Submission to the

Economic Regulation Authority

Prisons Inquiry (2014)

A joint submission prepared by:

WACOSS
Western Australian Council of Social Service Inc
Ways to make a difference

WAAMH
Western Australian Association for Mental Health

wanada
Western Australian Network of Alcohol & other Drug Agencies

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About WACOSS

The **Western Australian Council of Social Service (WACOSS)** is the leading peak organisation for the community services sector in Western Australia, and represents its 300 members and the over 800 organisations involved in the provision of services to individuals, families and children in our community. WACOSS has strong relationships with the community services sector and represents the interests of the sector and the communities they serve. WACOSS is in a unique position to comment on critical social issues that affect members of the WA community — particularly those members who are disadvantaged and vulnerable.

WACOSS represents community sector organisations who work in a diverse range of areas, including: health; mental health; community services and development; disability; employment and training; aged and community care; family support; children and youth services; drug and alcohol assistance; indigenous affairs; support for culturally and linguistically diverse people; housing and crisis accommodation; safety and justice; and advocacy.

About WAAMH

The **Western Australian Association for Mental Health (WAAMH)** is the peak body representing about 100 community-managed mental health services and individuals in Western Australia. WAAMH's vision is that Western Australian community organisations will lead the way in supporting and including people with mental illness and their carers, providing innovative, well-governed community-based services focused on recovery.

WAAMH's core role is to support the development of the community-based mental health sector, provide systemic advocacy and representation, and influence public opinion for the benefit of people with mental illness and their carers.

About WANADA

The **Western Australian Network of Alcohol and other Drug Agencies (WANADA)** is the peak body for the alcohol and other drug education, prevention, treatment, rehabilitation and support sector in WA. WANADA is an independent, membership-driven not-for-profit association.

Alcohol and other drugs are a health and social issue that impacts the whole community. The alcohol and other drug sector in Western Australia provides highly skilled services to meet the diverse needs of people in our community. WANADA supports across-sector solutions that focus on a whole of community approach to addressing health and wellbeing issues associated with the use of alcohol and other drugs.

WANADA's purpose is to lead and enhance the capacity of the alcohol and other drug sector to meet the needs of the Western Australian Community.

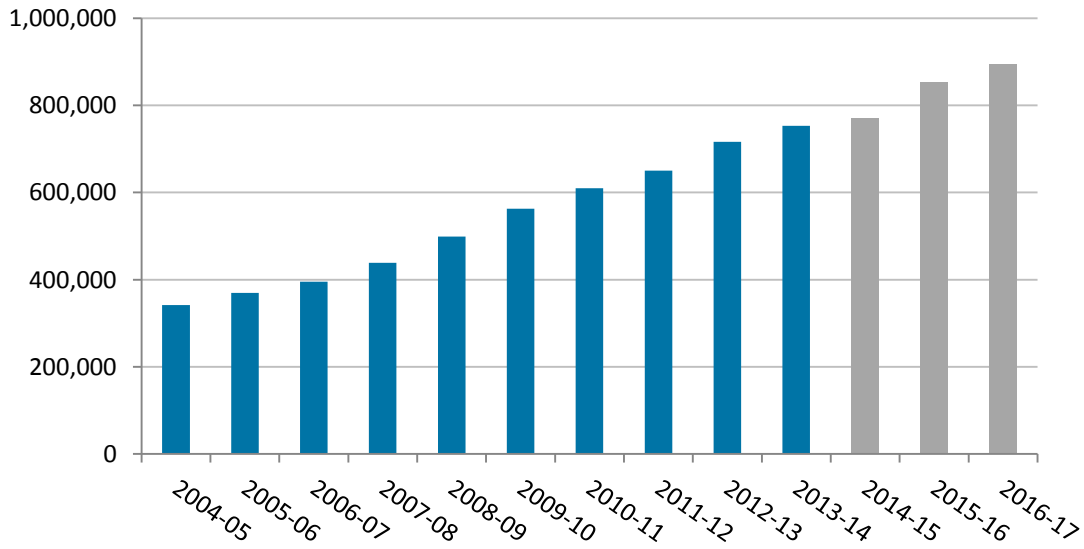
1.0 Introduction

The Western Australian Council of Social Service (WACOSS), Western Australian Association for Mental Health (WAAMH) and Western Australia Network of Alcohol and Drug Agencies (WANADA) thank the Economic Regulation Authority (ERA) for the opportunity to make a submission to the *Prisons Inquiry (2014)*.[1]

As the three member-based, peak body organisations representing the community, mental health and alcohol and other drug sectors in Western Australia, we have a keen interest in the effective and efficient functioning of the criminal justice system. Some of our members are currently involved in direct service provision within both adult and juvenile detention facilities, and many other members work in the areas including children and youth, family support, mental health, drug and alcohol, child protection, emergency relief, legal services, victim support and community development. Through their work with vulnerable and disadvantaged members of the community, our members regularly come into contact with people whose personal circumstances mean they have a greater likelihood of coming into contact with the criminal justice system.

While not explicitly stated in the Terms of Reference to this Inquiry, it seems likely appears that the key driver of this Inquiry is the steep increases in the cost of delivering prison services over the last decade.

Figure 1: Cost per annum for Adult Corrective Services ($,000)[2]



As Figure 1 shows, the total cost to the WA State Government of delivering adult prison services grew 120% between 2004-05 and 2013-14. Of understandable concern to the State

[1] The short time frame for making initial submissions to this Inquiry provided only a limited opportunity for our organisations to consult directly with members who provide DCS-contracted services, or other justice-related services. While we have been pleased to note the ERA's engagement with a number of key service providers already, we submit that there will be significant value in undertaking further, and wider-ranging consultation with the community services sector.

[2] All figures taken from WA State Budget Papers — 2004-05 through 2012-13 represent "Actual Costs"; 2013-14 is the "Estimated Actual"; 2014-15 is the "Budget Estimate"; and 2015-16 and 2016-17 are Forward Estimates. The 2013-14 through 2016-17 figures are all taken from the 2014-15 State Budget Papers.

Government is the fact that, in an increasingly tight fiscal environment, the combined cost of Adult Corrective Services and Youth Justice Services is estimated to exceed $1 billion by 2016-17.[3] The strain such high levels of spending on corrective services are placing (and will continue to place) on the State Budget are of great concern to the community services sector in Western Australia. **We know from past experience that a tight fiscal environment results in the introduction of cuts to, or restraints on, the State Government's funding of community sector services — many of which play critical roles in the prevention of offending behaviour and thus potentially, reduce corrective services costs.**

This inquiry presents an important opportunity for the State Government and our community to consider the desperate need for significant reform in the way the corrections system in Western Australia operates, and the way it interacts with other government and non-government agencies. This inquiry is an important opportunity not only to consider regulation of the system, but the bigger picture. The economic imperative driving this inquiry will not be achieved without significant, and much needed reform.

The Terms of Reference for this Inquiry focus on the issue of performance management – specifically, the development of a set of benchmarks designed to drive improved efficiency and performance of public and private prisons in Western Australia. We strongly encourage the ERA not to ignore the factors which have made the largest contribution to increased costs — that is, the growth in size of the prison population (see section 2.0).

The community services sector in Western Australia plays a key role in both preventing and responding to offending behaviour. **The development of cost-effective, innovative responses to address negative trends apparent within vulnerable or disadvantaged populations, is where the community services sector shines.**

Through this submission, we discuss in detail what we see as a key weakness of the Department of Corrective Services (the Department, DCS) at present — that is, the limited collection and use of data (relating to factors which have been shown to contribute towards offending behaviour) to drive program/service planning, procurement and evaluation. Due to the lack of available data, we expect the ERA will have many questions regarding the current efficiency and effectiveness of the delivery of prison services in WA, but will be able to find comparably few answers. We hope the ERA will conclude, like us, that addressing this serious data deficiency should be the number one priority for building a more efficient and effective prison system over the short, medium and long term.

We are aware, from the Department's 2013-14 Annual Report, that the *Knowledge and Information Technology (KIT) Directorate* has recently been established. On this, DCS has written:

> *Empirical evidence and data has shaped, and will continue to shape, our decisions. The use of accurate and timely data can help ensure that the Department can optimise capacity and target resources where they are most needed. The creation of KIT has been central to this goal. This has allowed for the transformation of data, statistical information and research findings into intelligence, an integral part*

[3] Department of Treasury (2014) 2014-15 State Budget Paper No. 2, Volume 2, page 748.

of reforming our organisation. The addition of these areas has embedded the Department's adoption of an integrated offender management philosophy – a collaborative and coordinated approach to the management of offenders.

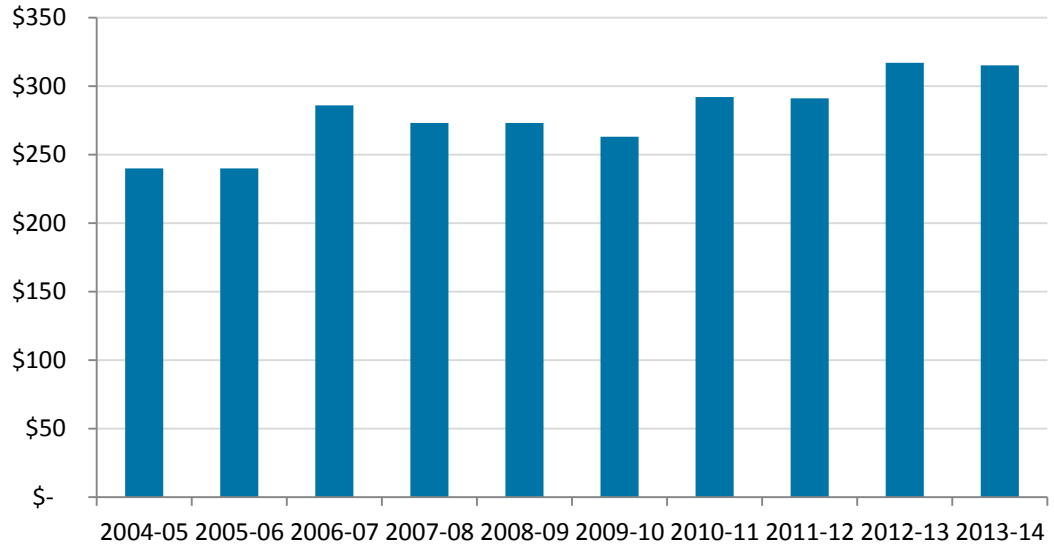
We strongly welcome this new approach. The collection and use of good data to drive funding decisions, and robust and transparent evaluation processes, are critical to the delivery of crime prevention opportunities, improved community safety, and cost-effective service delivery. **However, it is imperative that DCS be open and transparent about both the data they are collecting, and how this data is being used across policy, planning and procurement.** Greater transparency is needed to drive accountability, and to encourage new and innovative approaches to delivering safer communities.

2.0 Drivers of cost increases

Analysis of existing available data clearly indicates that the increase in the Corrective Services budget has been driven predominantly by the increases in the number of people being incarcerated in Western Australia, rather than the increases in cost per day of incarcerating prisoners. On this basis, it is critical that the inquiry takes into account the relative contribution of increasing prison numbers and not just per day imprisonment costs in considering the most effective use of resources to improve community safety and deliver long-term savings.

