inmates with

418 The cause of death is yet to be determined by the NSW Coroner.

419 Answers to questions on notice, Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, received 19 October 2018, p 1; Evidence, Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, 28 September 2018, p 27.

420 Evidence, Mr Forrest, 28 September 2018, pp 28 and 30.

421 Answers to questions on notice, Mr Forrest, received 19 October 2018, p 2.

422 Submission 31, NSW Nurses and Midwives Association, p 11.

423 Evidence, Mr Domenic Pezzano, 28 September 2018, p 22.

identifiable mental health issues has increased markedly, pointing to the ice epidemic as a significant factor.[424] Ms Nicole Jess, Chairperson of the PSA's Prison Officers Vocational Branch and Senior Vice President of the PSA, referred to there being a 'crisis at present with mental health and disabilities' which the correctional system is not adequately resourced to meet. Ms Jess noted that at the time they enter custody people are often severely unwell and need to be stabilised via medication. Because there are not enough psychiatrists and psychologists to manage the level of need, the new inmate may have to wait two or three weeks before they are adequately medicated. In the meantime corrections staff must manage their very difficult behaviour, reflected in statistics for assaults on staff and assaults on inmates. Ms Jess called for more training for corrections staff to help them to deal with this unmet need.[425]

7.20 The NSWNMA also highlighted the length of time taken to diagnose and treat patients with severe mental illness who enter prison. One nurse stated:

> Much has been reported over the years about the length of time patients with severe mental health wait for treatment, and I can attest to it in my own practice, and through discussion with mental health nurses at other centres, the situation appears to be across the State.
>
> Justice Health and Forensic Mental Health Network statistics indicate close to 50 % of all inmates have psychiatric diagnosis. I am one of two part-time mental health nurses employed to provide seven day a week cover. We currently have a waiting list of 78 patients - some of whom have been waiting for more than 150 days. On a good day we are able to see six patients - generally the number is much lower, and given the nature of our work we may see a patient a number of days in a row. Being assessed by a mental health nurse is only the first step; from there patients are either placed on a waitlist to see the GP for antidepressant medication, the psychiatrist for anti-psychotic medication, psychologists, or discharged. It is not unusual for someone to be released and re-incarcerated before being seen by a psychiatrist.[426]

The need for more forensic and mental health beds

7.21 A specific issue of concern was the lack of forensic beds separate to the corrections system, along with mental health beds within the correctional system. Forensic patients are persons found not guilty of an offence by reason of mental illness or who are unfit to plead because of mental illness. Correctional patients are sentenced and remanded inmates who become mentally ill while in custody and require treatment in a mental health facility. The Forensic Hospital at Malabar, part of the Justice Health and Forensic Mental Health Network, is a 135 bed high secure mental health facility for forensic patients, correctional patients and high risk civil patients (people who require care in a high secure environment).[427]

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424 Evidence, Ms Nicole Jess, Chairperson, Prison Officers Vocational Branch, and Senior Vice President, Public Service Association of NSW, 2 August 2018, p 2; and Mr Troy Wright, Assistant General Secretary, Public Service Association of Australia and Branch Assistant Secretary, Community and Public Sector Union NSW, 2 August 2018, p 2.

425 Evidence, Ms Jess, 2 August 2018, p 2.

426 Submission 31, NSW Nurses and Midwives Association, pp 11-12.

427 Justice Health and Forensic Mental Health Network, The Forensic Hospital, https://www. justicehealth. nsw.gov.au/about-us/health-care-locations/the-forensic-hospital.

7.22 Ms Jess of the PSA/CPSU told the committee that the correctional centre where she works has at times a waiting list of 13 people seeking to go into mental health units who are kept among the mainstream population in the meantime.[428]

7.23 The nurse who provided the comments above about mental health services also documented systemic inadequacies in how inmates with significant mental health issues are accommodated in the corrections system in the absence of appropriate alternatives:

> A major difficulty once somebody with a severe psychiatric disorder is identified is accommodation. Very occasionally, if somebody presents with a psychosis for the first time, they are transferred to the local gazetted mental health unit for assessment, and quickly transferred back to prison. From there they may be housed in either the clinic or one of the two segregation units, although this is not welcomed by Corrective Services NSW as the segregation cells are generally used as a consequence for inmates who have committed an in-custody offence, and the clinic cells are used to accommodate patients in acute situations who require medical observation.
>
> In most cases patients with a severe psychiatric disorder are housed in the main part of the gaol and more often than not, share a very small cell with another for at least 17 hours every day. As prisons are not gazetted, patients can and very often do refuse medication; the process to transfer a patient to either Mental Health Screening Unit, of which there are two 12 bed units for the State, where they have more intensive interaction with psychiatrists and mental health nurses with the hope they will accept medication, or from there to the Forensic Hospital at Long Bay where they can be forcibly medicated, can take several months.[429]

7.24 The committee explored with Mr Forrest of Justice Health the lack of forensic mental health beds in New South Wales. He advised the committee that at the time of his hearing in September 2018 there were approximately 60 forensic patients placed in the prison environment who have an order either to be detained in the prison environment until there is a forensic bed available for them, or have a time limit or order to move them into the forensic hospital.[430] Justice Health further advised that 17 per cent of forensic patients in the custodial setting identified as Aboriginal or Torres Strait Islander, as of 1 October 2018.[431]

7.25 With regard to patients who receive involuntary treatment for mental health conditions while in custody, Justice Health advised that all involuntary treatment in the New South Wales correctional setting is provided in the 40 bed Mental Health Unit of Long Bay Hospital. During 2017-18, 149 patients received involuntary treatment, while 491 patients received involuntary treatment in the five years from 1 July 2013 to 30 June 2018.[432]

7.26 The committee asked Mr Forrest whether he was aware of the Royal Australian and New Zealand College of Psychiatrists policy statement on involuntary mental health treatment in custody, which opposes the use of involuntary mental health treatment in custodial settings and

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428 Evidence, Ms Jess, 2 August 2018, p 2.

429 Submission 31, NSW Nurses and Midwives Association, p 12.

430 Evidence, Mr Forrest, 28 September 2018, pp 33-34.

431 Answers to questions on notice, Mr Forrest, received 19 October 2018, p 3.

432 Answers to questions on notice, Mr Forrest, received 19 October 2018, p 3. Patients requiring involuntary treatment in Long Bay Hospital's Mental Health Unit do so under the *Mental Health Act (2007)* or the *Mental Health (Forensic Provisions) Act 1990*.

considers that if a person experiences psychiatric symptoms so severe that involuntary treatment is necessary, the prisoner should be transferred to receive treatment in hospital. He indicated that he was aware of the position, and acknowledged that the NSW corrections system does not comply with it, but challenged the committee's language. Noting his support in principle, he proposed that given the absence of sufficient beds, the alternative of not providing treatment is unsupportable:

> When you say "does not comply", it is not a policy position that we are not complying with; it is a capacity issue position. In the ideal situation, absolutely people with mental illness who require enforced treatment should not have that treatment provided in the corrections environment. The reality is that we do not have enough beds in the forensic mental health system or in the mental health system more broadly to manage those sorts of patients. In the absence of having suitable beds to place patients in, if we did not provide involuntary treatment in the corrections environment we would have somebody whose mental illness would go for an extremely long period of time untreated. To Justice Health clinicians that is not a position that we would like to support.[433]

7.27 Mr Forrest disagreed with the suggestion that that a lower level of care is provided the corrections system than in the hospital system, asserting instead that a different care is provided in prisons. He went on to state that, 'We are constrained by the prison environment and the prison routine—absolutely, there is no disagreement about that. But the psychiatrists who work in the corrections environment also work in the forensic mental health environment. There is no difference in the calibre or quality of care that patients are receiving.'[434]

7.28 The committee also asked Mr Forrest how much of the additional $3.8 billion allocation from the NSW Government towards prison infrastructure under the Prison Bed Capacity Program is being spent to expand forensic facilities. Mr Forrest confirmed that those funds were all allocated to Corrective Services for prison beds, but that as part of the 2018-19 Budget, the Minister for Mental Health, Tanya Davis MP announced $700 million towards mental health infrastructure.[435] The Government's announcement at the time indicated that this would include additional beds for the Forensic Mental Health Network.[436] Mr Forrest was not able to advise how much would be allocated towards additional forensic mental health beds, but indicated that business cases were at the time being submitted to expand the forensic mental health and mental health systems across the State with that funding.[437]

7.29 The committee also explored these issues with Mr Peter Severin, Commissioner of Corrective Services NSW. Asked whether he agreed that it was a poor outcome that around 60 forensic mental health patients were not receiving treatment in a hospital but primarily in custody at Long Bay Correctional Centre, Mr Severin responded:

> Of course we are concerned about having mental health patients in our custody. We obviously communicate with the Mental Health Tribunal about this. We have no ability

433 Evidence, Mr Forrest, 28 September 2018, p 33.

434 Evidence, Mr Forrest, 28 September 2018, p 33.

435 Evidence, Mr Forrest, 28 September 2018, pp 33-34.

436 Media release, Hon Tanya Davis MP, Minister for Mental Health, '$2.1 billion for mental health', 18 June 2018, https://www.health.nsw.gov.au/news/Pages/20180619_02.aspx.

