

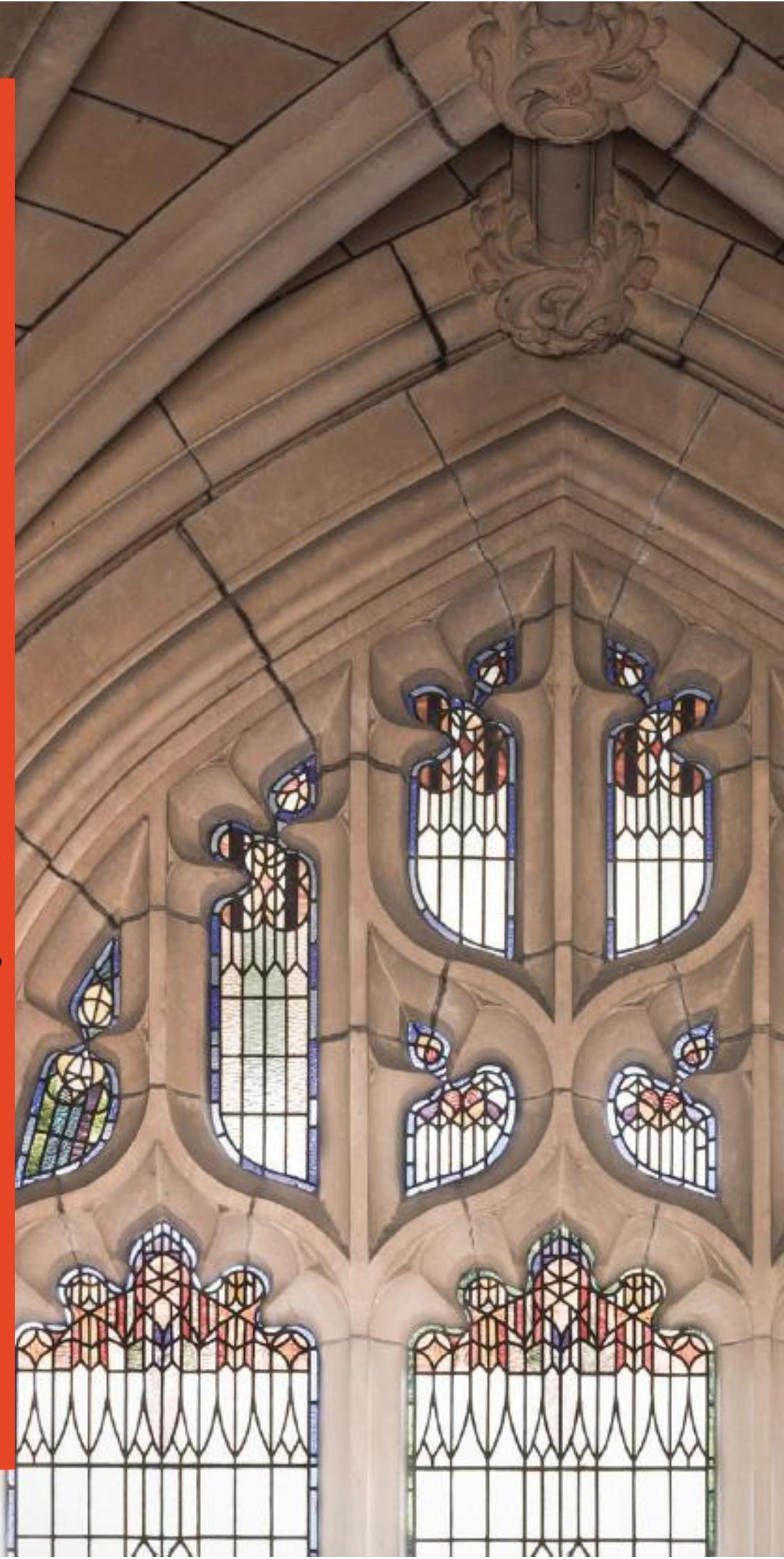
# The Cost of Commissioning

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# The Cost of Commissioning:

A Submission in Response to the ERA Draft Report on the 'Inquiry into the Efficiency and Performance of Western Australian Prisons'

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## Executive Summary

This submission emerges from a larger research project, entitled 'The Costs, Performance, Efficiency and Accountability of Australian Private Prisons' which examines the effects of prison privatization in different states within Australia, and evaluates the types of arguments made for and against further privatization of the prison system.