Between 2004-05 and 2013-14, the cost per day of keeping an adult offender in custody increased 31% — from $240 to $315.[4,5]

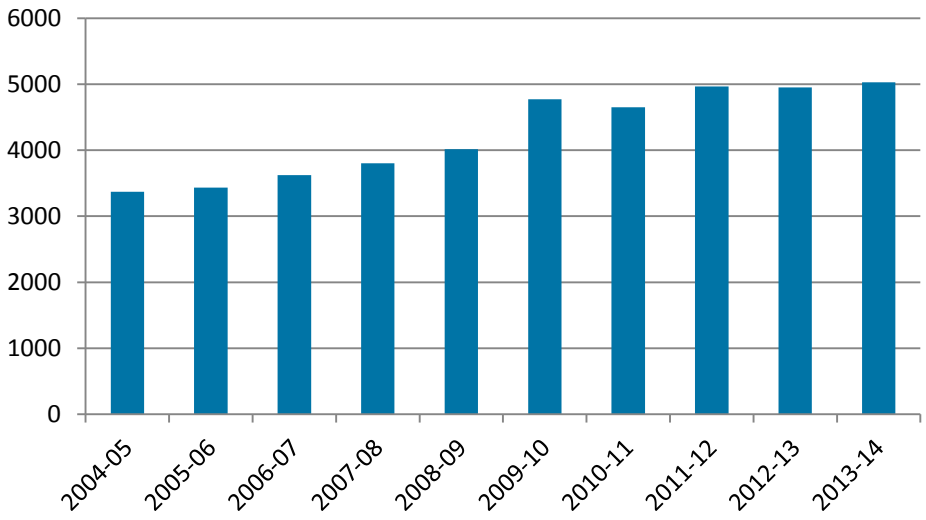
Figure 2: Cost per day of keeping an offender in custody: Adult[6]



[4] REF
[5] Over the same period, the cost per day of managing an offender through community supervision has increased 132% — from $22 to $51.
[6] Costs reflect *Budget Actual* - Government of Western Australia, 2014-15 State Budget Paper 2, Volume 2 & 2005-06 State Budget Paper 2, Volume 2.

Over the same period, the average number of prisoners increased 49% — from 3,371 to 5,034 (an additional 1,659 prisoners).

Figure 3: Average Daily Prison Population



Using these same statistics, we can also compare the impact of cost increases, in comparison with the impact of population increases. The table below compares the difference in total cost between 2004-05 and 2013-14, assuming the cost per day is constant (meaning the change in the number of prisoners is the driver of cost increases).

Average No. of Prisoners	Cost per Day	Total Cost ($m)
3,371	$240	$809
5,034	$240	$1,208
		Difference: $399
3,371	$315	$1,062
5,034	$315	$1,586
		Difference: $524

The next table compares the difference in total cost between 2004-05 and 2013-14, assuming the number of prisoners is constant (meaning a change in the cost per prisoner per day is the driver of cost increases).

Average No. of Prisoners	**Cost per Day**	Total Cost ($m)
3,371	**$240**	$809
3,371	**$315**	$1,062
		Difference: $252
Average No. of Prisoners	**Cost per Day**	Total Cost ($m)
5,034	**$240**	$1,208
5,034	**$315**	$1,586
		Difference: $378

These calculations show that while both increases in cost per day and increases in the number of prisoners are both driving the cost of prison services up, the bigger driver is the increased number of prisoners.

These figures make the community services sector question why the State Government (through the Terms of Reference provided to the ERA for this Inquiry) is focusing its efficiency measures on the cost of delivering services, rather than addressing what is seemingly the "elephant in the room" — that is, the significant increase in the number of people being imprisoned in WA.

3.0 Factors influencing corrective services costs and efficiency

The growth in the size of the prisoner population in WA is the "elephant in the room" of this Inquiry.[7] In looking for opportunities to decrease the cost per prisoner per day, we are concerned that reducing the cost of incarceration may reduce the effectiveness of prison with regards to its rehabilitative objective and the need to ensure appropriate standards of safety, care and dignity of prisoners. For example, to reduce costs, the Department might seek to reduce staff numbers, which may reduce the provision of offender or education services.

We do not deny that there may be cost efficiencies to be found within DCS. However, focusing all attention on opportunities to reduce prison costs, before first identifying and articulating the reasons *why* costs have increased so significantly in recent years, is short-sighted. Below we have identified a number of factors which have clearly had a sizeable impact on DCS's budget, and where there are potentially significant opportunities for improvement on both economic and social outcomes.

3.1 Changes in Prisoners Review Board decisions

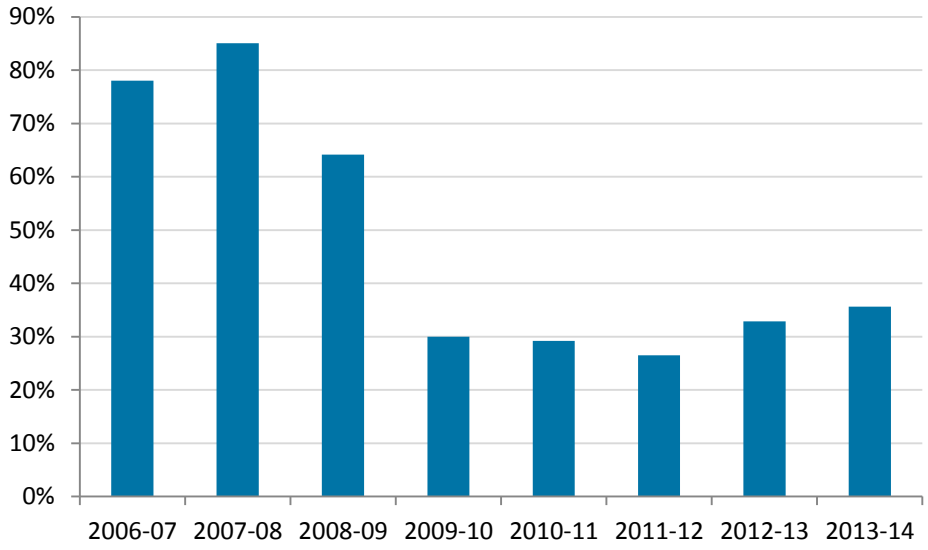
In 2010, there was concern raised about the rates of prison overcrowding in WA following an increase in the adult prisoner population of approximately 25% in the space of one year. Much of this increase was attributed to the changed practice of the new Prisoner Review Board (PRB), chaired by Justice Narelle Johnson from March 2009.[8] The impact of the new Board's "difference of approach" in granting early release orders can be seen in Table 1, and figure 4, below:

[7] ERA (2014, 9 October) *Inquiry to consider the efficiency and performance of Western Australian prisons: Terms of Reference*.
[8] ABC Radio National (2010) *Law Report: WA's Prisoner Review Board*.

Table 1: Parole eligibility and WA Prisoner Review Board decisions[9]

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
The number of prisoners who became eligible to be released under a parole order	2,483	2,732	3,051	3,091	2,582	2,639	2,982	3,134
The number of prisoners who were refused an early release order	682	493	855	2,112	1,731	1,794	1,805	2,124
The number of prisoners released under an early release order	1,937	2,323	1,957	927	754	700	980	1,116
Percentage of eligible prisoners released under a parole order	78%	85%	64%	30%	29%	27%	33%	36%

Figure 4: Percentage of eligible prisoners released under a parole order[10]



From March 2009, the PRB's application of the release considerations set out in section 5A of the *Sentence Administration Act 2003*, was markedly different from its predecessor.[11] This sudden and unexpected change of approach almost overnight, resulted in significant overcrowding within WA prisons and much higher costs for the State Government.

The value of denying parole to such a large percentage of prisoners should be questioned, especially since the level of prison overcrowding resulted in many prisoners being unable to complete programs required of them prior to parole being granted (thus resulting in them being denied parole). These prisoners were often released at the time their sentence was fully served. This means that the offender was released from prison without any supervision.

[9] All figures extracted from the *Annual Reports* of the Prisoners Review Board of Western Australia.
[10] Ibid.
[11] While Figure 4 suggests an upward trend in the percentage of eligible prisoners released under a parole order since the appointment of Judge Robert Cock QC as Chair of the WA PRB on March 26, 2012, it is too soon to know whether this trend will continue, and whether release figures will return to 2007-08 levels.

Research provides evidence to show that "recidivism rates are lower for those prisoners who have participated in either parole temporary release or release to halfway houses".[12] **As such, it is plausible to conclude that the lower rates of parole being granted in WA:**

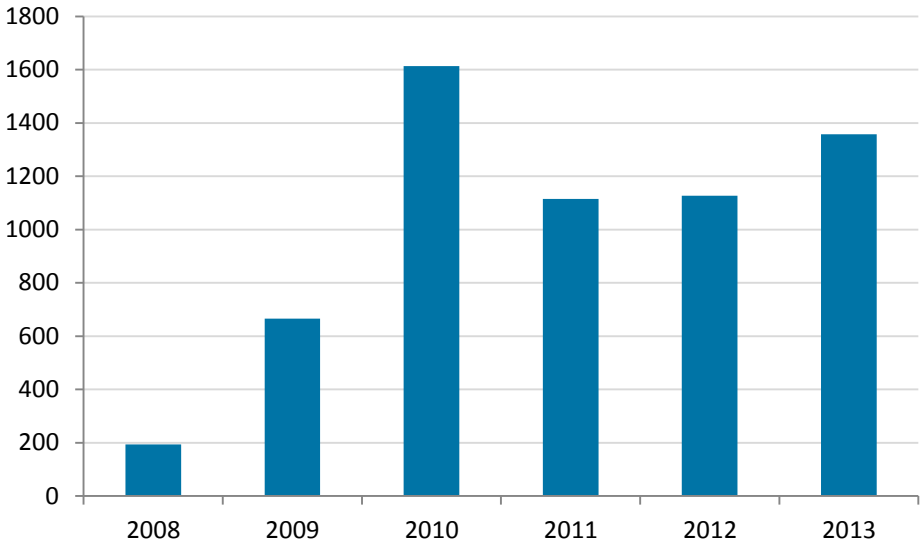
1) **Create higher immediate costs for DCS since prisoners are being held in custody for longer; and**
2) **Create higher longer term costs as prisoners released into the community without supervision (without parole) are more likely to reoffend (which creates additional costs for police, courts, DCS, and the community).**

3.2 Other policy issues

> *The number of people in West Australian prisons for unpaid fines has soared 600 per cent in the past five years, sparking claims that the Barnett government's hardline policies are exacerbating the crisis of Aboriginal incarceration.*[13]

A recent discussion paper published by WA Labor showed that the number of people entering the prison system as a means of clearing unpaid fines increased significantly between 2008 and 2013.

Figure 5: Number of receptions for fine default[14]



> *Fine defaulters enter the prison system to 'cut out' their fines at a notional rate of $250 per day. This means by going to prison over the weekend, as is often the case, an individual can rid themselves of $1,000 worth of fines (the part days of reception and release are counted as full days).*[15]

The discussion paper also indicated that Aboriginal people and women were being disproportionately impacted by this policy. We cannot see advantages to the community of this policy, especially when taking into consideration its estimated cost - that is, while never

[12] Walsh, T. (2006) Is Corrections Correcting? An Examination of Prisoner Rehabilitation Policy and Practice in Queensland, *The Australian and New Zealand Journal of Criminology*, Vol 39: No. 1, p.115.
[13] Burrell, A. (2014) *Huge leap in fine defaulters doing jail time*, The Australian.
[14] WA Labor (2014, November) *Locking in Poverty: WA Labor Discussion Paper*, p.3.
[15] Ibid, p.3.

receiving any revenue from these fine, the Government is also likely to be out of pocket for the cost of transporting people to prison, WA Police involvement, the $345/day (average) cost of imprisonment, plus the additional time and costs relating to reception and release processes from prison.

The State Government needs to justify and explain the practical, measurable benefit of this policy to the community. **Are the benefits of this policy greater than the costs (both the "cutting out" of fines, and costs of incarceration)? If the answer to these questions is 'no' — how can this policy be justified as a cost effective use of public funds?**

Similarly, the number of crimes for which mandatory sentencing applies in WA is increasing, despite overwhelming evidence from Australia and overseas demonstrating that it fails to reduce crime rates, leads to harsh and unfair sentences and disproportionately affects Indigenous and other marginalised groups.[16] The literature suggests

> *...that the proponents of mandatory sentencing have not made a very strong case either in terms of general principle or its practical, criminological impact.*[17]

From an economic standpoint, mandatory sentencing also means that offenders may be given sentences which do not reflect the most cost-effective (and efficient) use of State resources. As Donald Ritchie concluded in a paper for the *Victorian Sentencing Advisory Council* upon reviewing the relevant literature:

> *The evidence from empirical studies of deterrence suggests that the threat of imprisonment generates a small general deterrent effect. However, the research also indicates that increases in the severity of penalties, such as increasing the length of terms of imprisonment, do not produce a corresponding increase in deterrence.*[18]

To date, we are aware of no WA-specific data or analysis which contradicts findings within the literature regarding mandatory detention or the use of imprisonment as a deterrent. This suggests that such approaches (which drive up the prison population), are unlikely to be delivering an acceptable level of benefit, relative to cost. While we acknowledge that the ERA "considers that recommendations on such public policy settings are beyond the scope of this Inquiry"[19] — **we contend that for the Government to be successful at reducing the cost of incarceration and improving community safety, analysis of the cost/benefit of such approaches is both smart, and imperative.** It is highly likely that the additional money which the State Government is spending incarcerating people without a sound rationale could be invested in far more effective prevention and diversion programs which address factors which lead to offending behaviour.