437 Evidence, Mr Forrest, 28 September 2018, pp 33-34.

> to move them into forensic mental health facilities. That is a prerogative of the health system.[438]

7.30 Asked whether it is a lack of beds in the forensic mental health system that means Corrective Services cannot move those individuals on, Mr Severin emphasised that CSNSW is acutely aware of the issue and doing all it can to manage it:

> I would not go as far as professing that I have the answers for that. We respond to it. We have a strategy in place for Long Bay to increase the availability of step-down arrangements—not just for those who are there and should be in a forensic mental health hospital under the direction of the Mental Health Tribunal, but also for those who have mental health issues that are not regulated. So we are acutely aware of this. It is not an issue that we are content with, or ever will be, but we need to constructively work on their safe management and supporting whatever Justice Health can do.[439]

7.31 Pressed as to whether he agreed that the answer does not lie in additional facilities within the prison system, but rather in finding secure forensic accommodation for them in a medical setting outside of the prison system, Mr Severin indicated that he agreed. He observed that it was a decades long problem that had found some relief with the building of the Forensic Hospital at Long Bay in 2009, and indicated his hope that more was possible in the future.[440]

Committee comment

7.32 The committee is deeply concerned by the lack of resourcing for the health needs of the prisoner population in New South Wales. It is very clear to us, based on evidence presented during this inquiry, that while the inmate population has increased markedly, and the correctional system has received substantial resources to address this demand, the Justice Health system has not, and thus it struggles to meet the vast tide of inmates' health needs.

7.33 Justice Health's clear lack of capacity to meet those needs in a timely way is manifest in astonishing waiting times for all manner of treatments. It is patently unacceptable that patients must wait over four months to be screened for a sexually transmitted infection (on their request) or to be prescribed reading glasses, over two months to have their blood pressure checked when they are already on hypertensive medication, or eight weeks when they have a severe toothache.

7.34 In the committee's view it is also unsupportable that primary health care provision is routinely eclipsed by the emergency health needs that arise in a correctional centre. And the evidence that serious health needs are not simply unmet, but neglected, is indefensible, as was so powerfully reflected in the case study of Patrick, who apparently died because he did not receive timely, effective treatment for his cancer despite his numerous requests.

7.35 In addition, the tragic death of the individual at Parklea Correctional Centre under the supervision of nursing staff during detoxification is highly disturbing. The committee welcomes that following an investigation, disciplinary action was taken by Justice Health. We are not able to comment further on this or on the other tragedy that occurred at the Outer Metropolitan Multipurpose Centre as they will both be examined by the Coroner. However, the committee

438 Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 28 September 2018, p 53.

439 Evidence, Mr Severin, 28 September 2018, p 53.

440 Evidence, Mr Severin, 28 September 2018, p 54.

observes that at the very least, each of these deaths highlights how very much is at risk for inmates within the custodial environment. These sad events are surely symptomatic of the serious systemic problems we have noted above.

7.36 This state of affairs must be deeply disturbing to people at all levels of Justice Health, whom the committee knows strive to deliver compassionate care to a highly disadvantaged population group. The committee recognises that the problem is a systemic one that is fundamentally about a lack of resources. In our view, this absolutely must be addressed as a matter of urgency.

7.37 As was pointed out by inquiry participants, addressing this failing system will not only assist individual inmates, but will have a number of systemic outcomes: it will enable New South Wales to fulfil its human rights and statutory obligations to provide a reasonable standard of health care; it will protect public health; it will make prisons safer; and it will help to reduce reoffending by assisting patients' reintegration into the community.

7.38 As a particular issue within this broader context, the committee is extremely concerned about the lack of provision for mental health services and infrastructure in New South Wales. We saw for ourselves when we visited the Long Bay Correctional Centre, the Metropolitan Reception and Remand Centre and Silverwater Women's Correction Centre, the all pervasive pressure that the significant mental health needs of inmates generate. While we were impressed by the heath care facilities that we saw, we were disturbed by some of the accommodation for inmates exhibiting mental illness within the correctional system. We are also very concerned by the blockages that exist due to a lack of mental health care beds throughout the system, most especially forensic mental health beds.

7.39 While the committee heard of the creative and collaborative work being done by both Justice Health and Corrective Services staff to proactively manage the use of mental health beds with maximum efficiency, we recognise that this admirable work can only achieve so much. The fact is that significantly more forensic mental health beds are urgently needed, and in the committee's view, the estimated 60 forensic patients currently placed in the prison environment serves as a good approximation of the specific number of beds required.

7.40 The committee welcomes the NSW Government's provision of an additional $2.1 billion for mental health services and infrastructure from 2018-19. While the intention is that this includes provision for additional forensic beds, we have not yet been advised of how many, nor the extent of investment, if any, in mental health services specific to Justice Health. Given the many other undeniable service and infrastructure needs across the mental health system also flagged to benefit from this investment, we are not confident that the full extent of unmet need for both services and infrastructure within Justice Health will be met.

7.41 The committee underscores that substantial investment is required in terms of Justice Health services generally and mental health services and infrastructure specifically. At the same time, we recognise that there are few political imperatives to providing it. We can only highlight that adequate investment here will protect individual and public health, will enable the provision of care in the setting to which patients are entitled, and will greatly relieve pressure within the correctional system.

7.42 We call on the NSW Government to address this neglected, now urgent, need by providing sufficient additional resources for mental health services in particular, and health services in general, via the Justice Health and Forensic Mental Health Network, in order to meet the health

needs of the New South Wales prisoner population. In doing so, we recommend that the government ensure that an additional 60 forensic beds are provided, and make further investment in other mental health infrastructure for the prison population throughout the state.

Recommendation 14

That the NSW Government, over and above its recent investment in mental health services and infrastructure from 2018-19:

- provide sufficient additional resources to the Justice Health and Forensic Mental Health Network to enable it to meet the health needs of the New South Wales prisoner population, and their mental health needs in particular
- ensure that 60 more forensic beds are provided urgently
- ensure that there is sufficient investment in other mental health infrastructure for the prison population throughout the state.

7.43 By focusing on this most pressing need – for forensic beds – we do not wish to detract from the problems that arise from the significant need for other mental health beds as well, for example those for inmates with dementia and other diseases of old age, and for those who are severely mentally ill but who are not forensic patients. The absence of sufficient mental health beds throughout the state means that far too many individuals with severe mental illness remain in the general prison population, and those who are fortunate enough to gain access to Long Bay Hospital must move away from any family or other supports they might have (albeit temporarily for some, depending on their needs). We urge the NSW Government in the strongest possible terms to address these systemic gaps as well.

Appendix 1 Submissions

No.	Author
1	Mt Druitt Police Citizens Youth Club
2	Cessnock Prison Officers Vocational Branch
2a	Cessnock Prison Officers Vocational Branch
3	Name suppressed
4	Mr Clayton Brooke
5	Rev Liva Tukutama
6	NSW Council for Pacific Communities
7	Providential Homes
8	Name suppressed
9	Name suppressed
10	Confidential
11	Dr Jane Andrew & Dr Max Baker
12	Confidential
13	Kairos Prison Ministry Australia
14	Parklea Regional Committee, Kairos Prison Ministry Australia
15	Name suppressed
16	Confidential
16a	Mr Domenic Pezzano
17	Dr Carolyn McKay
18	Confidential
19	Mr Alex Ing
20	Name suppressed
21	Name suppressed
22	Professor Gary Sturgess
23	Australian Human Rights Commission
24	Name suppressed
25	Name suppressed
26	Name suppressed
27	Confidential
28	Merewyn Partners Pty Ltd
29	The GEO Group Australia Pty Ltd
29a	Confidential

No.	Author
30	Community Justice Coalition
30a	Community Justice Coalition
31	NSW Nurses & Midwives Association
32	Name suppressed
33	Name suppressed
34	Justice Action
34a	Justice Action
35	Serco Asia Pacific
36	Legal Aid NSW
36a	Legal Aid NSW
37	Corrective Services NSW, Department of Justice
37a	Corrective Services NSW, Department of Justice
38	Public Service Association of NSW and Community and Public Sector Union NSW

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 18 May 2018 Macquarie Room Parliament House, Sydney	Mr Pieter Bezuidenhout	Managing Director The GEO Group Australia
	Mr Keith Ketheeswaran	Director Governance and Performance The GEO Group Australia
	Mr Domonique Karauria	Director Correctional Services The GEO Group Australia
	Mr Richard Laws	General Manager, Parklea Correctional Centre The GEO Group Australia
	Mr Peter Severin	Commissioner Corrective Services NSW
	Mr James Koulouris	Assistant Commissioner Governance and Continuous Improvement Corrective Services NSW
	Mr Kevin Corcoran	Assistant Commissioner Custodial Corrections Corrective Services NSW
	Ms Gayle Robson	Commissioner's Chief of Staff Corrective Services NSW
	Mr Glen Scholes	Director Custodial Corrections North Corrective Services NSW
Thursday 2 August 2018 Macquarie Room Parliament House, Sydney	Mr Troy Wright	Assistant General Secretary Public Service Association of NSW and Branch Assistant Secretary Community and Public Sector Union NSW
	Ms Nicole Jess	Chairperson Prison Officers Vocational Branch and Senior Vice-President Public Service Association of NSW
	Mr Brett Collins	Coordinator Justice Action