The recommendations made in the ERA Draft Report of July 9<sup>th</sup>, 2015 that relate to improved data gathering, transparency, benchmarking and Service Level Agreements may have a positive effect on the performance and efficiency of the sector if appropriately designed and implemented. To achieve this, there will need to be clear opportunities for stakeholder engagement and review going forward.

Overall, the assessment of the prison system in Western Australia by the ERA reveals that the costs, efficiency, accountability and performance of the system remain opaque. The Draft Report acknowledges that information about the prison system is often difficult to acquire and that the Department of Corrective Services has not gathered and/or provided information that would be useful to the inquiry.

We therefore oppose any proposal to undertake substantive reforms to the prison system before the relevant information has been gathered and assessed.

Finally, the overall argument on costing within the ERA Draft Report is insufficient. For instance, the method used to calculate costs per-prisoner per-day within individual prisons is not adequately explained. The Draft Report also lacks key information, including the potential costs of contract failure by private providers; the costs of the commissioning reforms; and the costs associated with the oversight of a 'commissioning' approach to service delivery within the sector. Moreover, it makes claims that 'workplace culture' is unnecessarily raising costs within the prison system without providing an appropriate context for these claims.

At the minimum, the ERA should:

- Embed opportunities for stakeholder engagement and review in the development of benchmarks and Service Level Agreements
- Recognise that the Draft Report does not make an evidence based case for commissioning
- Gather and publish cost data so that all parties can assess the inquiries claims and recommendations.

# 1. Developing a consistent standard for assessing the WA prison system

Across chapters 4, 5 and 6, the Draft Report outlines the basis for assessing the prison system in Western Australia, as well as specific frameworks for introducing Service Level Agreements and benchmarks. This section of the Draft Report therefore focuses on the need to gather data and establish benchmarking standards for comparison between prisons<sup>1</sup>. However, comparisons are limited by a lack of available data on the public prison system (p70). The ERA therefore recognizes that individual prisons are difficult to compare using existing measures<sup>2</sup>. This echoes the findings in academic work (see Andrew, 2007 & 2011), and it is also acknowledged in the submission made by G4S to the ERA Discussion Paper of March 18<sup>th</sup>, 2015 (G4S Australia, 2015, p2).

We support further efforts to gather data on the prison system in Western Australia; however, we note that there are a number of difficulties.

## 1.1 Practical difficulties in comparing Western Australian prisons

There are significant issues regarding the comparison of public and private prisons in Western Australia. As the Draft Report notes, only two prisons of the 16 facilities in Western Australia are privately operated. The two facilities that are privately operated by Serco, Acacia prison and Wandoo reintegration facility, are significantly different from most prisons in the state in the way that neither facility houses maximum security prisoners, nor do they take new prisoners who are still within the remand period. Both factors contribute greatly higher cost for prisons. The Western Australian Auditor-General's report into the management of adults on bail (June 2015: 7) outlines the huge financial burden remand places on public sector prisons. Indeed, "a person granted bail but who is remanded in prison for one week while they arrange to meet their bail conditions will cost the State about \$5 390. This is because the cost of bringing a defendant into the prison system is high regardless of the short time they spend there" (WA Auditor-General, June 2015: 7) and further, at \$770 per day, these prisoners cost "around double the cost for longer term prisoners" (WA Auditor-General, June 2015: 14).