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[16] Refer, for example: to Smart Justice (2013) *Mandatory Sentencing*.
[17] Sallmann, P.A. (2005) Mandatory sentencing: a bird's-eye view, *Journal of Judicial Administration*, Vol: 14, No. 4.
[18] Ritchie, D. (2011, April) *Does Imprisonment Deter?*, Victorian Sentencing Advisory Council
[19] Economic Regulatory Authority (2014) *Inquiry into the Efficiency and Performance of Western Australian Prisons: Issues Paper*, p.43.

4.0 The relevance of prison population size to this Inquiry

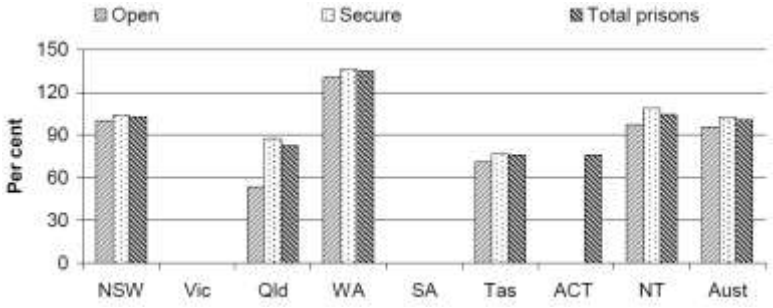
4.1 Prison overcrowding

The size of the prison population is highly relevant to this Inquiry, not just because a larger population costs the State Government more, but because overcrowded prisons are less effective in delivering rehabilitative objectives.

> *'Prison utilisation' is defined as the annual daily average prisoner population as a percentage of the number of single occupancy cells and designated beds in shared occupancy cells that is provided for in the design capacity of the prisons, reported separately for open and secure custody.*[20]

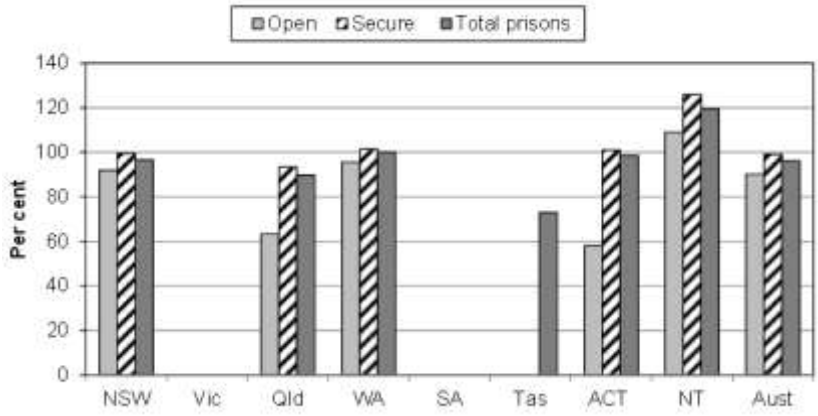
In 2010-11, Western Australian prisons were operating at a horrifying 134.9% of the total design capacity, as shown in Figure 6:

Figure 6: Prison design capacity utilisation, 2010-11[21]



By 2012-13, total prison capacity utilisation had improved to 100.1%, as indicated in Figure 7.[22]

Figure 7: Prison design capacity utilisation, 2012-13[23]



[20] Productivity Commission (2010) *2010 Report on Government Services, Chapter 8: Corrective Services*, Australian Government, p. 27.
[21] Ibid, p. 7.
[22] Ibid, p. 32.
[23] Productivity Commission (2014) *2014 Report on Government Services, Chapter 8: Corrective Services*, Australian Government, p. 32.

However, we note the Productivity Commission's assertion below (emphasis added), meaning that the Department still has some way to go to achieve the optimal level of prison utilisation:

> ***It is generally accepted that the preferred level of prison utilisation falls between 85 and 95 per cent****, because of the need for spare capacity to cater for the transfer of prisoners, special-purpose accommodation such as protection units, separate facilities for males and females and different security levels, and to manage short-term fluctuations in prisoner numbers. Percentages at the upper end of this range indicate better performance towards achieving efficient resource management.*
>
> *Efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A high utilisation percentage, for example, can impact adversely on effectiveness indicators such as 'assaults'.*[24]

The reduction in prison capacity utilisation between 2009-10 and 2012-13 was achieved as a result of the State Government spending hundreds of millions of dollars expanding existing prisons, and building new prison facilities. The cost of the Government's approach to addressing the sudden, extreme overcrowding in WA prisons had both very high up-front construction costs, as well as delivering higher recurrent expenses for the Government. Again, we question whether this decision was the most effective and efficient use of resources.

The location and type of some of these new corrective service facilities reflect the over-representation of Aboriginal Western Australians in the WA justice system. In particular, the Derby facility has been designed specially to cater for Aboriginal prisoners. Corrective Services Minister at the time, Christian Porter MLA claimed that "The Derby facility will be the first complex in Australia designed, built and staffed to meet the unique social and cultural needs of Aboriginal offenders."[25] While we acknowledge there is value in providing culturally appropriate facilities, we question whether the high rates of Indigenous offending in the (primarily Indigenous) communities surrounding these new facilities could not be better dealt with by instead increasing investment in local, community-directed initiatives targeting the factors which have been shown to precipitate offending behaviour in a local area.

We have previously welcomed the introduction of programs such as the driver training component of the *Attorney General's Aboriginal Justice Program* which seeks to address an identified cause of offending behaviour in regional areas.[26] However, we note that the program funder (Royalties for Regions) does not provide ongoing, recurrent funding, meaning that (regardless of performance), this program will likely cease in 2017. **It is also uncertain whether well-planned, ongoing evaluation processes are in place to measure the effectiveness and efficiency of this program.**

The provision of ongoing funding for evidence-based programs and services which address existing areas of disadvantage (and other identified issues), has the potential to bring

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[24] Productivity Commission (2010) *2010 Report on Government Services, Chapter 8: Corrective Services*, Australian Government, p. 27.
[25] Ibid.
[26] Government of Western Australia (2013, May 30) *Media Release: Bid to cut Aboriginal incarceration in regional WA*.

longer term, and much more positive outcomes to local communities than any prison is likely to be able to achieve, *and* optimise State Government spending.

4.2 Design capacity

In reflecting on rates of overcrowding, we also note that in the past, the Department for Corrective Services reported the "design capacity" of each of their prisons on their website. The general public had the ability to view both the design capacity of an individual prison and basic weekly prison population statistics.[27] Some time in or around 2011 (a time of high levels of prison overcrowding), the Department removed any reference to "design capacity" from their website, and replaced this with "operational capacity".[28] The Inspector of Custodial Services has written about this issue:

> *In Western Australia the Department of Corrective Services rarely refers to the national benchmark of design capacity but uses, instead, the term 'operational capacity'. This term includes the bunk beds which have been progressively installed across much of the system, especially over the past three years, in cells which were designed only for single occupancy. It does not, however, include arrangements such as mattresses placed on cell floors.*
>
> *This Office continues to argue against the double-bunking of cells designed for single occupancy for reasons of decency, respect, safety and the provision of a positive regime. The reality is that most prisons are overcrowded. And it is of particular concern that although double-bunking was originally badged as a necessary temporary measure, it has become widespread practice at most prisons. Almost every inspection report since 2010 has commented on the issues that this has created.* [29]

We maintain an unresolved concern that the decision to refer to 'operating' rather than 'design' capacity is an ongoing attempt to obscure the rate of overcrowding within WA prisons, rather than a decision designed to provide a more meaningful statistic to the public. When a prison is designed, intentional decisions are made which take into consideration the number of prisoners, safety, human rights, and efficiency and effectiveness of service delivery within the facility. While operating prisons above design capacity may reduce costs in the short term, it is unlikely to contribute positively to long term positive social outcomes.

Figure 7 shows prison utilisation in 2012-13 as being at (a much improved) 100.1%. However, we must point out that this rate is an average across all prisons. This means that a number of prisons are currently operating well above design (and likely operational) capacity. We know, for example, that Bandyup Women's Prison is highly overcrowded at present, but, on the other hand, Wandoo Reintegration Facility has been below capacity since it opened in 2012.

It is unclear from available data whether operating overcrowded prisons is more or less expensive than running a prison at capacity (or slightly below capacity as the Productivity Commission suggested was optimal). **However, available evidence makes clear that prison**

[27] Disappointingly, the Department stopped publishing their Weekly Offender Statistics on 30 June 2014.
[28] For example, see: Department of Corrective Services (2014) *Hakea Prison*.
[29] Office of the Inspector of Custodial Services (2014) *2013-14 Annual Report*, p. 8.

overcrowding hinders the ability of prisons and prison services to deliver on their rehabilitation objective, which will most likely result in higher costs to the Government and community in the long term (if not the short term).[30] The level of overcrowding raises significant questions regarding respect for human rights.

With regards to the direct and indirect cost implications of operating overcrowded prisons:

- **Direct costs:** Do you need more or less staff to oversee an overcrowded prison? What is the cost of not using the spaces in prison, as they were designed? Do overcrowded prisons increase the mental health issues requiring medical/health responses? What about health costs – does a high stress atmosphere increase chances of assaults etc.?
- **Indirect costs:** In overcrowded prisons it is more difficult for offenders to participate in courses/programs (many prisoners are on waiting lists). Inability to access offender programs makes it more likely that a prisoner will be denied parole and will remain in custody, rather than moving to a lower cost community corrections program instead. Stress levels of prison staff as a result of overcrowding may result in high levels of workers compensation claims.

We assert that overcrowding undermines the rehabilitative intention of prisons. This conclusion is supported by authors such as Fleming, Gately and Kraemer who wrote with regard to the effects of releasing offenders with untreated mental health problems into the community:

> *It is important to consider not only the health issues of the prisoners, but also the effects of releasing offenders with untreated mental health problems into the community. Particularly with problematic prison overcrowding, the mental wellbeing of prisoners will only worsen as living conditions become more cramped, cell temperatures reach extremes, and interpersonal difficulties inevitably occur. Overcrowding also increases the pressure on prison health services, unavoidably resulting in prisoners with undetected and untreated mental health problems. As these prisoners complete their sentences and are released, potentially without parole, the impact is felt on the public health system as they start accessing public health resources... Thus, prisoner mental health must be screened for and treated, with data provided to health organisations and government agencies to ensure programs are effective, and the health of prisoners meets standards expected in the general community.*[31]

It follows that reduced access to rehabilitative programs and similarly, lack of supervision upon release, will have negative consequences for community safety, and will increase the likelihood of recidivism (and thus, increase costs to police, courts and DCS). **For more on the**

[30] Refer also to "Measures of Overcrowding" within the Office of the Inspector of Custodial Services (2014) *2013-14 Annual Report*, p. 8.