Date	Name	Position and Organisation
	Mr James Hall	Assistant Coordinator Justice Action
	Mr James Watson	Assistant Coordinator Justice Action
	Ms Vanessa Abdallah	Assistant Coordinator Justice Action
	Mr David Johnson	Team member Justice Action
	The Hon John Dowd AO QC	President Community Justice Coalition
	The Hon Elizabeth Evatt AC	Member Community Justice Coalition
	Ms Rebecca Simpson	Solicitor in Charge Prisoners Legal Service Legal Aid NSW
	Mr Anthony Levin	Senior Solicitor Human Rights Group Legal Aid NSW
	Professor Gary Sturgess	Australia and New Zealand School of Government Chair of Public Service Delivery University of NSW
Friday 28 September 2018 **Macquarie Room** **Parliament House, Sydney**	Ms Fiona Rafter	Inspector of Custodial Services
	Dr Carolyn McKay	Lecturer in Law Deputy Director, Sydney Institute of Criminology The University of Sydney Law School
	Mr Domenic Pezzano	Former correctional officer
	Mr Gary Forrest	Chief Executive Justice Health and Forensic Mental Health Network NSW Health
	Associate Professor Jane Andrew	Associate Professor University of Sydney Business School

Date	Name	Position and Organisation
	Dr Max Baker	Senior Lecturer University of Sydney Business School
	Mr Peter Severin	Commissioner Corrective Services NSW
	Mr Kevin Corcoran	Assistant Commissioner Custodial Corrections Corrective Services NSW
	Mr Carlo Scasserra	Acting Assistant Commissioner Governance and Continuous Improvement Corrective Services NSW
	Ms Gayle Robson	Commissioner's Chief of Staff Corrective Services NSW
	Mr Glen Scholes	Director, Custodial Corrections North Corrective Services NSW

Appendix 3 Minutes

Minutes no. 57
Thursday 24 November 2017
Portfolio Committee No. 4 – Legal Affairs
Members' Lounge, Parliament House, 9:47 am

1. Members present
Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Khan
Mr Searle (substituting for Mr Moselmane for the duration of the inquiry)
Ms Voltz

2. Correspondence
The committee noted the following items of correspondence:

Received:

- 21 November 2017 – Letter from Mr Borsak, Ms Voltz, and Mr Shoebridge requesting a meeting of Portfolio Committee No. 4 to consider a proposed self-reference into the Parklea Correctional Centre
- 22 November 2017 – Email from the Hon Shaoquett Moselmane MLC to the secretariat, advising that the Hon Adam Searle MLC will be substituting for Mr Moselmane for the duration of the Parklea Correction Centre inquiry, and the Museums and galleries inquiry meeting of 23 November 2017.

3. Consideration of terms of reference
The Chair tabled a letter proposing the following self-reference:

1. That Portfolio Committee No. 4 – Legal Affairs inquire into and report on the current operations of Parklea Correctional Centre, and in particular:
    a. the adequacy of staffing levels and staff safety,
    b. the inflow of contraband,
    c. the security at the facility, including access to gaol keys,
    d. corporate governance of the GEO Group and the facility,
    e. any possible contraventions of the contract between the NSW Government and the GEO Group,
    f. the appropriateness and operation of private prisons in New South Wales, and
    g. any other related matter.

Resolved, on the motion of Mr Shoebridge: That the committee adopt the terms of reference.

4. Conduct of inquiry into the Parklea Correctional Centre

4.1 Closing date for submissions
Resolved, on the motion of Mr Shoebridge: That the closing date for submissions be Thursday 15 February 2018.

4.2 Stakeholder list
Resolved, on the motion of Mr Shoebridge: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

4.3 Advertising

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and media release distributed to all media outlets in New South Wales.

4.4 Hearing dates

Resolved, on the motion of Mr Shoebridge: That the timeline for hearings be considered by the committee following the receipt of submissions. Further, that hearing dates be determined by the Chair after consultation with members regarding their availability.

5. Adjournment

The committee adjourned at 9:49 am, until 9:50 am Thursday 23 November 2017, Members' Lounge, Parliament House (deliberative Museums and galleries inquiry)

Stephanie Galbraith
Committee Clerk

Minutes no. 65
Wednesday 7 March 2018
Portfolio Committee No. 4 – Legal Affairs
Members' Lounge, Parliament House, 2.01 pm

1. Members present

Mr Borsak, *Chair*
Mr Clarke
Mr Farlow
Mr Khan
Mr Searle
Ms Voltz (from 2.03 pm)

2. Apologies

Mr Shoebridge

3. Correspondence

The committee noted the following items of correspondence:

Received

- 22 November 2017 – Email from the Hon Shaoquett Moselmane MLC, Opposition Whip, advising that Hon Adam Searle MLC will be substituting him for the duration of the Parklea Correction Centre inquiry
- 28 November 2017 – Email from the Hon Natasha Maclaren-Jones MLC, Legislative Council Government Whip to the secretariat, advising that the Hon Scot Farlow MLC will be substituting for the Hon Catherine Cusack for the duration of the Parklea Correctional Centre inquiry
- 4 December 2018 – Letter from Mr Pieter Bezuidenhout, Managing Director, GEO, to the Chair offering its assistance to the committee, including inviting the committee to tour the Parklea and Junee facilities
- 4 January 2018 – Email from Mr Scott McKnight, A/Manager Executive Advisory Unit, Office of Commissioner, NSW Police Force advising committee that the NSW Police Force will not be making a submission to the inquiry
- 2 February 2018 – Letter from Mr Troy Wright, Assistant Branch Secretary, Community and Public Sector Union, seeking an extension to the submission closing date for the Parklea Correctional Centre inquiry
- 19 February 2018 – Email from Mr Troy Wright, Assistant Branch Secretary, Community and Public Sector Union, seeking an extension to the submission closing date for the Parklea Correctional Centre inquiry following the amendment to the inquiry terms of reference

- 23 February 2018 – Email from Ms Eva O'Dea, Senior Policy Officer, Attorney General and Corrections, to the committee seeking an extension to the submission closing date for the Parklea Correctional Centre inquiry
- 26 February 2018 – Email from Ms Robyn Gilbert, Law Reform Solicitor, Legal Aid NSW, seeking an extension to the submission closing date for the Parklea Correctional Centre inquiry
- 28 February 2018 – Email from Mr Paul Shaw, Corporate Affairs Director, SERCO, seeking an extension to the submission closing date for the Parklea Correctional Centre inquiry.

Resolved, on the motion of Mr Khan: That the committee keep the correspondence regarding documentation relating to the Parklea Correctional Centre inquiry, dated 24 January 2018, confidential at the present time, as per the request of the author, as it contains sensitive and identifying information.

4. Inquiry into the Parklea Correctional Centre and other operational issues

4.1 Proposed hearing and site visit timeline

Resolved, on the motion of Mr Farlow: That the committee adopt the following timeline for the inquiry, the dates of which are to be determined by the Chair after consultation with members regarding their availability:

May/June

- Site visit to Parklea Correctional Centre
- Hearing
- Site visit to Junee Correctional Centre

August/September

- Site visit to Cessnock Correctional Centre
- Site visit to a prison managed by Corrective Services NSW
- Hearing
- Hearing.

4.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under authorisation of the resolution appointing the committee: submission nos 1, 2, 2a, 4, 5, 6, 7, 11, 13, 14, 17, 19, 22, 23, 28, 29, 30, 31 and 34.

Resolved, on the motion of Mr Khan: That the committee publish submission no. 35.

4.3 Partially confidential submissions

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 3, 8, 9, 15, 20, 21, 24, 25, 26, 32 and 33.

Resolved, on the motion of Mr Khan: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos 3, 8, 9, 15, 20, 21, 24, 25, 26, 32 and 33.

4.4 Confidential submissions

Resolved, on the motion of Mr Khan: That the committee keep submission nos 10, 16 and 18, 27 and 29a confidential at the present time, as per the request of the author, as they contain identifying and/or sensitive information.

4.5 Submission no. 12

Resolved, on the motion of Mr Khan: That the Chair write to the submission author to ask that he contact the individuals the subject of the submission, and suggest that they forward a submission directly to the committee.

Resolved, on the motion of Mr Khan: That the committee keep submission no. 12, including its attachment, confidential at the present time, as per the request of the author, as it contains identifying and sensitive information.

5. Inquiry into the fire and emergency services levy

5.1 Hearing timeline

Resolved, on the motion of Mr Khan: That the committee commence hearings in August 2018 for the inquiry, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 2.08 pm, until Tuesday 20 March 2018 *(Emergency service agencies hearings)*.

Jenelle Moore
Committee Clerk

Minutes no. 68
Friday, 18 May 2018
Portfolio Committee No. 4 – Legal Affairs
Parklea Correctional Centre, Sydney, 8.00 am

1. Members present

Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Clarke
Mr Farlow
Mr Khan
Mr Moselmane (substituting for Mr Searle from 8.00 am to 11.30 am)
Mr Mookhey (substituting for Mr Searle from 1.22 pm)
Ms Voltz

2. Inquiry into Parklea Correctional Centre and other operational issues

2.1 Site visit to Parklea Correctional Centre

The committee conducted a site visit to Parklea Correctional Centre.

3. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 65 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 17 April 2018 – Email from Rod Casimir, Legal Manager, GEO Group to secretariat, providing an organisational chart of GEO Group and requesting it be kept confidential for the reason of commercial-in-confidence

Sent

- 12 March 2018 – Letter from the Chair to the author of submission no. 12, concerning the confidentiality of his submission to the Parklea Correctional Centre inquiry.