Public prisons, on the other hand, house all maximum-security prisoners and are responsible for processing new prisoners within the remand period (ERA Draft Report, 2015: 29-32). Therefore it is ineffective to compare the low cost services provided by private prisons with the high cost services provided by public prisons through the use of simple metrics, like cost per prisoner per day.

## 1.2 Recommendation: Pursue further data gathering in order to facilitate greater accountability

While we strongly agree with the ERA Draft Report that indicators for performance, efficiency, cost and accountability must be established in order to ensure high standards within the prison system, we believe these indicators need to be more sophisticated than those proposed. The construction of meaningful and workable benchmarks for SLAs require increased data gathering within the public system, clear

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<sup>1</sup> "One of the deliverables of the Inquiry will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in Western Australia. The Department of Corrective Services (Department) would use the benchmarks to identify areas in which the performance of individual prisons could be improved." (p3)

<sup>2</sup> "The ERA considers that it is not possible to directly compare the performance of different prisons because of fundamental differences in their characteristics and the role that they play in the prison system. However, it is possible to provide a high-level comparison by giving prisons a weighted grade or score for their performance." (p7)

mechanisms for stakeholder engagement and clearly defined opportunities for review (See Ammons & Rivenbark, 2008, Magd & Curry, 2003). SLAs need to be developed in conjunction with people working within prison at all levels and to be successful the benefits of their implementation should be articulated to all staff. As with all changes to public services, consultation and partnership with staff is crucial (Farnham *et al.*, 2005: 79).

Benchmarks need to incorporate the cost of external private contracts as well as a clear allocation of overheads if accurate comparisons are to be made between prisons.

Given the uneven distribution of costs across the sector, the higher costs of remand periods, and of periods closer to release of prisoners, need to be understood in comparison to regular incarceration and the impact these higher cost activities has on the public sector. For example, a study of suicides in UK prisons discovered that 49% took place during the remand period, with 32% taking place in the first week of remand (S. Shaw *et al.*, 2004: 263). Moreover, prisoners on remand frequently require treatment for the initial consequences of drug withdrawal. A review of prisoners in the UK discovered that 57% of men on remand were drug users, with 71% requiring help directed at drug and alcohol misuse, and 36% requiring a detoxification program (Mason, *et al.*, 1997). This gives a good indication of the additional burdens borne by remand prisons in Australia, as they deal with acute problems stemming from drug dependency amongst new inmates. Further, a report on prison violence in New South Wales established a direct relationship between security level of prisons and frequency of violent incidents (Corben, 2003: 21). The overall picture, therefore, is of greater stress on services and personnel in remand and high security facilities, based on higher levels of violence, drug withdrawal, and suicide. Equally, costs or benefits derived from geography, from the level of security, the age of facilities, and the organizational layout of prisons need to be taken into account (see Andrew, 2011: 198).

An adequate system of 'weighted grade' assessment needs to be implemented before a meaningful comparison between public and private prisons can take place (p75).

## 2. The problems with commissioning

The final chapter of the ERA Draft Report addresses how greater ‘competitive tension’ may be introduced into the prison system as a whole.<sup>3</sup> Chapter 8 of the Draft Report proposes significant changes to the functioning of the Department of Corrective Services. These changes are proposed on the basis that they will introduce greater competition into the prison system (p138). The Draft Report presents several different potential models for increasing competition in the prison system, and establishes a clear preference for ‘commissioning’.

In our view, the ERA recommendation of commissioning as a model of service provision in Western Australian prisons is not logically continuous with the rest of the Draft Report. The earlier chapters of the report establish a clear need for greater information gathering, well defined key performance indicators, and increased accountability through Service Level Agreements. However, it is not clear that commissioning will address any of these issues.

Furthermore, given the current state of knowledge concerning the prison system, it is difficult to establish what positive outcomes would derive from the considerable and expensive restructuring needed to introduce commissioning.