[31] Fleming, J., Gately, N., & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, pp.7-8.

negative impact of prison overcrowding on rehabilitation, refer to the Criminal Justice Alliance's 2012 paper, *Crowded Out*.[32]

4.3 Security-Level Mismatch

In their *2013-14 Annual Report*, the Office of the Inspector of Custodial Services (OICS) writes:

> *As a result of investment decisions in 2009–2010, there are now in excess of 2,500 maximum-security beds for fewer than 1000 prisoners. This means that many prisoners are being subjected to more restrictive and more expensive regimes than the Department's assessment system dictates.*[33]

Decisions in 2009-10 have created what will be a legacy issue negatively impacting the State Government, since maximum-security beds are much more restrictive and expensive. The oversupply begs the question — **why did the Government build so many maximum security beds, inconsistent with need? Are there any opportunities to make amendments to the system so that it is more reflective of need?**

We currently do not have any data to know whether holding WA prisoners at a higher-than-necessary security level has any impact on rates of recidivism and whether this perhaps contributes to the justification of higher costs. However research suggests that:

> *Inmates housed in higher security levels are no less likely to recidivate than those housed in minimum security; if anything, our estimates suggest that harsher prison conditions lead to more post-release crime.*[34]

Research has also found that prisoners released from maximum security will have greater difficulty reintegrating into the community.[35]

A frank and honest explanation regarding the decisions and planning processes which led the State Government to an oversupply of the most expensive (and least rehabilitative) beds needs to be provided by DCS so that lessons can be both acknowledged and learnt.

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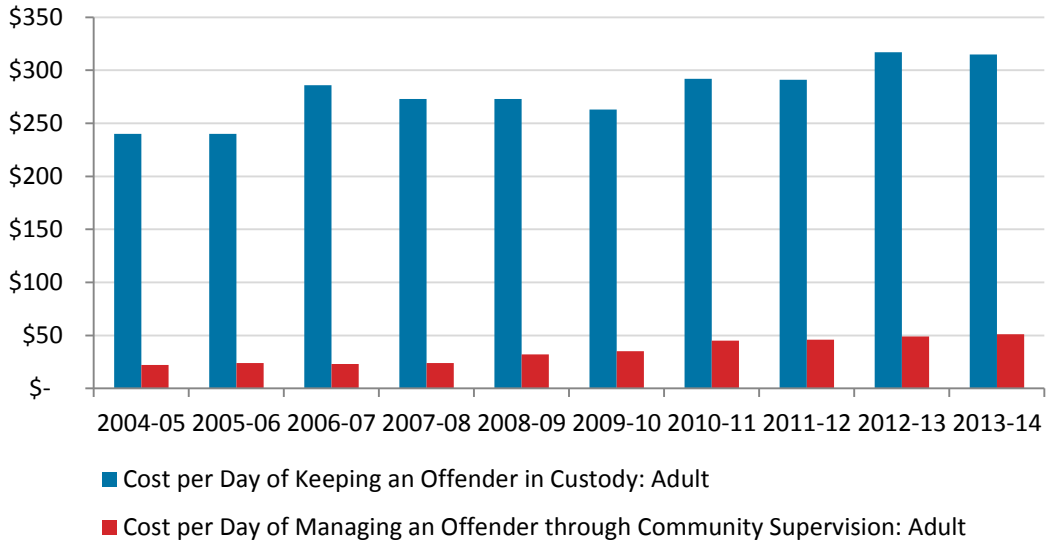
[32] Although this report focuses on the experiences of prisons in the UK and Wales, the findings and circumstances described appear highly relevant to experiences of overcrowding in WA prisons. See: Criminal Justice Alliance (2012) *Crowded Out*.
[33] Office of the Inspector of Custodial Services (2014) *2013-14 Annual Report*, p. 11.
[34] Chen, M.K. (2007) Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach, *American Law and Economics Review*, Vol. 9: No. 1.
[35] Walsh, T. (2006) Is Corrections Correcting? An Examination of Prisoner Rehabilitation Policy and Practice in Queensland, *The Australian and New Zealand Journal of Criminology*, Vol 39: No. 1, p.115.

5.0 Community corrections

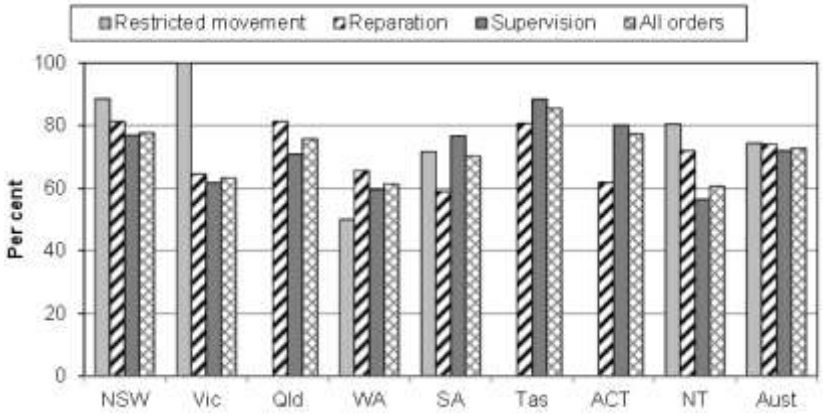
Community corrections orders include parole, probation, bail and court diversion programs.[36] As Figure 8 shows, community corrections is approximately 15-16% of the cost of keeping an offender in custody.

Figure 8: Cost per day of keeping an offender in custody vs community supervision



The 2014 Productivity Commission *Report on Government Services: Corrective Services* showed that in 2012-13, Western Australia achieved the lowest rate of completion of community corrections orders (Figure 7).

Figure 9: Completion of community corrections orders, by type of order, 2012-13[37]



At present we are unaware of any (publically available) information which further breaks down or explains these comparably poor results. **We are interested to know why the rate of completion of community corrections orders is so much lower in Western Australia than the national average? What does the low rate of completion mean? Do these failures**

[36] Department of Corrective Services (2014) *Adult Community Corrections*.
[37] Productivity Commission (2014) *2014 Report on Government Services, Chapter 8: Corrective Services*, Australian Government, p.35.

represent a serious risk to the community, or would other responses be more effective? How is the rate of completion impacted by other service systems, such as the availability and effectiveness of mental health and drug and alcohol supports?

Other jurisdictions have provided examples of where analysis of data has been used to drive the implementation of new processes and programs to deliver lower rates of recidivism, improved community safety and lower costs to governments. For example:

> *Between 2010 and 2011, [New Carolina] state leaders came together across party lines to take a hard look at their criminal justice system. With assistance from national criminal justice experts, state leaders identified issues that were disturbing not just for taxpayers, but also for public safety:* ***more than half of people entering prison were those who failed on probation; substance use treatment resources were spread thinly across the probation population****; and 15,000 people who had been convicted of felony offenses were leaving prison every year without any supervision at all."* [38]

It was also found that in North Carolina:

> *More than half of all admissions to prison in FY2009 were probation failures, and three-quarters of those admissions were for violations of supervision conditions, not the result of a new conviction or absconding. Looking carefully at the reasons behind the high probation failure rates, state leaders found an outdated supervision system badly in need of repair and weighed down by high caseloads.*[39]

These (and related) findings prompted a range of changes to the justice system in North Carolina, which have since delivered reductions in prison population size, number of overall admissions to prison, and the closure of 10 prisons. Thorough, transparent, and *ongoing* analysis across the criminal justice system in WA is needed in order to determine these types of areas of concern, what is causing WA to perform so poorly with regards to community corrections, and to determine whether new/different programmatic or systematic responses are needed to address the low rate of completion, associated impacts, and to improve community safety and reduce the cost to Government.

5.1 Throughcare approaches

There are a wide range of obstacles which face prisoners seeking to reintegrate back into the community post-release. Offending has been linked to social disadvantage, and a range of social challenges including poverty, poor education, unemployment and poor physical health, accompanied by alcohol, drug and mental health issues, intellectual disability, and poor social and communication skills; all of which may place an individual at high risk of rearrest and reimprisonment.[40]

> *Social disadvantage can be further exacerbated by the prison experience. Prisoners tend to possess low levels of workplace skill and education, and the addition of a*

[38] Justice Centre (2014, November) *Justice Reinvestment in North Carolina*, p. 1.
[39] Ibid, p. 1.
[40] Borzycki, M. & Baldry, E. (2003) *Promoting integration : the provision of prisoner post-release services, Trends & issues in crime and criminal justice no. 262*, Australian Institute of Criminology.

custodial term to an ex-offender's personal history further diminishes employability. Similarly, stable accommodation can become hard to obtain because on release, ex-prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing.

Without sufficient material and social support upon release, the cycle of release and re-arrest can become increasingly difficult to break.[41]

A number of community sector service providers are contracted by DCS to deliver throughcare programs to support offenders pre and post-release.

Throughcare programs typically provide a counselling/case management service for men and/or women who are eligible for parole within the next three months. The contracted period of engagement post-release varies, though is often approximately 9 months. Participation is voluntary, and referrals for participations must be made by a Transition Manager within DCS to one of the community service providers. Throughcare workers help their clients access the services they need, such as rehabilitation, accommodation, employment, education, training, health, life skills, and reconnection to family and community.

In 2009, the Federal Department of the Attorney General commissioned a number of evaluations of throughcare programs. An evaluation of eight programs by the Cultural and Indigenous Research Centre indicated:

...a range of positive outcomes of Offender Support and Reintegration. While lack of comprehensive data makes definitive findings on longer term goals such as reducing recidivism difficult, many significant positive outcomes were identified."[42]

We note, yet again, the central role that data needs to play in both driving DCS policy and procurement, and program evaluation.

A further factor identified as a challenge to throughcare programs (through the same evaluation) is the lack of resourcing for, and sustainability of, programs. For example:

Most of the programs in Project B were challenged by lack of adequate, stable and ongoing funding, and this worked to limit their success. The lack of stable and sufficient funding underlined many of the performance issues identified in this evaluation. The capacity of the programs to undertake performance monitoring to establish client outcomes, develop collaborative service partnerships and undertake systems advocacy were all limited by such constraints.

All programs could have been better resourced for success, especially for planning and monitoring and evaluation functions. This would have strengthened their capacities to be results based. There was also a need for adequate funding for the system as a whole in order to provide complementary programs and services.

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[41] Borzycki, M. & Baldry, E. (2003) *Promoting integration : the provision of prisoner post-release services, Trends & issues in crime and criminal justice no. 262*, Australian Institute of Criminology.

[42] Cultural and Indigenous Research Centre (2013, January) *Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration: Final report*, Department of the Attorney General, p.221.

Positive program results were hampered by short-term, time-limited or spasmodic funding, meaning the programs did not have the capacity for effective program planning, implementation and evaluation.[43]

Anecdotal reports from service providers in WA tell similar stories. One organisation reported having been pleased to receive very positive feedback on their service delivery under their DCS contract, but have found that DCS' acknowledgement of the need for and value of additional funding for their program rarely bears fruit.

Support and funding for throughcare approaches to prisoner release is needed to deliver long-term savings for Government by reducing reoffending rates. To this end, ongoing evaluation of the delivery and outcomes of (throughcare and other) services must be undertaken to ensure a culture of continuous improvement is supported to optimise performance and spending.

On the topic and value of throughcare, we commend Outcare's[44] submission (to this Inquiry) to the ERA.

6.0 Factors which contribute to offending behaviour & the delivery of effective rehabilitation services in the prison system

We note that the Issues Paper identifies four primary objectives of imprisonment: incapacitation, deterrence, rehabilitation and retribution. However, we argue, the ultimate goal is community safety, and that the four identified objectives are a just means to that end.

On the four objectives: Studies of **deterrence** suggest that the threat of imprisonment generates only a small general deterrent effect, and that more severe penalties do not deliver corresponding increases in deterrence.[45] **Retribution** is no longer considered an appropriate objective — it is inconsistent with current community standards and values. **Incapacitation** is a necessary short-term response where an individual represents a threat to community safety — but does not in itself provide a long-term, lasting or sustainable solution. Rather, incapacitation provides an opportunity to pursue the more fundamental objective of **rehabilitation**. Incapacitation is expensive, and where it is not linked to rehabilitation, arguably ineffective. However, given the fact that the vast majority of offenders *will* be released, the safety and wellbeing of the community relies heavily on the ability of the prison system to provide (and encourage the use of) services which help to address the underlying causes of offending behaviour and those other factors associated with offending. Where community safety is not at risk other response may provide more efficient and effective outcomes.