Resolved, on the motion of Mr Khan: That the Chair, on behalf of the committee, write to GEO Group to advise that the committee proposes to publish a section of the organisational chart displaying the management structure of Parklea Correctional Centre, and seek GEO's comment on that proposal.

5. Inquiry into Parklea Correctional Centre and other operational issues

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under authorisation of the resolution appointing the committee: submission nos 30a and 36 to 38.

5.2 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Pieter Bezuidenhout, Managing Director, GEO Group
- Mr Keith Ketheeswaran, Director, Governance and Performance, GEO Group
- Mr Domonique Karauria, Director, Correctional Services, GEO Group
- Mr Richard Laws, General Manager, Parklea Correctional Centre, GEO Group.

Mr Bezuidenhout tendered the following documents:

- Graph entitled 'Volume of PPSI conducted – Summary by Centre'
- Document entitled 'Monthly review of PLF's and KPI's, p 21'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Severin, Commissioner, Corrective Services NSW
- Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW
- Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, Corrective Services NSW
- Ms Gayle Robson, Commissioner's Chief of Staff, Corrective Services NSW
- Mr Glen Scholes, Director, Custodial Corrections North, Corrective Services NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.46 pm.

The public and media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Graph entitled 'Volume of PPSI conducted – Summary by Centre', tendered by Mr Pieter Bezuidenhout, Managing Director, GEO Group
- Document entitled 'Monthly review of PLF's and KPI's, p 21', tendered by Mr Pieter Bezuidenhout, Managing Director, GEO Group.

5.4 Inquiry activities

The committee noted that it had previously agreed to conduct the following inquiry activities:

- 1 August – site visit to Hunter and Cessnock Correctional Centres
- 2 August – Sydney hearing
- 3 August – site visit to South Coast Correctional Centre or Wellington and Macquarie Correctional Centres
- 24 September – site visit to Junee Correctional Centre
- 28 September – Sydney hearing.

6. Next meeting

The committee adjourned at 4.51 pm, until Monday, 28 May 2018 *(Museums and galleries public hearing).*

Sam Griffith
Committee Clerk

Minutes no. 73
Wednesday, 1 August 2018
Portfolio Committee No. 4 – Legal Affairs
Hunter Correctional Centre, 10.00 am

1. Members present

Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Clarke
Mr Farlow
Mr Moselmane
Ms Voltz

2. Apologies

Mr Khan

3. Inquiry into Parklea Correctional Centre and other operational issues

3.1 Site visit to Hunter Correctional Centre at Cessnock

The committee attended the Hunter Correctional Centre, a rapid-build dormitory prison housing maximum security inmates located at the Cessnock Correctional Complex, and was met by the following Corrective Services NSW staff:

- Commissioner Peter Severin
- Mr Kevin Corcoran, Assistant Commissioner Custodial Corrections
- Mr Glen Scholes, Director Custodial Corrections North
- Mr Richard Heycock, Governor
- Ms Kara Lawrence, Commissioner's Office
- Ms Mary Britton, Commissioner's Office
- Ms Ros Pavey, Acting Regional Nurse Manager Women's and Metro North (Justice Health and Forensic Mental Health Network).

Mr Scholes and Mr Corcoran provided a briefing on the rapid-build dormitory prison.

The committee conducted a tour of inspection accompanied by the staff listed above.

4. Adjournment

The committee adjourned at 1.10 pm until 2 August 2018.

Sam Griffith
Committee Clerk

Minutes no. 74
Thursday, 2 August 2018
Portfolio Committee No. 4 – Legal Affairs
Macquarie Room, Parliament House, Sydney, 9.33 am

1. Members present

Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Clarke
Mr Farlow
Mr Mallard (substituting for Mr Khan)
Mr Moselmane
Ms Voltz

2. Draft minutes

Resolved, on the motion of Mr Moselmane: That draft minutes nos 68 and 72 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 May 2018 – Email from the Hon Shaoquett Moselmane to secretariat, advising that the Hon Shaoquett Moselmane will be substituting for the Hon Adam Searle for the duration of the inquiry into Parklea Correctional Centre and other operational issues
- 13 June 2018 – Letter from Mr Pieter Bezuidenhout, Managing Director, GEO Group, to Chair, advising that GEO has no objection to the committee's proposal to publish a redacted version of GEO Group's organisational chart
- 17 July 2018 – Email from the Hon Natasha Maclaren-Jones to secretariat, advising that the Hon Shayne Mallard will be substituting for the Hon Trevor Khan for the hearing on 2 August 2018.

Sent:

- 23 May 2018 – Letter from Chair to Mr Pieter Bezuidenhout, Managing Director, GEO Group, seeking GEO Group's comment on a committee resolution to consider publishing a redacted version of GEO Group's organisational chart
- 25 July 2018 – Email chain with Serco Asia Pacific confirming that the company would like to give evidence on 28 September 2018 for the inquiry into Parklea Correctional Centre, but did not want to give evidence on 2 August 2018 as it is involved in an ongoing tender process regarding the management of Parklea Correctional Centre
- 25 July 2018 – Email chain with Dr Carolyn McKay, Lecturer in Law, University of Sydney Law School, confirming that she would like to give evidence on 28 September 2018 for the inquiry into Parklea Correctional Centre, and was unable to give evidence on 2 August 2018.

Resolved, on the motion of Mr Moselmane: That the committee:

- authorise the partial publication of the GEO Group organisational chart, provided to the committee on 17 April 2018, as agreed to by the GEO Group on 13 June 2018
- keep the original version of the GEO Group organisational chart confidential.

4. Inquiry into Parklea Correctional Centre and other operational issues

4.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice and supplementary questions were published under the resolution appointing the committee:

- Corrective Services NSW, received 13 June 2018
- GEO Group, received 13 June 2018.

Resolved, on the motion of Ms Voltz: That the document 'Action Plan – Vulnerable Inmate Management & Suicide Prevention Strategies', provided by GEO Group on 13 June 2018 as an answer to questions on notice be kept confidential.

4.2 Public submission

Resolved, on the motion of Ms Voltz: That the committee publish submission no 36a, previously resolved to be kept confidential, at the request of Legal Aid NSW.

4.3 Public hearing

Mr Shoebridge joined the meeting.

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Troy Wright, Assistant General Secretary, Public Service Association of NSW (PSA) and Branch Assistant Secretary, Community and Public Sector Union NSW (CPSU)
- Ms Nicole Jess, Chairperson, Prison Officers Vocational Branch (POVB) and Senior Vice-President, PSA.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Brett Collins, Coordinator, Justice Action
- Mr James Hall, Assistant Coordinator, Justice Action
- Mr James Watson, Assistant Coordinator, Justice Action
- Ms Vanessa Abdallah, Assistant Coordinator, Justice Action.

Mr Collins tendered the following documents:

- Report, Rapid Build Dormitory Prisons - an unacceptable pressure cooker, Community Justice Coalition
- Report, Community Justice Coalition visit to Hunter Correctional Centre, Cessnock Rapid Build Dormitory Prison, Assistant Commissioner Luke Grant and Community Justice Coalition 24 May 2018, draft observations
- Report from prisoners at Hunter Correctional Centre, 29 June 2018
- Correspondence from Assistant Commissioner Luke Grant, Corrections Strategy and Policy, NSW Department of Justice, to Community Justice Coalition, 27 July 2018.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- The Hon John Dowd AO QC, President, Community Justice Coalition
- The Hon Elizabeth Evatt AC, Member, Community Justice Coalition.

The Hon John Dowd AO QC tendered the following documents:

- Report, Rapid Build Dormitory Prisons - an unacceptable pressure cooker, Community Justice Coalition
- Report, Community Justice Coalition visit to Hunter Correctional Centre, Cessnock Rapid Build Dormitory Prison, Assistant Commissioner Luke Grant and Community Justice Coalition 24 May 2018, draft observations
- Correspondence from Assistant Commissioner Luke Grant, Corrections Strategy and Policy, NSW Department of Justice, to Community Justice Coalition, 27 July 2018.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rebecca Simpson, Solicitor in Charge, Prisoners' Legal Services, Legal Aid NSW

- Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor Gary Sturgess, Australia and New Zealand School of Government Chair of Public Service Delivery, University of New South Wales.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.05 pm.

The public and media withdrew.

4.4 Witnesses for 28 September 2018 hearing

The committee noted that it had previously agreed via email for Serco Asia Pacific and Dr Carolyn McKay, Lecturer in Law, University of Sydney Law School, to be invited to give evidence.

Resolved, on the motion of Mr Shoebridge: That the committee invite the following witnesses to give evidence on 28 September 2018:

- Mr Domenic Pezzano, former corrections officer
- Inspector of Custodial Services
- NSW Ombudsman
- Justice Health and Forensic Mental Health Network, NSW Health
- Associate Professor Jane Andrew and Dr Max Baker, University of Sydney Business School
- Corrective Services NSW.