The other significant problems with instituting a ‘commissioning’ approach to service provision are outlined as follows:

### 2.1 Lack of Evidential Support for Commissioning

As noted in the academic literature (e.g. Rees, 2014), commissioning is often vague at the conceptual level and unevenly implemented in practice. A 2014 review of commissioning across public services in the UK notes that, despite widespread use of this process, the UK government itself has not produced any research on its performance (Bovaird *et al.*, 2014: 556). Similarly, the ERA Draft Report contains no real evidence that commissioning has been successful elsewhere, whether in prison services or in other industries. Given that commissioning has been used as a process for service provision for over a decade in several countries, it is worrying that the ERA was unable to produce any evidence of its efficacy in raising standards, reducing costs, or increasing accountability, efficiency and productivity.

### 2.2 The DCS is unprepared for commissioning

Based on the alleged merits of a commissioning approach, the ERA suggests that the DCS should undergo considerable structural reforms. These include establishing separate service provision and commissioning divisions within the DCS, which would be ring-fenced from one another to ensure that bids were considered competitively. However, the Draft Report does not cite examples of where this type of reform has been successful in practice. A tendering unit would be created within the DCS that would focus on creating competitive bids for contracts and an independent probity auditor would oversee the separation between the two divisions. Introducing a commissioning model would therefore involve considerable time and expense. For instance, the Draft Report notes that the cost to the DCS of undertaking a commissioning process is ‘considerable’ (p147, footnote 228). However on the basis of its own admission the ERA does not possess adequate means to establish the costs of the outcomes of introducing a commissioning model of service provision.

### 2.3 Commissioning will increase costs

Despite strong advocacy of the commissioning model the ERA does not assert that this approach will necessarily reduce costs for the prison system in Western Australia. The argument in favour of commissioning is instead based upon its ability to deliver ‘system wide improvements’ (p147-148) as compared to the narrower benefits derived from a procurement model. The Draft Report suggests that

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<sup>3</sup> This is distinguished from competition within service provision at specific prisons.

use of a tendering process within a commissioning framework will lead to enhanced accountability, and to increased innovation. However, as noted previously, the empirical evidence for improved performance through commission has yet to be offered by the ERA.

Conversely, there is mounting evidence that suggests many problems with commissioning. In a comprehensive study of health care service commissioning across multiple counties<sup>4</sup> it was found that commissioning failed to introduce a competitive environment for services, to improve the flexibility and choice of providers and to improve service provider transparency (Ham, 2008: 116-117). Similarly, a review of the commissioning process within the UK National Health Service observed that this model of service provision was poorly implemented, with only 20% of authorities adequately using commissioning (Bovaird *et al.*, 2014: 556). Research further suggests that the potential cost of commissioning outweighed its benefits and the commissioning approach required the creation of large and costly institutions to oversee the process (Ham, 2008: 120).

The cost of implementing commissioning also speaks to broader concerns about the role of contracting out public services, and the lack of trust between service commissioners and service providers. Adversarial relationships between public bodies and the private actors they employ drive rising transaction costs through the need to continually redesign contracts with private providers, and to extensively monitor delivery and outcomes, in order to prevent abuses (Kirkpatrick, 1999: 7-9) The overall picture is therefore of a complicated process of service provision, which is often badly implemented in practice, and which may incur greater costs.

The Draft Report includes forecasted cost reductions surrounding the UK prison commissioning process (p140). However this does not constitute evidence of cost reductions. This also ignores the fact that the UK prison system has endured a raft of serious problems arising from the involvement of private providers, including G4S and Serco. These problems include instances where both companies systematically overcharged the UK government for electronic tagging of prisoners (Financial Times, 2014). Equally, serious allegations have been made concerning conditions at the Yarl's Wood detention centre in the UK, operated by Serco since 2007. These include sexual abuse of detainees by prison staff, and the mistreatment of pregnant women (Independent UK, 2014). Moreover, a recent UK government report on the HMP Dovegate high-security prison, privately operated by Serco, found that it was both understaffed and overpopulated, with high levels of serious violence (HM Inspectorate of Prisons, 2015: 5-6). None of these issues are explored in depth within the discussion of commissioning.