Rehabilitation has a critical role to play in reducing crime and achieve long-term benefits for the community and victims, as well as better outcomes for individuals. We also submit that

[43] Cultural and Indigenous Research Centre (2013, January) *Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration: Final report*, Department of the Attorney General, p.7.
[44] Outcare is a WACOSS, WANADA and WAAMH member, and a DCS contracted provider of throughcare and other services.
[45] Victorian Sentencing Advisory Council (2011) *Does Imprisonment Deter? A Review of the Evidence*, p.1.

there is a critical issue, that has not been identified in the Issues Paper, yet which is essential to meet both the rehabilitative aim of prisons and our international obligations to prisoners. With deprivation of liberty comes State responsibilities; these, and the civil and political rights of individuals, are set out in the *International Covenant on Civil and Political Rights*.

The *Standard Minimum Rules for the Treatment of Prisoners* sets out rules for the general management of prisons and addresses issues such as cell occupancy, clothing, exercise, medical services and discipline and punishment. It also addresses the issues of rehabilitation, treatment, services, transition supports, connection to community and the role of community organisations in achieving community reintegration. This includes the requirement to provide health and medical services, including psychiatric services.

We commend the *Standard Minimum Rules for the Treatment of Prisoners* and the ICCPR to the ERA.

The ability of the prison system to deliver on its rehabilitative objective in an effective way is heavily dependent on data. That is, the system's ability to rehabilitate prisoners, or address their health/disability issues, relies firstly on its ability to understand what the needs of the population are. **We have significant concerns regarding Department of Corrective Services' ability to provide the most effective and efficient mix of programs and services to address causal factors, given the lack of data collected on such factors at present.** We are also concerned about the lack of transparency with regard to the data that is collected.

6.1 The 'criminalisation' of social and health issues

A key feature of the existing approach to crime and justice issues in WA has been the 'criminalisation' of social and health issues. For example, there are known to be strong links between offending behaviour and alcohol and other drugs, mental health and cognitive impairment.[46] That is, there are strong links between offending behaviour and *issues relating to health and disability.* The lack of support provided for those experiencing significant social and health disadvantage together with the lack of appropriate and effective treatment for mental health, alcohol and other drug problems (and their comorbidity) contributes to circumstances where those affected and untreated are significantly more likely to end up in our justice system. This is evidenced in high rates of over-representation in our courts, prisons and juvenile justice system, and as victims of crime. These issues are particularly evident when viewing prison statistics with a gender or indigenous lens.

The over-representation of disadvantaged groups within the Western Australian justice system is an issue of significant concern to the community sector. Aboriginal Western Australians are particularly over-represented within our juvenile and adult courts and prisons. There is a strong consensus among community service providers and social justice advocates that many "tough on crime" measures disproportionately impact on Aboriginal people as well as other disadvantaged and minority groups in WA.

[46] NADA (2013) *Offending behaviour and drugs/alcohol, mental health and cognitive impairment*, Complex Needs Capable: A practice resource for drug and alcohol services, NSW.

Aboriginal people also have higher rates of homelessness, mental health issues, child protection interventions, disability and alcohol and drug use. If we are to succeed in "closing the gap" in incarceration it is essential that prison addresses these broader issues in culturally appropriate ways.

The availability of alternatives to imprisonment is important, especially amongst offenders who have one (or many) factors that contribute to offending behaviour. A 2009 study by the Law Reform Commission of Western Australia found, in examining a selection of Western Australian sentencing cases (a total of 156 offenders) in the Supreme Court and District Court, that:

> *The Commission found that in approximately 90 per cent of these cases there was evidence of at least one of the following underlying problems: substance abuse, mental health, family violence, gambling and homelessness. In 71 per cent of the cases analysed substance abuse was involved in some way; 28 per cent of offenders had a mental health problem; 19 per cent of offenders had both substance abuse and mental health problems; and in 14 per cent of cases either the offence involved family violence (or abuse) or the offender had previously been a victim of family violence or abuse. These results support the contention that a substantial number of offenders have underlying problems that contribute to offending behaviour.*[47]

It is both inappropriate and ineffective to treat health problems and address social disadvantage through prisons. The fact that these issues, if left untreated, can lead or contribute to criminal behaviour amongst some of those affected, as well as contribute to their risk of reoffending, **is a reason to ensure appropriate, adequate and timely services are available to all.** The presence of these factors cannot be said to 'cause' or excuse criminal behaviour – but the evidence is clear, that they do make it very much more likely.

Prisons are a particularly inappropriate place for most people with health issues (especially mental health and/or alcohol and other drug issues) to receive treatment. Experience has shown that prisons can rarely provide the support needed to help individuals seek recovery. The practical reasons for this include that, in prison, medical attention is scant, PBS Medicare entitlements are withdrawn, and recovery-oriented services are generally unavailable or inaccessible.[48] A key issue here is the need to explore and define how health and wellbeing oriented programs and services are impacted by, and can best be implemented in, a regime with the dual aims of corrections and rehabilitations which have differing philosophical tenets.

Additionally, there are problems associated with the WA model of prison health service provision, which differs to other Australian jurisdictions; this has adverse impacts on the provision of clinical supports, including mental health and alcohol and drugs services:

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[47] Law Reform Commission of WA (2009) *Court Intervention Programs: Final Report*.

[48] Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, pp. 119-122 and Recommendation 9.1.3.

> *[T]he need for a health service independent of the custodial service has been recognised and implemented in all Australian states, with the exception of Victoria which has a hybrid model. The organisational structure that locates the Health Service within DCS in Western Australia creates specific problems in the provision of health care, based on the significantly different philosophies of these two groups.*[49]

The 2010 *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services* identified a number of issues with regards to the delivery of health services, including: that the decision making of Health Services staff is strongly influenced by security and cost issues despite their prime concern being health and wellbeing; that the empowerment and education essential for behaviour change and health promotion (such as the provision of bleach to assist in cleaning injection equipment) may not be supported by custodial services and inadequate infrastructure of the health centres and access to offenders. The Assessment concluded that the case for change in the organisational arrangement of WA offender health services remains "compelling".[50]

We share this information, and our subsequent discussion of issues relating to mental health, alcohol and other drug use, and cognitive impairments (sections 6.2, 6.3 and 6.4) to highlight the importance of viewing corrective services spending *in context*.

The inadequacy of funding for the provision of early interventions and support for people with mental health, AOD, or cognitive impairment issues in the community, can lead them down paths to criminal behaviour and incarceration — as seen in the characteristics of the prisoner populations across Australia. Prevention, and diversion programs are critical — not only because they deliver better long term outcomes, but because they are more cost effective than imprisonment. Similarly, the unavailability, or unsuitability, of support services whilst in prison (and as people transition out of prison) increases the likelihood of reoffending, thus increasing costs to the State Government in the long term.

6.2 Rehabilitation and support for offenders with mental health problems

There is a high rate of mental illness in prisons, but the association between mental health and offending is complex. It appears that it is only a cause or clear risk for some offender populations. These include some young people[51] and a small percentage of adult offenders for whom there is a clear association between experiencing a psychotic or severe mood disorder, and increased rates of violence and criminal offending.[52]

It seems that for the majority of offenders, mental illness only indirectly causes criminal behaviour by exposing them to other risk factors such as unemployment, homelessness,

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[49] Department of Corrective Services (2010) *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services, p. 27.*

[50] Ibid, p. 26.

[51] Cottle, Lee and Heilbrun (2001) 'The Prediction of Criminal Recidivism in Juveniles A Meta-Analysis', *Criminal Justice and Behavior* June 2001 vol. 28 no. 3 367-394

[52] Refer to Mullen , P. (2001); Wallace et al (1998); and Maden A. (2007) in Mental Health Commission (2014) *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015 – 2015*, Government of Western Australia.

limited pro-social relationships, instability in their lives and familial problems.[53] The latter is particularly relevant when taking a trauma informed approach as mental illness can be a result of trauma; with the association between trauma resulting from experiences of abuse, neglect and violence and women's mental health being particularly clear.[54]

It may be that untreated mental illness, or a lack of effective recovery oriented supports, is related to risk rather than mental illness per se; alerting us further to the need to provide appropriate recovery oriented treatments and supports in prisons.

It is clear that to meet their rehabilitative aim, prisons must hold and respond to a complex understanding of the impact of mental health challenges on offending and associated risk factors, and the impact of imprisonment on mental health. In fact, this has been recognised by the Western Australian Government in its recently released *Mental Health and Alcohol and Other Drug Services Plan 2015-2025* (the MHAOD Plan), which acknowledges that the cost of doing nothing is "a continued high level of recidivism and involvement in the justice system for people with mental health, alcohol and other drug problems."[55] **The Plan further refers to research indicating that for every dollar spent on early intervention, which can reduce arrests and decrease imprisonment time, a saving of $1.40 to $2.40 in government costs is made.**[56] We posit that a significant saving would also be made were recidivism reduced through the provision of contemporary mental health supports within prisons.

6.2.1 Collection of mental health data

Australian data on mental health issues and illness in prisons varies. One study found that 38% of all people entering the Australian prison system reported having been told they have a mental illness[57]. Of these, 16% took medication for a mental health issue. Three out of 4 prison entrants who were taking mental health medication also used illicit drugs in the previous 12 months. These figures are likely to be a significant under-representation, as we know that there are significant barriers to reporting mental health issues, which we believe would be likely exacerbated by a custodial environment.

The *Stokes Review* cites evidence that court data cross-linked with the mental health database show that 85 per cent of court attendees have had contact at some previous stage with mental health services. The same review, stated that of the **1000 prisoners in Acacia Prison, 40% have a mental illness and at any one time 10% are experiencing active**

[53] Latessa, E.J. (no date) *Criminogenic Risk and Mental Health: What Works and What Doesn't in Reducing Recidivism* University of Cincinnati.
[54] Canadian Women's Health Network (2009) *Making the links: Violence, trauma and mental health*, Spring/Summer 2009, Vol 11, Number 2.
[55] Mental Health Commission (2014) *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015 – 2015*, Government of Western Australia, p. 17.
[56] McCausland R, Johnson S, Baldry E, Cohen A. (2013) *People with mental health disorders and cognitive impairment in the criminal justice system: cost-benefit analysis of early support and diversion*, University of New South Wales, PwC.
[57] Australian Institute of Health and Welfare (2012, 2013) *The health of Australia's prisoners*.

psychosis[58]. These rates are shockingly high, and we remain deeply concerned that equivalent data is not available for *all* Western Australian prisons.

Additionally, it is generally accepted that prison can cause psychological harm and worsen mental health conditions:

> *There is substantial evidence from across Australia that access to adequate mental health care in prisons is manifestly inadequate, that the mentally ill in prison are often 'managed' by segregation, and that such confinement – often for very long periods – can seriously exacerbate mental illness and cause significant psychological harm.*[59]

A WA Government report assessing the clinical service provision of health services in WA prisons also noted the negative mental health effects of prison circumstances - anger, guilt, deprivation of freedom, anxiety, aggression and boredom. [60] We have also heard first hand reports from mental health consumers and carers describing prison as a traumatic experience for people with mental illness, and themselves or their loved one becoming more mentally unwell in prison.[61]

Internal modelling completed for the development of the *MHAOD Plan* shows that approximately 65% of the juvenile and 59% of the adult prison population have mental health problems.[62] This compares to one in five Australians being affected by a mental health disorder each year (in the general population). We also know that prisoners are at an increased risk of self-harm and suicide.[63]

The need for modelling to be undertaken specifically to inform the development of the Services Plan, raises significant questions as to why DCS did not (or were unable to) provide appropriate data to the Mental Health Commission for this purpose.

The ECU *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons,* study, published in 2011, described the prisoner mental health assessment process as being "inconsistent following intake".[64] This has a detrimental impact on the quality of data available in WA, which hinders the ability of prisons to make sure that a) the most appropriate mix of programs and services are made available to prisoners; and b) the ability

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[58] Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Department of Health, Government of Western Australia, p. 118

[59] Forensicare (Victorian Institute of Forensic Mental Health), *Submission to Senate Select Committee on Mental Health* (May 2005) 4, 5, 19 and 20. See also, *NSWCCL Addendum Report*, [A20]-[A21].