4.5 Tendered documents

Resolved, on the motion of Ms Voltz: That the committee accept and publish the following documents tendered during the public hearing:

- Report, Rapid Build Dormitory Prisons - an unacceptable pressure cooker, Community Justice Coalition, tendered by Mr Brett Collins and the Hon John Dowd AO QC
- Report, Community Justice Coalition visit to Hunter Correctional Centre, Cessnock Rapid Build Dormitory Prison, Assistant Commissioner Luke Grant and Community Justice Coalition 24 May 2018, draft observations, tendered by Mr Brett Collins and the Hon John Dowd AO QC
- Report from prisoners at Hunter Correctional Centre, 29 June 2018, tendered by Mr Brett Collins
- Correspondence from Assistant Commissioner Luke Grant, Corrections Strategy and Policy, NSW Department of Justice, to Community Justice Coalition, 27 July 2018, tendered by Mr Brett Collins and the Hon John Dowd AO QC.

5. Next meeting

The committee adjourned at 3.09 pm, until Friday 3 August 2018.

Merrin Thompson
Committee Clerk

Minutes no. 75
Friday 3 August 2018
Portfolio Committee No. 4 – Legal Affairs
Wellington Correctional Centre, Wellington, 10.00 am

1. Members present
Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Farlow
Ms Voltz

2. Apologies
Mr Clarke
Mr Khan
Mr Moselmane

3. Inquiry into Parklea Correctional Centre and other operational issues

3.1 Site visit to Wellington Correctional Centre and Macquarie Correctional Centre
The committee attended the Wellington Correctional Centre then Macquarie Correctional Centre, a rapid-build dormitory prison housing maximum security inmates, and was met by the following Corrective Services NSW staff:

- Mr Kevin Corcoran, Assistant Commissioner Custodial Corrections
- Mr Glen Scholes, Director Custodial Corrections North
- Mr Craig Smith, Governor, Wellington Correctional Centre
- Mr Brett Lees, Senior Assistant Superintendent, Macquarie Correctional Centre
- Ms Kara Lawrence, Commissioner's Office
- Ms Mary Britton, Commissioner's Office
- Ms Leah Chapman, Acting Regional Nurse Manager Women's and North West NSW (Justice Health and Forensic Mental Health Network).

Mr Smith provided a briefing on the Wellington Correctional Centre and Mr Scholes provided a briefing on the rapid-build dormitory prison.

The committee conducted a tour of inspection of both facilities, accompanied by the staff listed above.

4. Adjournment
The committee adjourned at 2.10 pm until Monday 23 September 2018.

Merrin Thompson
Committee Clerk

Minutes no. 83
Monday, 24 September 2018
Portfolio Committee No. 4 – Legal Affairs
Junee Correctional Centre, 10.15 am

1. Members present
Mr Borsak, *Chair*
Mr Clarke
Ms Voltz

2. Apologies
Mr Farlow
Mr Khan
Mr Moselmane
Mr Shoebridge

3. Inquiry into Parklea Correctional Centre and other operational issues

3.1 Site visit to Junee Correctional Facility
The committee conducted a site visit to the Junee Correctional Facility, operated by GEO Group. The committee met with the following staff of GEO Group Australia and Corrective Services NSW:

- Mr Pieter Bezuidenhout, Managing Director, GEO Group Australia
- Mr Domonique Karauria, Director, Correctional Services, GEO Group Australia
- Mr Scott Brideoake, General Manager Junee Correctional Centre, GEO Group Australia
- Mr Russell McAuliffe, Operations Manager, GEO Group Australia
- Ms Ainslie Wood, Contract Compliance Manager, GEO Group Australia
- Ms Kelly Eisenhauer, Human Resources Manager, GEO Group Australia
- Ms Jan Te Maru Health Services Manager, GEO Group Australia.
- Mr Carlo Scasserra, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW
- Ms Kim Blinkhorn, General Manager, Operational Performance Branch, Corrective Services NSW
- Ms Mary Britton, Manager Strategic Communications, Commissioner's Office, Corrective Services NSW
- Mr Kenneth Kirk, Manager of Security, Operational Performance Branch, Corrective Services NSW

The committee conducted a tour of inspection accompanied by the staff listed above.

4. Adjournment
The committee adjourned at 1.10 pm until 30 October 2018.

Merrin Thompson
Committee Clerk

Draft minutes no. 84
Friday, 28 September 2018
Portfolio Committee No. 4 – Legal Affairs
Macquarie Room, Parliament House, Sydney, 9.15 am

1. Members present
Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Clarke
Mr Farlow
Mr Graham *(until 9.27 am)*
Mr Khan
Ms Voltz

2. Apologies
Mr Moselmane

3. Draft minutes
Resolved, on the motion of Ms Voltz: That draft minutes nos 73, 74, 75, 77, 79, 80 and 81 be confirmed.

4. Correspondence
The committee noted the following items of correspondence:

Received:

- 23 August 2018 – From Mr Michael Polkinghorn on behalf of the NSW Ombudsman, to secretariat, advising that the Ombudsman, Deputy Ombudsman and Manager of Custodial Services are all unable to attend the Parklea inquiry hearing on 28 September 2018
- 11 September 2018 – From Mr Tim Shaw, Director Strategy, Serco Asia Pacific, declining the committee's invitation to give evidence at the 28 September 2018 hearing, on the basis that the Parklea procurement process will not be concluded by that time
- 12 September 2018 – From Ms Mansi Thakkar and Justice Action Team to committee, forwarding supplementary submission and questionnaire for inmates of dormitory style prisons

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- 25 September 2018 – Answers to questions on notice from the Hon Troy Grant MP, Minister for Police, Emergency Services, to committee, from the Police, Emergency Services hearing 30 August 2018, including two pieces of legal advice with a request to keep these confidential
- 25 September 2018 – Answers to supplementary questions from the Hon Justice Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission, to committee, from the Police, Emergency Services hearing 30 August 2018
- 25 September 2018 – Letter from the Hon Justice Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission, to committee, requesting the committee redact the body which conducted the 2017 Washington Conference from the transcript for the budget estimates hearing dated 30 August 2018
- 25 September 2018 – Email from Ms Harriet Ketley, Manager, Strategic Law Reform Unit, Legal Aid NSW to the secretariat, advising that Legal Aid NSW is not in a position to provide further details of the confidential case study referred to in evidence at a hearing on 2 August 2018
- 27 September 2018 – Email from Ms Nishita Dayal, Office of Minister Grant, to secretariat, in relation to publication of the two pieces of legal advice provided as part of answers to questions on notice.

Sent:

- 14 August 2018 – Email exchange between secretariat and Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, providing advice on confidential case study requested via questions on notice from 2 August 2018 hearing

- 21 August 2018 – Chair to Commissioner Peter Severin conveying the committee's thanks regarding the site visits to the Hunter Correctional Centre, Wellington Correctional Centre and Macquarie Correctional Centre

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Resolved on the motion of Mr Farlow: That the committee:

- keep the email exchange with Mr Anthony Levin, Senior Solicitor, Human Rights Group, Legal Aid NSW, providing advice on confidential case study requested via questions on notice from 2 August 2018 hearing, received 14 August 2018, confidential, as per the advice of the secretariat, as it contains identifying and/or sensitive information.

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4.1 Consideration of the status of answers to questions on notice: Police, Emergency Services

Resolved, on the motion of Mr Graham: That the committee:

- publish the two pieces of legal advice provided as part of the answers to questions on notice from the Hon Troy Grant MP, Minister for Police, Emergency Services, received 25 September 2018
- publish the answers to supplementary questions from the Hon Justice Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission, received 25 September 2018
- redact from page 14 of the transcript from the Police, Emergency Services hearing on 30 August 2018 the name of the body which conducted the 2017 Washington Conference
- keep confidential the correspondence received on 25 September 2018 from the Hon Justice Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission, requesting the committee redact the body which conducted the 2017 Washington Conference from the transcript.

5. Inquiry into Parklea Correctional Centre and other operational issues

5.1 Serco Asia Pacific's attendance at 28 September 2018 hearing

The committee noted that it had agreed via email that, in view of the correspondence from Serco Asia Pacific received 11 September 2018, in the first instance the committee forward any questions to Serco for their written response.

5.2 Public submission

Resolved on the motion of Ms Voltz: That the committee authorise the publication of submission no. 34a and its attachment, and submission 37a.

5.3 Answers to questions on notice and supplementary questions

The committee noted that answers to questions on notice and answers to supplementary questions from the following organisations were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Legal Aid NSW, received 7 September 2018
- Professor Gary Sturgess, received 24 September 2018.

The committee noted the receipt of answers to questions from Justice Action, together with attachments, received 26 September 2018.

Resolved, on the motion of Ms Voltz: That the committee authorise the publication of the answers to questions on notice provided by Justice Action, together with attachments, with the exception of identifying information, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: The answers to questions on notice for the hearing held this day be returned within 10 days.

Mr Graham left the meeting.

5.4 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Fiona Rafter, Inspector of Custodial Services

Ms Rafter tendered the following documents:

- Inspector of Custodial Services – Annual Report 2016-17
- Inspector of Custodial Services – Full House: The growth of the inmate in NSW

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Carolyn McKay, Lecturer in Law, Deputy Director, Sydney Institute of Criminology, The University of Sydney Law School.

The evidence concluded and the witness withdrew

The following witness was sworn and examined:

- Mr Domenic Pezzano, Former correctional officer.

The evidence concluded and the witness withdrew

The following witness was sworn and examined:

- Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network NSW Health

The evidence concluded and the witness withdrew

The following witnesses were sworn and examined (via Skype):

- Associate Professor Jane Andrew, Associate Professor, Accounting, University of Sydney Business School
- Dr Max Baker, Senior Lecturer, Accounting, University of Sydney Business School.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Severin, Commissioner, Corrective Services NSW
- Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, Corrective Services NSW
- Mr Carlo Scasserra, Acting Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW
- Ms Gayle Robson, Commissioner's Chief of Staff, Corrective Services NSW
- Mr Glen Scholes, Director, Custodial Corrections North, Corrective Services NSW

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.05 pm.