## **2.4 There is only a limited connection between commissioning and innovation**

The Draft Report provides some evidence of innovation taking place within privatized prisons in Western Australia, including the introduction of new information technology resources for managing prisoners, and a menu selection system designed to optimise satisfaction and minimise food waste.

However, we also note that the two private prisons were not established under a commissioning model. Instead, contracts were established through direct procurement. Therefore these prisons do not make an obvious case for commissioning *per se*. Equally, the innovations provided by private prisons are not a logical corollary of market competition. Introduction of a more varied menu, and allowing fathers to record stories for their children, could have each been instituted with relative ease within any public prison. Introduction of new information technology, such as the Custodial Management System, need not rely upon market competition and could simply result from a commitment to upgrading infrastructure.

## **2.5 The limited competition in the prison market**

Research on human services provision in Australia notes the importance of reducing contestability, in order to ensure high quality of services, make best use of limited public resources, and to protect vulnerable people (Davidson, 2011: 214). However, even if one assumes improving contestability is the primary goal of the ERA review, it is doubtful whether commissioning will achieve this end. As the Draft Report

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<sup>4</sup> US, UK, Sweden, The Netherlands, Germany and New Zealand

notes on page 147, only one bid was received for the Wandoo Reintegration Facility contract. This indicates that the market for non-public providers of prison services is extremely limited.

Recent research out of the UK suggests private involvement in service provision has no definite connection to market contestability (Cowie, 2012). Instead, commissioning may actually lead to more rigidity in that private providers would operate only the most profitable facilities through a bidding process, whilst leaving more problematic institutions in public hands. This type of 'selective commissioning problem' is identified within the Ernst and Young report on commissioning, cited in the ERA Discussion Paper of March 18<sup>th</sup> 2015. Ernst and Young suggest that there is a danger of 'creaming' off the services that are easier and more profitable to run (Ernst and Young, 2014: 13). There is evidence of this already occurring within Western Australian prisons, wherein private providers like Serco controls the newest facilities in Western Australia, benefiting from economies of scale of the Acacia prison, and from lower usage rates at Wandoo (ABC News, 2014) while avoiding the expensive high security incarceration and remand processes. The overall process would thus entail an unequal share of burdens and rewards between the public and private sectors.

The ERA intends to include public, private and not-for-profit entities within the commissioning process, however, in practice, not-for-profit entities have been reluctant to engage in service provision under commissioning (Silvestri, 2009). Accordingly, not-for-profit organizations should not be counted on as adding to the number of market participants in the commissioning process

## **2.6 Commissioning will not lead to increased public accountability**

Whilst the introduction of benchmarks and Service Level Agreements may provide clear measures of prison performance that could be made publically accessible for assessment and critique, it is not clear that commissioning would allow for increased accountability within the prison system. As it stands, the Draft Report does not make a clear case for how commissioning would improve public accountability. We also have concerns about the impact commissioning may have on the governance of practices within prisons. The Ernst and Young, (cited in the ERA Discussion Paper of March 18<sup>th</sup> 2015)<sup>5</sup> argues that the commissioning model of service provision requires a shift in focus from *processes* towards *outcomes* (Ernst and Young, 2014: 6). It follows that under the model, key performance indicators would not focus on *how* services are delivered but on the *outcomes* service providers are able to deliver when they are freed from the traditional constraints imposed on public service delivery. However, the provision of penal and justice services inherently involves consideration of processes, and not just outcomes. In this sense, commissioning may reduce accountability by shifting focus away from how justice is administered through the prison system or alternatively, should these be maintained, then the alleged benefits of the commissioning model would be compromised.

Given this, the model is at odds with the ERA's other recommendations around benchmarking and Service Level Agreements, as these suggest a tightening of focus on processes and accountability within the sector.