[60] World Health Organization, 2007, *Health in Prisons. A WHO guide to the essentials in prison health* in Department of Corrective Services (2010) *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services*,.

[61] Refer to WAAMH (2014, October 27) *Report of the Forum: Not guilty due to unsound mind: Achieving reform of the Criminal Law (Mentally Impaired Accused) Act 1996*, and Mental Health Advisory Council (2013) *Submission the Criminal Law (Mentally Impaired Accused) Act 1996 (WA)*.

[62] Mental Health Commission (2014) *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015 – 2015*.

[63] Australian Institute of Health and Welfare (XX) *From corrections to community: a set of indicators of the health of Australia's prisoners*.

[64] Fleming, J., Gately, N., & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, p.3.

to determine (with much accuracy) trends in presentation of mental health problems (and thus the ability to deliver services to prevent future incarceration).

If the Department of Health, Mental Health Commission, courts and DCS were able to work together to collect and analyse data, we would be in a far better position to identify how mental health and offending are related for individuals in Western Australia and design effective program and system responses.

To ensure the most effective and efficient services are developed and delivered, it is essential that better data on prisoners' mental health is collected and used to drive the transparent procurement, delivery and evaluation services within the justice system.

The Australian Institute of Health and Welfare (AIHW) has recommended key national indicators for prisoner health. The mental health indicators recommended are:

- *Proportion of prison entrants who report that they have been told by a doctor, psychiatrist or psychologist that they have a mental health disorder;*
- *Proportion of prison entrants who are currently taking medication for a mental health disorder;*
- *Proportion of prison entrants by level of psychological distress experienced in the past 4 weeks (self-report);*
- *Proportion of prison entrants who indicate their current distress is related to the present incarceration;*
- *Proportion of prisoners in custody whose reason for attending the prison clinic was psychological;*
- *Proportion of prison entrants who, at reception, were referred to mental health services for observation and further assessment;*
- *Proportion of prison entrants who report that they have ever intentionally harmed themselves;*
- *Proportion of prison entrants who report that they have thought of harming themselves in the last 12 months; and*
- *Proportion of prison entrants identified as currently at risk of suicide or self-harm.*[65]

This same work also recommended four key points at which to collect information on prisoners health: at reception, in custody, at the time of release into the community and post-release. At each of these time points, health status, factors influencing health and health needs are likely to differ significantly. Collection of information at each of these time points would allow the positive and negative effects of incarceration to be assessed.[66]

It is essential that prisons meet the daily standards of care and dignity, as outlined in the Minimum Rules and or National Indicators AIHW document. We contend that the meeting of such is a relevant, and key, factor in the efficiency and effectiveness of prisons and should be within the remit of the ERA's inquiry.

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[65] AIHW (2009) *Bulletin 75: From corrections to community: a set of indicators of the health of Australia's prisoners, p. 7.*
[66] Ibid.

We recommend this work and call for DCS to collect and report publicly on such data in Western Australia. We also call for specific data on marginalised and vulnerable groups including young people, Aboriginal people and women.

It is essential that investment is made in research and evaluation to determine what systems and supports are needed by prisoners with (different types of) mental health issues; how we can best support them on their ongoing recovery journey; and to understand what factors or circumstances are most likely to make a prisoner with a mental health issue reoffend (thus costing the State Government more).

6.2.2 The paucity of mental health care in prisons

Prisoners with mental illness often require assessment and treatment to break the cycle of recidivism; however, prisoner mental health assessment and treatment has been arguably inconsistent following intake.

> *No jurisdictions have any formal ongoing assessment or screening service that monitors prisoners' mental health status following admission to the correctional facility.*[67]

Additionally, insufficient funding arrangements results in understaffing, and treatments which are often only available for those at crisis point, or for offenders who have committed particularly violent or sexual crimes. This may result in other prisoners being denied parole because they have not addressed their offending behaviours as programs are unavailable. **The effective management of mental health problems by screening all prisoners and providing evidence-based treatment programs, although initially increasing costs through staffing and service delivery, will reduce overall government expenditure through a reduced recidivism rate and increased eligibility for parole.**[68]

The importance of providing effective mental health treatments and supports in prisons is widely agreed. The World Health Organization and International Red Cross recommend that:

> *[T]he detection, prevention and proper treatment of mental disorders, together with the promotion of good mental health, should be both a part of the public health goals within prison, and central to good prison management.*[69]

The World Health Organization *Moscow Declaration of Prison Health as a Part of Public Health*[70] recommends that all necessary health care is provided to people deprived of their liberty, and the UN Minimum Rules state that the medical officer of a prison should daily see all sick prisoners.[71]

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[67] Ogloff, J., Davis, M.R., Rivers, G. & Ross, S. (2007) *'The identification of mental disorders in the criminal justice system', Trends and issues in crime and criminal justice*, Australian Institute of Criminology.
[68] Fleming, J., Gately, N. & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, p. 3.
[69] Australian Institute of Health and Welfare (2009) *Bulletin 75: From corrections to community: a set of indicators of the health of Australia's prisoners*, p. 69.
[70] World Health Organisation (2003) *Moscow Declaration on Prison Health as Part of Public Health*.
[71] United Nations Officer of the High Commissioner for Human Rights (2005) *Standard Minimum Rules for the Treatment of Prisoners*.

In Western Australia, the need to improve the availability and appropriateness of mental health services within the prison and community corrections systems has been acknowledged. The guiding principle for forensic services in the government's MHAOD Plan is that people in contact with the criminal justice system should receive mental health, alcohol and other drug services equivalent to services available to individuals in the community, with due regard to community safety.[72] The MHAOD Plan further articulates that the cost of not doing so is continued involvement of people with mental health issues in the criminal justice system. We propose that this same principle should apply to people with these health issues in prison and we also note Professors Stokes' comment that "custody offers a unique opportunity to address the needs of mentally ill people who would otherwise go untreated."[73]

Despite this recognition it appears that approaches to clinical management of mental health varies in the different prisons throughout WA. It would seem that there are no service standards that must be met, as there are for people accessing mental health services in the community. A review of clinical health services in WA prisons by DCS stated:

> *The mental health program in prisons has been, and remains, contentious. Significant applications to Government for enhanced funding have been made jointly with the Department of Health and independently but none have been successful.*[74]

Given the overrepresentation of mental illness in the prison population this is very concerning.

The Stokes Review noted that of the 1000 prisoners at Acacia, 40% have a mental illness and 10% are experiencing active psychosis at any one time. Despite this, mental health services at Acacia are extremely limited - only 2 full time GP's (across all health issues), 3 full time mental health nurses and only three sessions of psychiatrist consultant per week.[75]

WAAMH, in consultations with members and mental health stakeholders, have recently heard deeply concerning and disturbing reports from mental health consumers and carers in prison. Their experiences included:

- Lack of access to medication prescribed prior to incarceration;
- Limited access to treatments and supports;
- Lengthy delays to see a psychiatrist or other clinical specialist;
- Even more limited access to mental health supports for people on remand;
- The impact of detention far from home and country;
- Increased vulnerability due to mental health challenges;

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[72] Mental Health Commission (2014) *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015 – 2015*. p. 65

[73] Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, p. 116

[74] Department of Corrective Services (2010) *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services*, p. 9

[75] Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, p. 118

- Being 'stood over' by other prisoners in an effort to gain their medication;
- The impact of detention in an over-crowded prison system;
- Lack of access to independent advocacy;
- Lack of alignment between the mental health and justice systems, and resultant challenges navigating the justice system; and
- The inability of carers to provide or receive information about the mental health and wellbeing of a loved one for whom they may have had caring responsibilities prior to their imprisonment (and for whom they may resume caring responsibilities upon their release).

A key matter of concern was the mismatch between the correctional environment and contemporary approaches to mental health care, which include the recovery model. A similar issue was identified by DCS, which observed that the differing philosophies and foci of corrections and health care causes problems in delivering health care in the prison setting.[76] One model that assists in resolving this tension is to take the responsibility for health care outside of corrections and into the jurisdiction of the Department of Health, with the establishment of a Justice Health or similar division as is the case in New South Wales.[77] Such a division would incorporate prison health, forensic health, community and court based health issues.

Stakeholders have also raised concerns about the ability of prison staff to identify and manage mental illness. Prison staff need 'sufficient competence to know what to look for and what to do if they have concerns'. The Inspector of Custodial Services in WA has often raised concerns about the limited mental health training available to prison staff, despite frequent complaints by staff that they need better training.[78]

6.2.3 A contemporary model for mental health care in prisons

It is well established that people can and do recover from mental health conditions.[79] The recovery model is an internationally and nationally recognised model of contemporary practice in mental health care. It is endorsed by the Commonwealth and all Australian state and territory governments, which have formally adopted a recovery approach.

There is no one definition of recovery, but stakeholders agree on some key concepts. Andresen, Oades and Caputi modelled recovery with four processes: finding and maintaining hope, re-establishing a positive identity, building a meaningful life and taking responsibility and control.[80] Glover developed a model with five recovery processes: from passive to active

[76] Department of Corrective Services (2010) *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services*.
[77] *Justice Health and Forensic Mental Health Network* is a state-wide, Board-governed specialty network delivering health care to adults and young people in contact with the forensic mental health and criminal justice systems, across community, inpatient and custodial settings in NSW.
[78] Office of the Inspector of Custodial Services (2014) *Assaults on staff in Western Australian prisons, p. ii*.
[79] Commonwealth of Australia (2013) *A national framework for recovery-oriented mental health services: Policy and theory*.
[80] Andresen, Oades and Caputi (2003, 2006 & 2011) cited in Commonwealth of Australia (2013) *A national framework for recovery-oriented mental health services: Policy and theory*.

sense of self, from hopelessness to hope, from other's control to self-control, from alienation to discovery and from disconnectedness to connectedness.[81]

It is well established that embedding recovery principles within clinical practice is a key tenet of contemporary forensic mental health practice.[82] There are many challenges to implementing recovery in prisons, which limit liberty and autonomy and must enforce obligations for legal accountability. However it can and is being done in Australia, and we propose that such an approach would support DCS to improve mental health of prisoners with a corresponding improvement in the rehabilitative aim of prison. The *National Mental Health Recovery Framework: guide for practitioners* provides direction for practitioners and providers to achieve this.[83]

6.2.4 Prison design and infrastructure

Commenting on the high rates of assaults of prison staff involving prisoners with mental health issues and disability, the Office of the Inspector of Custodial Services (OICS) has argued for better ways to manage these prisoners. OICS suggests that these people should not be held in a prison environment in the long term, and in the shorter term specialist mental health wings or units should be developed. In a 2013 report on *Assaults on staff in Western Australian prisons* OICS commended a strategy developed by the Department of Health and HM Prison Service (UK) for developing and modernising mental health services in prisons. The strategy focused on greater use of wings, units and day care programs and treatments, along with more participation in prison regime and a productive day.[84]

Infrastructure which assists the delivery of effective mental health treatment services and recovery are needed to achieve positive long-term outcomes for individuals, for their families and communities. We strongly encourage DCS to further examine options to deliver such a proposal, in consultation with both the Department of Health and Mental Health Commission.

6.2.5 Mental Health Court

The opening of the Mental Health Court (known as the Start Court) pilot in WA in 2013 was a positive initiative that acknowledges that mental health can contribute towards offending behaviour, and seeks to address this up front and divert people from further contact with the justice system. The court is expected to have a positive impact on the costs of the broader justice system. WA State Government agencies have acknowledged that there is evidence from other jurisdictions which indicates that mental health court diversion programs result in improved mental health, less recidivism and long-term cost savings.[85]

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[81] Glover (2012) cited in Commonwealth of Australia (2013) *A national framework for recovery-oriented mental health services: Policy and theory*.
[82] See for example Davey, I. and Dempsey, J. 2012, Working with complexity: a map for recovery in forensic psychiatry, *newparadigm*, Spring/Summer 2012, Psychiatric Disability Services of Victoria (VICSERV)
[83] Commonwealth of Australia (2013) *A national framework for recovery-oriented mental health services: Policy and theory*.
[84] Office of the Inspector of Custodial Services (2014) *Assaults on staff in Western Australian prisons.*
[85] Department of the Attorney General & Mental Health Commission (no date) *Media Release: New Start for People with Mental Illness*.