The public and media withdrew.

5.5 Tendered documents

Resolved, on the motion of Ms Voltz: That the committee accept and publish the following documents tendered during the public hearing:

- Inspector of Custodial Services – Annual Report 2016-17, tendered by Ms Fiona Rafter
- Inspector of Custodial Services – Full House: The growth of the inmate in NSW, tendered by Ms Fiona Rafter.

6. Report deliberative meeting

Resolved, on the motion of Mr Shoebridge: That the report deliberative date for the inquiry into Parklea Correctional Centre and other operational issues move to 23 November 2018, subject to members' availability.

7. Next meeting

The committee adjourned at 4.08 pm, until Tuesday 30 October 2018.

Merrin Thompson
Committee Clerk

Minutes no. 87
Tuesday 30 October 2018
Portfolio Committee No. 4 – Legal Affairs
Silverwater Women's Correctional Centre, 9.05 am

1. Members present

Mr Borsak, *Chair*
Mr Clarke
Ms Voltz
Mr Farlow
Mr Khan
Mr Moselmane
Mr Shoebridge

2. Apologies

Mr Clarke

3. Inquiry into Parklea Correctional Centre and other operational issues

3.1 Site visit to Silverwater Women's Correctional Centre and the Metropolitan Remand and Reception Centre

The committee attended the Silverwater Women's Correctional Centre then the Metropolitan Remand and Reception Centre, and was met by the following Corrective Services NSW staff:

- Mr Kevin Corcoran, Assistant Commissioner Custodial Corrections
- Mr Hamish Shearer, Director Custodial Corrections Metro West
- Ms Paula Quarrie, Governor, Silverwater Women's Correctional Centre
- Mr Jon Cresswell, Senior Assistant Superintendent
- Mr Simon Raper, A/Director Custodial Corrections Metro East
- Mr Tom Woods, Governor, Metropolitan Remand and Reception Centre
- Ms Mary Britton, A/Manager, Strategic Communications, Commissioner's Office.

Ms Quarrie provided a briefing on the Silverwater Women's Correctional Centre and Mr Woods provided a briefing on the Metropolitan Remand and Reception Centre.

The committee conducted a tour of inspection of the facilities, accompanied by the staff listed above.

3.2 Site visit to the Long Bay Correctional Complex

The committee attended the Metropolitan Special Programs Centre and the Long Bay Hospital at the Long Bay Correctional Complex, and was met by the following staff of Corrective Services NSW and the Justice Health and Forensic Mental Health Network:

- Mr Kevin Corcoran, Assistant Commissioner Custodial Corrections
- Mr Simon Raper, A/Director Custodial Corrections Metro East

- Mr Pat Aboud, Governor, Metropolitan Special Programs Centre
- Mr Shannon Kay, A/Governor, Long Bay Hospital and Special Purpose Centre
- Ms Mary Britton, A/Manager, Strategic Communications, Commissioner's Office
- Mr Shaun Connolly, Nurse Manager, Operations, Access and Demand Management, Justice Health and Forensic Mental Health Network
- Mr Duncan Newsome, Nursing Unit Manager, South Eastern NSW, Justice Health and Forensic Mental Health Network.

Mr Aboud provided a briefing on the Metropolitan Special Programs Centre. Mr Kay provided a briefing on the Long Bay Hospital Cluster. Mr Connolly provided a briefing on the hospital's Mental Health Unit.

The committee conducted a tour of inspection of the facilities accompanied by the staff listed above.

4. Adjournment

The committee adjourned at 4.30 pm until 16 November 2018.

Merrin Thompson
Committee Clerk

Draft minutes no. 93
Wednesday 19 December 2018
Portfolio Committee No. 4 – Legal Affairs
McKell Room, Parliament House, Sydney at 1.05 pm

5. Members present

Mr Borsak, *Chair*
Mr Shoebridge, *Deputy Chair*
Mr Clarke
Mr Farlow
Mr Khan
Mr Moselmane
Ms Voltz

6. Previous minutes

Resolved, on the motion of Mr Moselmane: That draft minutes nos. 83, 84, and 87 be confirmed.

7. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 23 October 2018 – Letter from Chair to Mr Pieter Bezuidenhout, General Manager, GEO Group Australia, thanking him for hosting the committee's site visit to Junee Correctional Centre on 24 September 2018
- 6 December 2018 – Letter from Chair to Mr Peter Severin, Commissioner, Corrective Services NSW, thanking him for facilitating the committee's visit to the Silverwater Women's Correctional Centre, Metropolitan Remand and Reception Centre and Long Bay Correctional Complex ion 30 October 2018.

Received:

- 2 October 2018 – Email from Mr Rod Casimir, Legal Manager, The GEO Group Australia, providing information sought during committee visit to Junee Correctional Centre *(attached)*

- 15 October 2018 – Letter from Ms Fiona Rafter, Inspector of Custodial Services, requesting clarifications to her transcript of 28 September 2018
- 4 October 2018 – Letter from Mr Brett Collins, Coordinator, Justice Action, to committee, forwarding response from Ms Gayle Robson, Chief of Staff to Commissioner, Corrective Services NSW, to request from Justice Action to distribute a questionnaire to inmates of the rapid build dormitory prisons
- 1 November 2018 – Letter from Mr Michael Barnes, NSW Ombudsman, to Chair, providing responses to written questions in the context of the Parklea inquiry, and attaching information from annual report, received 1 November 2018
- 29 November 2018 – Letter from Mr Gary Forrest, Chief Executive, Justice Health and Community Mental Health Network, NSW Health, providing information in response to questions arising during the site visit on 30 October 2018.

The Committee noted that it resolved via email to:

- publish the request from the Inspector of Custodial Services for clarifications to her transcript of 28 September 2018, and insert footnotes at the relevant points in the Inspector's transcript, with hyperlinks to her letter of request
- publish the letter and attachments from Mr Michael Barnes, NSW Ombudsman, to Chair, received 1 November 2018.

Resolved, on the motion of Mr Shoebridge: That the committee publish the correspondence received from Mr Gary Forrest, Chief Executive, Justice Health and Community Mental Health Network, NSW Health, providing information in response to questions during the site visit on 30 October 2018.

Resolved, on the motion of Ms Voltz: That the letter from the Chair to the author of submission no. 12 concerning the confidentiality of his submission to the Parklea Correctional Centre inquiry, dated 12 March 2018, be kept confidential.

8. Inquiry into Parklea Correctional Centre and other operational issues

8.1 Public submission

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 16a.

8.2 Answers to questions on notice and supplementary questions

The committee noted that answers to questions on notice and answers to supplementary questions from the following organisations were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Associate Professor Jane Andrew and Dr Max Baker, The University of Sydney Business School, received 26 October 2018
- Mr Gary Forrest, Justice Health and Community Mental Health Network, NSW Health, received 19 October 2018
- Dr Carolyn McMay, The University of Sydney Law School, received 12 October 2018
- Ms Fiona Rafter, Inspector of Custodial Services, received 15 October 2018
- Mr Peter Severin, Commissioner, Corrective Services NSW, received 15 October 2018.

8.3 Answers to questions on notice – Public Service Association NSW and Community and Public Sector Union

Resolved, on the motion of Mr Khan: That the committee authorise the publication of answers to questions on notice from Mr Troy Wright, Public Service Association NSW and Community and Public Sector Union, received 11 October 2018, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.

8.4 Consideration of Chair's draft report

The Chair submitted his draft report, entitled 'Parklea Correctional centre and other operational issues', which having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.2 be amended by omitting, 'Having broadcast concerns over a long period prior to this point, Radio 2GB presenter Ray Hadley' and inserting instead 'Ongoing criticism in the broadcast media, especially on radio,'.

Resolved, on the motion of Mr Khan: That paragraph 1.2 be amended by inserting 'occurring in December 2016' after 'In a separate incident'.

Resolved, on the motion of Mr Khan: That paragraph 1.6 be amended by inserting after the first sentence: 'The contract under which GEO operated Parklea until the termination of the contract in 2018 (including by extension) was that entered into in 2009.'

Resolved, on the motion of Mr Shoebridge: That paragraph 1.13 be amended by inserting at the end: 'It remains to be seen how this new, wholly privatised, medical service model will work in Parklea. Further consideration of it was outside the scope of this inquiry.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.18:

> 'The prison system is largely a passive responder to these changes. It must cope with increased prison numbers that are sent its way by the Parliament, the police and the judiciary. Whether or not this increase in prisoner numbers is an appropriate public policy outcome at a time where New South Wales is experiencing record low rates of violent crime is not able to be answered in this inquiry.'

Resolved, on the motion of Mr Shoebridge: That paragraph 1.27 be amended by inserting 'seek to' before 'ensure'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.32 be amended by omitting the second sentence, 'One monitor was appointed every year between 2011 and 2016, with three instated from 2017.' and inserting instead 'From 2011 to 2017 there was only one monitor, at which time it increased to three.'