## **2.7 Recommendations: Commissioning should be rejected as a strategy for reform**

We recommend that commissioning be rejected as part of the reform of the Western Australian prison system at the current juncture. There is inadequate awareness of the costs of commissioning, a lack of adequate competition for contracts, and serious concerns about accountability attached to these reforms.

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<sup>5</sup> "Simply having multiple providers doesn't always lead to better results. Failing to manage under-performance can also dis-incentivise better performing service providers and lead to customer and community disillusionment." (Ernst and Young, 2014).

We recommend that any decision concerning whether or not to introduce new models of service provision should be delayed until such time as the DCS and the ERA have adequate means to quantify the likely effects of policy changes.

## 3. The Costs

Whilst costs should not be the only driver of public policy reform, they are important consideration in any assessment of performance and efficiency. Given this, the absence of adequate cost data throughout the report undermines the quality of the recommendations made by the ERA.

### 3.1 The connection between workplace culture and costs is unsubstantiated

The ERA Draft Report makes significant claims regarding the effects of workplace culture on the costs, efficiency and productivity of Western Australian prisons. Specifically, the Draft Report cites a difference in the cost of compensation claims between public and private prisons wherein 16 per cent of prison officers working in public prisons in Western Australia are on active workers compensation claims, compared to only one per cent in private prisons (p51). However, this overlooks the difficulties in comparison listed in the previous section. It is reasonable to expect a lower level of compensation claims in prisons that are lower security, or that are less crowded, as both of these factors contribute to workplace stress and violent incidents. As the private facilities in Western Australia benefit from both of these factors, a comparison of this kind is not useful. Moreover, there is a strong correlation between workplace efficiencies and retention of skilled employees (see Lee, et. al. 2006). Reducing access to employee entitlements therefore risks increasing turnover, as employees seek work that is better remunerated (Shaw, et al. 1998: 512). A short-term benefit in terms of a lower wage bill may therefore translate into longer term problems derived from an inexperienced workforce. For example, a 2012 study of the Australian aged care sector highlighted the importance of introducing appropriate wages, benefits and entitlements to avoid negative outcomes derived from workforce instability (Howe, et al., 2012: 87. See also King, et al., 2013).

### 3.2 Costing private prison failure and risk

There are many instances of private prison failure. Recent examples include the death of Mr Ian Ward during a transportation by G4S (ABC News 2009), the serious misconduct by Serco staff at Mount Eden NZ (New Zealand Herald, 2015), and the mismanagement of Melbourne Metropolitan Women's Correction Centre by the Corrections Corporation of America (George, 2003). In these instances where a private provider is at fault for breaches in duties of care or other issues, the government is jointly liable as noted in each of the ERA documents on prison service. The WA government cannot delegate its fundamental responsibilities for prisoners and other stakeholders thus the costs of the private mismanagement of penal services are borne by the taxpayer.

### 3.3. Negative outcomes from a lack of cost data

As noted in previous sections, the cost data for the prison sector as a whole is not yet clear. In particular, it is not clear how the cost of overheads will be incorporated into per-prisoner-per-day costs for specific prisons (Andrew and Cahill, 2009). The Ernst and Young report on commissioning, cited by the ERA in the Discussion Paper of March 18<sup>th</sup> 2015, identifies lack of price clarity as a significant problem for commissioning models of service provision. Models of pricing which are not sufficiently detailed may produce either dis-incentives or perverse outcomes (Ernst and Young, 2014: 13). Accordingly, the current state of costing information within the ERA review of prison services is a barrier to the introduction of further reforms.

### 3.4 Recommendations: Establish a full and complete picture of costs

The relative merits of the ERA's proposal cannot be assessed without accurate costing. This should include information about the current costs of the Western Australian prison system, the estimated cost of reform and their associated risks.

A rigorous review of the prison system can only occur if detailed and transparent costing projections of individual prisons, prison overheads, use of staff entitlements, and the cost of public liability for failure of private providers are made publicly available.

We recommend that the ERAs proposed reforms are stalled until a full and complete picture of costs are produced and made publicly available.

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