> *By diverting people with mental illness into individual treatment and support plans, we expect that this intervention will help break the cycle of offending, improve the lives of those who take part, and make the community safer through less crime being committed.* [86]

The court-based mental health team conducts assessments, reports to the court, and develop intervention plans to divert people into treatment that addresses their mental illness and their offending behaviour.

We strongly support this approach and suggest that the Court should be able to require DCS to provide mental health treatments to prisoners. An example of a similar model is the Mental Health Tribunal, which under the *Mental Health Act 2014* has the power to make recommendations to public mental health services about an individual involuntary patient's treatment, support and service plan. This may be one way of better ensuring that prisons can efficiently and effectively provide treatments that are likely to be effective in addressing offending. **We commend this idea to the ERA as an example of where adjustments to the interaction between prisons and the broader justice system may achieve improvements.**

6.2.6 Forensic mental health services

We were surprised to see that the Frankland Centre – WA's only forensic mental health unit – was not mentioned in the Issues Paper, despite approximately 50% of its patients being from WA prisons.

The Frankland Centre is a very old facility and far smaller than the needs of the WA community, with numerous key stakeholders including the Deputy State Coroner, the State Forensic Mental Health Service and the Director of DCS Health Services arguing it is highly inadequate to meet demand. It is so small that it is common for the "least unwell" person to be sent back to prison from the Centre before staff believe that person is ready.

In 2012, the *Stokes Review* recommended the creation of additional forensic beds and units. While this recommendation has been heeded, and the additional beds have been included in the *MHAOD Plan*, in reality it may yet take 10 years for these beds to eventuate. While we welcome the intention, we note that these plans are subject to government funding approvals, and further that the Plan contains very little detail about the extent and nature of these forensic services, and how they will interact with DCS.

We submit that the Frankland Centre needs to be in scope for this Inquiry, since the process of returning prisoners to a prison setting while they are mentally unwell means that responsibility for ensuring the health and wellbeing of mentally unwell individual will fall on untrained prison officers and under resourced DCS health staff. This is unlikely to deliver good long term outcomes for offenders, DCS staff, and the community.

6.2.7 Post-release supports and recovery

It is generally accepted that post release supports are required to reduce the risk of reoffending. The Fourth National Mental Health Plan states:

[86] Ibid.

> *[T]reatment and care within the custodial environment, and support to link with community services at the point of release, will reduce the risk of relapse of illness and is also likely to reduce the risk of recidivism.*[87]

The need for improved planning between DCS, the Department of Health and the Mental Health Commission to plan, procure and provide post-prison supports is essential if we are to respond to offenders' needs and to improve recidivism rates.

We submit to the ERA that DCS-provided and funded transition and post-release supports need to be provided within a recovery framework, and integrated into communities. We must also attend to the need to involve carers and family members in transition and post-release supports and interventions. **Continuity of care is critical.** As many offenders have multiple and complex needs, coordination between non-government, public mental health services, DCS and other relevant services is essential. Better information exchange and staff training will reduce the risk of people falling between the cracks.

6.2.8 People under the Criminal Law (Mentally Impaired Accused) Act 1996

We alert the ERA to the situation of people with mental illness and disability who are held in WA prisons under the *Criminal Law (Mentally Impaired Accused) Act 1996* (CLMIA Act), despite never having been convicted of a crime. Although the CLMIA Act enables people to be detained in authorised hospitals or 'declared places', the Frankland Centre, as previously noted, has far too few beds and no declared places have ever been established. As a result people with mental illness and disability are incarcerated, under indefinite custody orders, in prisons.

The intent of the CLMIA Act is to protect community safety, and we submit that there is no place for the concepts of punishment or deterrence in this legislation. However, the effect of a custody order involves detention in prison for the majority of people found mentally impaired accused. For some, this is for the full period while under an indefinite order, while others may spend part of their time in hospital. DCS appears to have no specific policy or procedures regarding the treatment of these individuals and as a result they are subject to the same Prisons Rules as convicted offenders.

We refer the ERA to the *International Covenant on Civil and Political Rights* which requires member states to segregate accused persons from convicted persons, and subject them to separate treatment appropriate to their status as unconvicted persons.[88]

This issue has attracted considerable public debate, with the Act currently under review by the Western Australian government. Further detail about the impact of imprisonment on people detained under CLIMA in prisons has been highlighted by WAAMH and other stakeholders.[89] In a joint submission to the government's review of the CLMIA Act, a number

[87] Commonwealth of Australia (2009) *Fourth National Mental Health Plan - An agenda for collaborative government action in mental health 2009-2014*.
[88] United Nations Office of the High Commissioner for Human Rights (2014) *International Covenant on Civil and Political Rights*.
[89] WAAMH et al (2014) *Submission to the Review of the Criminal Law (Mentally Impaired Accused) Act 1996*.

of community services agencies recommended that prison should cease to be a legal place of detention for mentally impaired accused.[90]

Although the number of people held under the Act in WA prisons usually numbers less than 20 at any one time, this population warrants attention — as accused rather than convicted offenders, only the objectives of incapacitation and rehabilitation apply; there is no place for the objectives of deterrence and retribution. We therefore submit to the ERA they should be a specific focus of this Inquiry.

6.2.9 Issues for carers and family members

We cannot write about the efficiency and effectiveness of prisons without commenting on the role of carers and family members. Contemporary mental health services recognise that carers have an important role in contributing to the support and recovery of individuals.

In WA government policy for mental health and disability services, carers have specific rights. The *Carers Recognition Act 2004* is Western Australian legislation that requires the Department of Health and Disability Services, or any organisations funded by them, to formally recognise carers as key partners in the delivery of care. As prisons provide services to these populations, we submit that the *Carers Recognition Act* should apply within WA prisons, and urge the ERA to consider within its remit the positive effect that carers and family members can have on offenders with mental health problems, thus supporting prisons to better achieve their rehabilitative objective.

6.2.10 Conclusion

The criminalisation of mental illness is an issue which costs the State Government significant amounts of money each year. In December 2014, Congressional leaders in the United States joined the Council of State Governments (CSG) Justice Center and the National Association of Counties (NACo) to discuss potential federal reforms and a new national initiative to reduce the number of people with mental illnesses in prisons. As United States Senator Al Franken (MN-D) said of the initiative:

> *This is a moral issue and an economics issue… When we use our jails to warehouse people with mental illnesses, we burden the judicial system, the public health system, our law enforcement offices, and the taxpayers. In confronting this problem, we know that some of the most innovative solutions come from our local communities. It's our job to make sure they're properly supported.*[91]

We encourage a similar, data-driven approach to addressing the high costs associated with the criminalisation of mental illness within Western Australia. Further consideration urgently needs to be given to the funding and provision of prevention, diversion and forensic mental health services in Western Australia, in collaboration with the Mental Health Commission, Department of Health, and non-government service providers.

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[90] Ibid.

[91] Justice Centre (2014, December 16) *Law Enforcement, Health Advocates, and Members of Congress Push to Reduce the Number of People with Mental Illnesses in Jails*.

6.3 Rehabilitation and support for offenders with alcohol & other drug problems

6.3.1 Current available statistics

Statistics on the number of people involved in the criminal justice system with alcohol and other drug (AOD) issues is based on very different measures:

- Whether a person has ever used;
- Whether they were using at the time of the offence;
- Whether their use is "problematic";
- Whether the offence is attributed to their use of substances; or
- Whether their substance use has impacted on other health or social issues that need to be taken into consideration.

As a result the figures quoted often vary enormously. Some examples of such statistics are shown below:

> *Alcohol use has been linked to criminal behaviour (Marteau 2008).The prisoner population is characterised by very high rates of high-risk drinking (Butler & Milner 2003; Victorian Department of Justice 2003; Hockings et al. 2002).*[92]
>
> *Smoking prevalence is higher among prisoners than in the non-incarcerated adult population.*[93]
>
> *Most prisoners have used illicit drugs at some time in their life, with two-thirds regularly using drugs at the time of incarceration.*[94]
>
> *Over half of the prisoners surveyed in the four-state Bloodborne Virus Surveys reported injecting drug use in the previous months —New South Wales (69%), Queensland (61%), Western Australia (62%) and Tasmania (54%). Indigenous prisoners reported injecting drug use at a slightly higher rate than non-Indigenous prisoners (64% vs 58%) (Butler et al. 2005).*[95]
>
> *It is estimated that between 37% and 52% of offenders in Australia report that their offending is attributed to their drug problem (NCDS, 2006).*[96]
>
> *Of the almost 6,000 persons who consented to a urinalysis as part of the Drug Use Monitoring in Australia program 2009–10, two-thirds (66%) tested positive to at least one illicit drug type. Of these, 30% tested positive to multiple drugs.*[97]
>
> *Almost half (45%) of the detainees confirmed that their substance use had contributed to their current offences (Sweeney & Payne 2011).*[98]

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[92] AIHW (2009) Bulletin 75: From corrections to community: a set of indicators of the health of Australia's prisoners, p.11.
[93] Ibid, p. 12.
[94] AIHW (2006) Towards a national prisoner health information system.
[95] AIHW (2009) Bulletin 75: From corrections to community: a set of indicators of the health of Australia's prisoners, p.11.
[96] WA Department of Corrective Services (2010) *Offender Drug and Alcohol Strategy 2010 – 2014.*
[97] AIHW (2013) The health of Australia's prisoners 2012, Cat. no. PHE 170. Canberra: AIHW
[98] Ibid.

Similarly, a Forensicare review in 2008 suggest that for prisoners and offenders appearing before the courts in Western Australian more than 80% had 'substance abuse' issues.[99]

> *Of the factors associated with recidivism, the three strongest relationships were with age, prior prison admission, and problematic substance use. Over half of sentenced prisoners released in 2008/9 and 2009/10 were identified as having highly problematic substance use.*[100]

6.3.2 What data is needed?

While varied information currently available validates the significance of alcohol and other drug use issues for people involved in the criminal justice system they do not inform alcohol and other drug service planning. Information that is needed includes an identification of: **how many people in prison would benefit from alcohol and other drug treatment and rehabilitation, harm-reduction support, information and education. Without this information there is no way to assess the efficiency and performance of the broad rehabilitation efforts of the prisons.**

To inform the need for treatment and support services, and to ensure appropriate treatment and support matching for best outcomes of individuals, **routine assessment needs to be undertaken.**

In WA the increasing influence of meth/amphetamine use is also highlighted in the prison population, as it is in the general population. The 2010 prison entrants BBV survey of those who have injected drugs reported amphetamine as the last drug injected by 75% of respondents. This is significant compared with 39% in Victoria and 33% in the Northern Territory.[101]

Issues related to meth/amphetamine use require specific consideration in treatment and support, included an awareness of an extended withdrawal period, which may coincide with imprisonment and impact on behaviour while in prison.

> *Withdrawal symptoms from dependent use of methamphetamine are not "just psychological". Frequent methamphetamine use results in down-regulation of dopamine, serotonin and (nor) adrenalin, and the desensitisation of receptors for these monoamines. Toxic doses or chronic use may also result in axonal "pruning", as excess dopamine breaks connections between brain cells. Abrupt withdrawal from dependent use may be associated with a lack of energy and enthusiasm, depression, dysthymia and anhedonia, lowered libido, and problems with mood control, memory and concentration. These symptoms often persist for 3 to 4 months, and if axonal pruning has occurred, 'rearborisation' (rebuilding*

[99] Forensicare (2008) *Western Australian State Forensic Mental Health Services Review* 2008, p 9.
[100] Office of the Inspector of Custodial Services (2014, September) *Recidivism rates and the impact of treatment programs*, p. 7.
[101] Butler, T, Lim D, & Callander D. (2011) *National Prison Entrants' Bloodborne Virus and Risk Behaviour Survey Report 2004, 2007, and 2010*. Kirby Institute (University of New South Wales) and National Drug Research Institute (Curtin University).

connections between neurons) may take 8 to 12 months. In the recovery period the person is likely to experience many cravings and "triggers" or "cues to relapse".[102]

Different population groups, including Indigenous Australians, women, young people, have different experiences with different substances. For example:

Excessive alcohol consumption is associated with poor health and social problems and is a major risk factor for conditions such as liver disease, pancreatitis, diabetes and some types of cancer. The 2004–05 NATSIHS found that Indigenous Australians were twice as likely as non-Indigenous Australians to drink at short term risky/high-risk levels at least once a week in the previous 12 months; and Indigenous adults were around 1.5 times as likely as non-Indigenous adults to drink at long-term risky/high-risk levels (ABS 2006).[103]

Any routine assessment needs to take into consideration specifics of the substances used, and nuances related to alcohol and other drug use experienced by different population groups to best inform effective and efficient service matching.