Resolved, on the motion of Mr Khan: That paragraph 1.49 be amended by inserting at the start: 'That committee saw benefits with a mixed model of correctional management, that is, a mixture of public and private management of prisons.' [FOOTNOTE: Legislative Council, General Purpose Standing Committee No. 3, *Privatisation of prisons and prison-related services*, June 2009, pp 45 and 87.]

Chapter 2

Resolved, on the motion of Mr Khan: That the heading above paragraph 2.1 be amended by omitting 'The crisis' and inserting instead 'Recent troubling events'.

Mr Khan moved: That paragraph 2.1 be amended by omitting 'crisis that erupted' and inserting instead 'reports'.

Question put and negatived.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.2:

> 'As detailed below in paragraphs 2.34-2.35, in February 2017 CSNSW initiated a 'wellbeing review' of the operations at Parklea with a focus on safety and security issues.'

Mr Khan moved: That paragraph 2.4 be amended by omitting 'of crisis'.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That tables 2, 3 and 4 each be amended to include a clear notation that the 2018 data is for a partial year.

Resolved, on the motion of Mr Khan: That the following two new paragraphs be inserted after paragraph 2.11:

> 'CSNSW provided figures on the trends in the performance of Parklea and comparable prisons (the Metropolitan Remand and Reception Centre and Wellington). These figures indicated that in 2016-17 Parklea recorded a significantly lower rate of assaults on staff than comparable public prisons and a much lower rate than all public secure custody prisons. Since 2010-11 Parklea has consistently recorded a lower

rate of inmate on staff assaults than comparable public prisons and a lower rate compared to all public secure custody prisons (with the exception of 2012-13 only).

Overall, staff at Parklea are statistically less likely to be assaulted than staff working in public secure custody prisons, or comparable publicly operated prisons. CSNSW provided further figures which indicated that in 2016-17, Parklea recorded a slightly lower rate of spontaneous use of force on inmates than comparable public prisons and a slightly higher rate than all public secure custody prisons. In 2015-16, the rate of spontaneous use of force on inmates at Parklea was slightly lower than all public secure custody prisons. Since 2009-10, Parklea has consistently recorded a lower rate of spontaneous use of force on inmates than comparable public prisons. [FOOTNOTE: Submission no. 37, Corrective Services NSW, Department of Justice, p 52.]'

Resolved, on the motion of Mr Khan: That paragraph 2.25, the quote that follows and the section heading be omitted:

'Questions about Junee Correctional Centre

A question also arose in evidence as to whether the problems at Parklea were not also present at Junee Correctional Centre, given that it is also managed by the GEO Group. For example, whilst acknowledging that the PSA/CPSU does not represent workers at Junee, so has no direct knowledge of operations there, Ms Jess proposed that surely there must be similar issues at play at that prison too:

> I would say respectfully say without firsthand knowledge that I cannot see how the issues that GEO has had in managing Parklea would not have been repeated at Junee … Based on our experience as a union not being consulted about the issues at Parklea, I would wonder very much if the silence coming out of Junee is a real silence or if there are actually issues bubbling away under the surface as well. [FOOTNOTE: Evidence, Ms Jess, 2 August 2018, p 12.]'

Mr Khan moved: That paragraph 2.75 be amended by omitting the first sentence: 'The fact that the problems at Parklea Correctional Centre escalated to the point of crisis is extremely troubling to the committee.'

Question put and negatived.

Mr Khan moved: That paragraph 2.76 be amended by omitting 'but it is concerning to the committee that in the face of escalating problems, evident across multiple indicators, CSNSW seems to have intervened later than it might have.'

Question put and negatived.

Mr Khan moved: That paragraph 2.78 be amended by omitting 'erupting in'.

Question put and negatived.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 2.78:

'The data we have been able to obtain from both GEO and CSNSW makes it clear that there were readily identifiable and escalating problems with contraband, excessive use of force and assaults at least from 2016. If it was true that during this time CSNSW had strict oversight of the operations at Parklea, then it is difficult to understand why more immediate interventions were not made then. This is especially so given what appears to be the widespread acknowledgement that the overall culture at Parklea was creating a damaging environment for staff and prisoners. These kinds of cultural problems do not happen overnight, and any proactive regulator or monitor would have had to be aware of them well before the crisis struck in 2017.'

The committee divided.

Ayes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Noes: Mr Clarke, Mr Farlow, Mr Khan.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.82 be amended by inserting after 'they were', 'about more than just resources and staffing levels (as important as these are) they were'.

Mr Khan moved, in globo:

(a) That paragraph 2.84 be omitted: 'Given that many if not all correctional centres in New South Wales also faced the challenges that Parklea encountered, the extent to which Parklea's status as a private prison had a bearing on the cultural and other problems that occurred there emerged as a significant area of discussion in this inquiry.'

(b) That paragraph 2.85 be omitted: 'It is clear to the committee that while there are substantial risks for the effective operation of any prison, there are additional risks that accompany private prisons, and we saw those risks erupt into crisis at Parklea Correctional Centre in 2017.'

(c) That paragraph 2.86 be omitted: 'The committee has some sympathy for the view expressed by several stakeholders that private prisons operate from a fundamentally different model to that of public prisons, in that they are not just accountable to government but also to their shareholders. While we do not take a position in respect of the privatisation of prisons, we do consider that a particular risk accompanying the private sector model is that standards of safety and quality may erode because of the inherent tension between minimising costs and ensuring quality, holistic service provision. Another factor in this risk is that private prisons are one step removed from government and thus less exposed to the values and ethos of public corrections, and arguably less answerable for them.'

(d) That paragraph 2.88 be amended by omitting 'that erupted into crisis' after 'problems of security and contraband'.

(e) That paragraph 2.88 be amended by omitting 'culture in the private prison' and inserting instead 'culture in the prison'.

(f) That Finding 1 be amended by omitting 'that erupted into crisis' after 'problems of security and contraband'.

(g) That Finding 1 be amended by omitting 'culture in the private prison' and inserting instead 'culture in the prison'.

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Farlow, Mr Khan.

Noes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.84 be amended by inserting at the end: 'During this committee's numerous public hearings and multiple visits to prisons it is difficult not to notice the systemic differences between the morale, professionalism and competence of the CSNSW public servants who staff our public prisons, and the responses of GEO regarding Parklea. In particular much of the critical material regarding Parklea had to be drawn from the private operator and staff who, even during this inquiry, failed to face up to the serious and systemic failings in that company's operation of the prison.'

Resolved, on the motion of Mr Shoebridge: That paragraph 2.86 be amended by omitting 'The committee has some sympathy for the view' and inserting instead 'The committee acknowledges the view'.

Resolved, on the motion of Mr Shoebridge: That Finding 1 be amended by inserting 'longstanding' before 'fundamental failures'.

Mr Khan moved: That paragraph 2.90 be amended by omitting 'on whose watch the crisis occurred' after 'lies with CSNSW'.

Question put and negatived.

Mr Khan moved, in globo

(a) That paragraph 2.91 be omitted: 'It is with great concern that we note our observation of a pattern in CSNSW's evidence to us, in which Corrective Services has downplayed the significance of the problems at Parklea and has been unwilling to take responsibility for its part in them. This is despite the mechanics of corporate governance arrangements for private prisons, as well as the principle that CSNSW is ultimately responsible for each private prison. This fundamental responsibility is discussed further in the following chapter.'

(b) That paragraph 2.92 be omitted: 'As a key example of this pattern of recalcitrance, the committee is very concerned that in all the evidence that CSNSW furnished to the committee, its acknowledgement of problems of culture and leadership formed only two small lines, and even then, Corrective Services downplayed their significance with its observation that the problems at Parklea 'appear to be localised issues linked to the "culture" of the prison' (see the quote under paragraph 2.74). This seems extraordinary to the committee. Despite the fact that this must surely be among the most significant information shared with us during the inquiry, this is the only reference to the problematic culture of Parklea in CSNSW's 170 page submission. The committee did not see any further preparedness on the part of Corrective Services NSW to explore this highly significant issue with us, nor to take any responsibility for it.'

(c) That paragraph 2.93 be omitted: 'The committee thus finds Corrective Services NSW did not exercise sufficient diligence in its governance over Parklea Correctional Centre and its operator, the GEO Group Australia, allowing the problems at Parklea to escalate to the point of crisis before intervening with sufficient strength to address them. Further, the committee considers that Corrective Services NSW has not taken sufficient responsibility for its part in the crisis that occurred at Parklea.'

(d) That Finding 3 be omitted: 'That Corrective Services NSW:

- did not exercise sufficient diligence in its governance over Parklea Correctional Centre and its operator, the GEO Group Australia, allowing the problems at Parklea to escalate to the point of crisis before intervening with sufficient strength to address them
- has not taken sufficient responsibility for its part in the crisis that occurred at the prison.

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Farlow, Mr Khan.

Noes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved, in globo:

(a) That paragraph 2.94 be amended by omitting 'Our last finding' and inserting instead 'A further finding'.

(b) Inserting the following new paragraph and finding after paragraph 2.99:

'Overall the evidence is clear that many of the risks and failures identified in the operation of Parklea are a direct result of it being a private prison. This fact means that the management of the prison undertaken by a private corporation that must, as a matter of law, be focused primarily on its profits. It also places its management at one remove from the most professional prison operators in NSW, who are CSNSW. Given this, and the history of failures at Parklea identified in this report, we believe that there should be no expansion of the private prison system in NSW and that the NSW Government should make a long term commitment to return all prisons in NSW to public ownership and management.

Finding X
That private prisons inevitably bring increased risks to inmates, staff and the state of NSW and therefore the NSW government should immediately commit to no further expansion of private prisons and make a long term commitment to returning all prisons in NSW to public ownership and management.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Shoebridge.

Noes: Mr Clarke, Mr Farlow, Mr Khan, Mr Moselmane, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.95 be amended by inserting 'We note that there are currently two, and soon will be three private prisons operating in NSW. Given this reality we believe it is essential to reform the way they are managed and oversighted.' before 'Together, these findings'.

Chapter 3

Resolved, on the motion of Mr Khan: That paragraph 3.42 be amended by inserting 'entered in to in 2009 by or under the authority of the former Minister The Hon. John Robertson' after 'contract between GEO and CSNSW'.

Mr Khan moved: That paragraph 3.42 be amended by omitting ', and ultimately the crisis there,' after 'the problems at Parklea'.

Question put and negatived.

Mr Khan moved: That the following new finding be inserted after paragraph 3.42:

'Finding X

The deficiencies in the contract between GEO and CSNSW entered in to in 2009 by or under the authority of the former Minister John Robertson significantly contributed to the problems at Parklea.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Clarke, Mr Farlow, Mr Khan, Mr Shoebridge.

Noes: Mr Moselmane, Ms Voltz.

Question resolved in the affirmative.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 3.43:

'We are not persuaded by the reasons given by the government to exclude CSNSW from bidding for the tender of Parklea. In our multiple inspection of prisons in NSW, and from the evidence given in this inquiry, it is clear that the most professional and capable providers of corrective services in NSW is CSNSW. Especially when we consider the multiple failures of the existing private operator of Parklea we believe it was a very poor decision, driven by ideology and not good sense, to exclude CSNSW from the tender for the prison. Excluding CSNSW can only have produced a sub-par tender process that will have ongoing impacts on the NSW prison system when the new private operator takes control of the facility.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Noes: Mr Clarke, Mr Farlow, Mr Khan.

Question resolved in the affirmative.

Mr Khan moved: That the following new finding be inserted after paragraph 3.43:

'Finding X

The new Contract, with its vast improvements, will hold the new operator of Parklea Prison more accountable for achieving best practice outcomes.'

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Farlow, Mr Khan.

Noes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.53:

'One area that received limited attention in this inquiry was the decision to privatise the health services in Parklea along with the new prison tender. The obvious risks in this, with a private operator controlling all aspects of an inmate's life, without any external health services being on call is troubling. This is a matter that both CSNSW and the NSW Government more broadly will need to pay close attention to as the new contract rolls out.'

Chapter 4

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after the case study on page 70:

'During the committee's site visit, there was significant concern about the impact of benchmarking and the reduction in staff numbers at Silverwater Women's Correctional Centre. This concern focused on the particularly complex needs of women prisoners and how these complex needs were being met under the benchmarking process.'

Resolved, on the motion of Mr Shoebridge: That paragraph 4.62 be amended by inserting 'successfully' before 'reintegrate into society'.

Resolved, on the motion of Mr Khan: That paragraph 4.67 be amended by omitting 'Concerns among witnesses' and inserting instead 'Concerns among some witnesses'.

Mr Khan moved: That paragraph 4.67 be amended by omitting 'We were somewhat reassured' and inserting instead 'We are reassured'.

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Farlow, Mr Khan.

Noes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Khan moved: That paragraph 4.67 be amended by omitting the last sentence: 'However the committee is of the view that there is something wanting here as CSNSW has not advised us of any plan to ensure that the individual characteristics of each centre will be taken into account.'

Question put.

The committee divided.

Ayes: Mr Clarke, Mr Farlow, Mr Khan.

Noes: Mr Borsak, Mr Moselmane, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Farlow: That paragraph 4.67 be amended by inserting 'adequately' before 'taken into account' in the last line.

Resolved, on the motion of Mr Shoebridge: That Recommendation 2 be amended by omitting 'and again in 2024' and inserting instead 'and against in 2023'.

Resolved, on the motion of Mr Khan: That paragraph 4.71 be amended by omitting 'reductions in staff on the ground, giving rise to greater risks to staff and inmate safety' in the first sentence and inserting instead 'changes in staff on the ground'.

Resolved, on the motion of Mr Shoebridge: That the following dot point be added at the end of the list in paragraph 4.73 and Recommendation 3:

' ● the private provision of health services at Parklea.'

Chapter 5

Resolved, on the motion of Ms Voltz: That Recommendation 5 be amended by omitting 'for the life of the prisons' and inserting instead 'for the life of these prisons'.

Resolved on the motion of Mr Shoebridge: That the following new paragraph be inserted after Recommendation 10 on page 96:

'Finally, we are of the belief that the rapid build dormitory prisons can only ever be a small, or boutique, part of the prison system. They are not best practice for the prison system at large. Best practice was identified by the Inspector of Custodial Services as secure single cell accommodation and maximum time out of cell in structure engagement.'

Resolved, on the motion of Mr Shoebridge: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled on 21 December 2018.

9. Adjournment

The committee adjourned at 2.25 pm *sine die*.

Merrin Thompson
Committee Clerk

Appendix 4 Dissenting statements

The Hon Trevor Khan MLC, The Nationals

This Final Report reflects an opportunity lost. Whilst there was a chance for a unanimous report emphasising the needs for appropriate oversight of our prisons and greater transparency, instead the majority of the Committee has sought to embark on a partisan frolic.

The majority of the members of the Committee into Parklea Correctional Centre and Other Operational Issues has fallen into error particularly with respect to Finding 3 of the Final Report. The Final Report presents opinion as fact, applies the benefit of 20/20 hindsight to the evaluation of some evidence and gives insufficient weight to some evidence presented to the Committee, particularly that given by CSNSW. The finding (Finding 3) made by the majority of the Committee against Corrective Services NSW (CSNSW) is unjustified, given the Committee has found that 'the deficiencies in the contract between GEO and CSNSW entered into in 2009 by or under the authority of the former Minister, John Robertson, significantly contributed to the problems at Parklea.'

The majority of the Committee has placed insufficient weight on the evidence from CSNSW that it proactively monitored the performance of Parklea Correctional Centre's operator GEO Group Australia and intervened throughout the contract to ensure improvements were made. The Committee has acknowledged in Chapter 3 of the Report that the new contract entered into contains 'vast improvements' which will hold the new operator 'much more accountable for achieving best practice outcomes (and) makes it clear that the levers available to the government under the previous contracts… were indeed deficient.'

There can be no doubt that prisons are difficult and volatile places to manage and that Parklea is one of the State's most complex prisons, in terms of its operations and the type of inmate it houses. It is not appropriate or possible to immediately respond to such incidents with direct interventions. It is incorrect and misleading to find that the issues that developed at Parklea in 2017 existed because it is a private prison. On most key measures of prison safety and security, Parklea performed on par or better than the comparable public prisons of Wellington and the Metropolitan Remand and Reception Centre at Silverwater. CSNSW also gave evidence that the GEO Group has successfully operated Junee Correctional Centre for 25 years.

On the evidence, CSNSW was proactive at Parklea CC, instigating the 'Well Being Review' in February 2017 and subsequently moving to intervene in July 2017. This is indicative of good governance, responsive reaction and management, and a responsible approach to holding the operator accountable.

Finally, I reject the use of overly dramatic and emotive language used in the Report, particularly with respect to the events during late 2016 and early 2017. The use of the term 'crisis' is entirely inappropriate. This detracts from much of the otherwise good work of the Committee and lessens the value of the Recommendations contained in the Report.

This report follows on the earlier inquiry completed in 2009 under the Chairmanship of the Hon Amanda Fazio. Both reports have emphasised the need for proper oversight of all prisons, both public and private, and the need for appropriate oversight and transparency. Having been a member of both Committees, I endorse those overall objectives.

Mr David Shoebridge MLC, The Greens

While the great bulk of this report and each of its recommendations represent a consensus of the members, there was one significant area of disagreement.

There was one proposed amendment, and one finding, that I put forward on behalf of the Greens that was opposed by both the Coalition and Labor members on the committee. It dealt with the future of private prisons in NSW. They were to include the following in the report:

> *Overall the evidence is clear that many of the risks and failures identified in the operation of Parklea are a direct result of it being a private prison. This fact means that the management of the prison undertaken by a private corporation that must, as a matter of law, be focused primarily on its profits. It also places its management at one remove from the most professional prison operators in NSW, who are CSNSW. Given this, and the history of failures at Parklea identified in this report, we believe that there should be no expansion of the private prison system in NSW and that the NSW Government should make a long term commitment to return all prisons in NSW to public ownership and management.*
>
> ***Finding 5***
> *That private prisons inevitably bring increased risks to inmates, staff and the state of NSW and therefore the NSW Government should immediately commit to no further expansion of private prisons and make a long term commitment to returning all prisons in NSW to public ownership and management.*

It was extremely unfortunate that both Labor and the Coalition voted to reject this principled opposition to private prisons.

Regardless of the outcome in the committee, ending the appalling practice of privatising key public services, whether it is prisons, hospitals, ports, electricity networks or even the Land Titles Office, this is a matter that the Greens will continue to campaign for in this Parliament and the next.

Despite this area of disagreement, I would like to thank the other members of the committee and the secretariat for the work and collaboration that underpins this important report.