The effectiveness of data collection and use within the WA prison system is a recurrent theme within this submission. **Assessment of the AOD support needs of prisoners is not routinely conducted at prison entry.** This gap in relevant data was evident in the inability of WA to provide statistics to the AIHW's *Health of Australia's Prisoners Report (2012)*, as well as the need for modelling to be undertaken specifically to inform the development of the MHAOD Plan (previously flagged in section 6.2.1).

DCS's *Offender Drug and Alcohol Strategy 2010 – 2014*, provides the following statistics regarding AOD use amongst offenders:

It is estimated that between 37% and 52% of offenders[104] *in Australia report that their offending is attributable to their drug problem.*[105] *In relation to young people in custody, an Australian study indicated that the misuse of drugs exacerbated offending, with 35% of Aboriginal and 29% of non-Aboriginal youths attributing their offending to their drug use.*[106]

We note that the *Strategy* makes very few references to any *DCS-gathered data* regarding the prevalence of AOD use amongst the WA prisoner population.

The data that is DCS collects is based on self-reported need by prisoners via a 'checklist' However as OICS have reported:

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[102] WANADA (2014) *Amphetamines Brief*

[103] Justification statements for alcohol and other drug use indicator measures – Australian Institute of Health and Welfare (2009) *From corrections to community: a set of indicators of the health of Australian prisoners,* p.11.

[104] We note that 37% of 5,034 WA prisoners is 1,863; whereas 52% represents 2,618— a difference of 755 individuals. Such a difference will clearly have significant implications for service delivery and procurement decisions within DCS.

[105] NCDS (2006) cited in Department of Corrective Services (2010) *Offender Drug and Alcohol Strategy 2010 – 2014*, page 5.

[106] Prichard and Payne (2005) cited in cited in Department of Corrective Services (2010) Offender Drug and Alcohol Strategy 2010 – 2014, page 5.

> *Prisoners serving a sentence of less than 6 months duration are typically not assessed. In addition, prisoners would only complete checklists related to their offending behaviour.*[107]

This approach means is that the data collected by DCS will never reflect the full extent of needs of the prison population, nor capture sufficient information to ensure the best match of treatments are available within prisons. The lack of assessment of prisoners with a sentence of 6 months or less means that a crucial opportunity to provide brief intervention, and to link prisoners to AOD treatment and support services in their community post-release, is missed.

In addition, by failing to collect comprehensive data which could be used to identify trends in offending behaviour within the community, significant opportunities (for other government and non-government agencies) to introduce programs/systems designed to reduce offending behaviour are being missed. DCS needs to reaffirm that their work fits into a "bigger picture", and that the collection and use of such data is a key contribution that their agency needs to be making to the objective of delivering a safer community, and to reducing the costs to government.

The lack of adequate data has been repeatedly raised by the alcohol and other drug community service sector with DCS. Data, including routine assessment, is essential to inform service planning to meet the alcohol and other drug treatment and support needs of people in prison. Outcomes, effectiveness and efficiency continue to be hard to evaluate beyond an individual level when data collected by, and received from, DCS is limited.

6.3.3 AOD treatment models for prisons

> *Intervening early, preventing imprisonment and hospitalisation, and decreasing the length of stay for those hospitalised can provide a cost benefit. This can reduce criminalisation and community incidents leading to arrests, allow for [diversion], and decrease imprisonment time. One study has demonstrated that for every dollar spent on early intervention, a saving of $1.40 to $2.40 in Government cost is made.*[108]

This sentiment is consistent with our assertion that reducing prison numbers through prevention initiatives needs to be a priority focus of this Inquiry.

6.3.4 Diversion Programs

The *WA Diversion Program*[109] offers the opportunity for eligible individuals to avoid a prison sentence and access support for their substance use. The WA program offers police, administrative and court-based programs that provide brief early intervention sessions through to more intensive and/or supervised programs. All programs aim to break the cycle of offending with the hope that they do not go on to enter the prison system at all.

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[107] Office of the Inspector of Custodial Services (2014, September) *Recidivism rates and the impact of treatment programs*

[108] Mental Health Commission (2014) *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015 – 2015,* p. 65.

[109] Drug & Alcohol Office WA (2013) *WA Diversion Program*.

Evaluation of Court Diversion undertaken in 2007 indicated that those completing Diversion Programs in comparison with non-completers:

- Were less likely to have been arrested (all offences and drug offences);
- Had a longer median time to first arrest;
- Were less likely to have been imprisoned post-program[110]

Evaluation on the impact on recidivism is planned for 2015.

A review of *Indigenous Participation in Adult Court Diversion* was completed in 2008. This considered the barriers to participation for Aboriginal people and made a wide range of recommendations to improve engagement with the Aboriginal community. The recommendations have been used to inform WA Diversion programs with the aim of increasing participation rates.

Further investment in diversion programs has the potential to reduce the numbers of the people entering prison, to reduce corrective services expenditure, and to improve outcomes for individuals, families and communities.

6.3.5 In-Prison Programs

> *The guiding principle for the forensic services is that persons in contact with the criminal justice system should receive mental health, alcohol and other drug services equivalent to services available to individuals in the community, with due regard to community safety…. With this in mind, an increase in contemporary in-prison services is urgently required, including in-prison mental health, alcohol and other drug beds.*[111]

Adequate diversity of AOD services is not currently provided in WA prisons. OICS have indicated that service provision in and of itself is inadequate without appropriate treatment and support service matching.[112] Treatment matching requires the availability of a diverse range of services. It also requires appropriate assessment of every prisoner as indicated above.

Research into prison treatment programs have broadly confirmed that they are effective in changing behaviour. NDARC's review of illicit drug treatment in prisons considered four key intervention types for drug-dependent prisoners: detoxification; drug-free units; therapeutic communities; and opioid substitution treatment. Of these, they conclude that the evidence

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[110] Crime Research Centre UWA (2007) *WA Diversion Program Evaluation Framework (POP/STIR/IDP): Final Report*, Prepared for the Drug and Alcohol Office (WA).

[111] *The Western Australian Mental Health, Alcohol and other Drug Services Plan 2015 – 2025: Consultation Draft.* p. 65 - 70.

[112] Office of the Inspector of Custodial Services (2014, September) *Recidivism rates and the impact of treatment programs*
This is contrary to the findings of the OICS report. That report found recidivism rates for those released from WA prisons in 2008/9 and 2009/10 were higher for those that completed a prison program than for those who did not. This was not specific to AOD, and the reasons given for the higher recidivism rate of program participants was inappropriate matching of prisoners to programs provided.

base is increasing in the cases of therapeutic communities and opioid substitution treatment (discussed further below).[113]

In-Prison Therapeutic Communities

Therapeutic Communities (TC's) in the broader community have been shown to be an effective treatment option for a subset of clients.[114] Prison alcohol and other drug TCs are offered in other states in Australia and in New Zealand, with growing evidence for positive performance outcomes. The Australasian Therapeutic Communities Association describe a TC as "a treatment facility in which the community itself…" (in the case of a prison TC this means the participating prisoners), "… through self-help and mutual support, is the principal means for promoting personal change". **The introduction of prison TCs in WA would introduce additional diversity and meet the needs of *The Western Australian Mental Health, Alcohol and other Drug Services Plan 2015 – 2025: Consultation Draft* call for prison mental health, alcohol and other drug beds.**

An Assessment of the Social Climate of Australian Prisons (2011) also concluded that the "social climate of a prison can influence rehabilitative outcomes".[115] This assessment noted the positive influence on general prisoner behaviour and reoffending that the TC model can provide, particularly when delivered alongside a range of other treatment types.

The National Drug and Alcohol Research Centre (NDARC) reviewed the available research to consider the effect of TC treatment on criminal recidivism following release from prison.

> *An evaluation of a TC for incarcerated women found that while 30% of women in a non-treated control group were convicted of another offence following release, only 13% of those who completed the treatment program were reconvicted. Of those with any exposure to treatment, 22% were reconvicted (Mosher & Phillips, 2006).*[116]

NDARC's review also highlights the link between post-prison aftercare programs and treatment completion as important for achieving positive outcomes. The review notes that:

> *The impact of therapeutic community treatment on criminal recidivism is maximised when treated inmates transfer directly to community-based treatment on release from prison.*

There is growing evidence to support the delivery of prison programs such as therapeutic communities to non-government, community-based services, where treatment and support can be continued beyond release. Such programs will decrease the long terms costs to government, through the likely reduction of recidivism rates.

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[113] Larney, S., Mathers, B. and Dolan, K. (2007), *Illicit drug treatment in prison: Detoxification, drug-free units, therapeutic communities and opioid substitution treatment,* Sydney: National Drug and Alcohol Research Centre p. 25.
[114] Ibid. p.16.
[115] Trends & issues in crime and criminal justice no. 427 Day, A. Casey, S. Vess, J. & huisy, G. Canberra: Australian Institute of Criminology, September 2011 p. 5.
[116] Larney, S., Mathers, B. and Dolan, K. (2007), *Illicit drug treatment in prison: Detoxification, drug-free units, therapeutic communities and opioid substitution treatment,* Sydney: National Drug and Alcohol Research Centre. p.16

In-Prison opioid substitution treatment

Opioid substitution treatment is also considered as an effective treatment to administer in a prison setting. Although the cost seems initially prohibitive, the return on investment does make it a cost efficient option. Evidence suggests that recidivism is significantly delayed and the overall rate reduced for those on methadone programs. Use of illicit drugs in prison is greatly reduced as is the risk of HIV and other BBV transmission through shared equipment. The NDARC review does however note that methadone replacement is only for opioid-dependent populations.

6.3.6 Post-release

There is overwhelming evidence to underpin the need for post-release support for prisoners. In addition, while in prison, prisoners may have had no access to their pre-imprisonment substance of choice or the family and friends with whom their substance use may be associated. Any consideration of how to improve the efficiency and effectiveness of WA prisons *must* include support and resources beyond the prison gate (and the contribution DCS can/should make to the effective delivery of services by other government and non-government agencies).

With regards to the need to manage the transition of people out of the prison system, we note the findings of the Stokes Review (written in relation to mental health, but likely to apply to all health issues and treatment, including AOD):

> *Of significance are those patients on remand who are suddenly released at a bail hearing and who do not get any medical or mental health follow-up as the critical services may not be informed of their release.* [117]

Also:

> *When release is planned, prisoners receive a medical summary, appointments for follow-up care and an exit interview. The prison health services are not always informed that the prisoner is being released. Some prisoners are released directly from court following successful bail applications and others are transferred to another prison.*[118]

We are unaware whether DCS has undertaken any analysis to determine the effect such processes have on access to AOD and other health services post-release, and whether there are opportunities or ways to improve these processes.

6.3.7 Conclusion

Data, including **routine assessment** of a prisoner's alcohol and other drug treatment and support needs is essential to inform service planning and address the needs of individuals. **Without this information there is no way to assess the efficiency and performance of the broad rehabilitation efforts of the prisons.**

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[117] Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, p.7

[118] Ibid, p. 117.

Accurate and timely assessment of need enables **matching with appropriate programs**. A greater **diversity of alcohol and other drug treatment and support programs** needs to be offered in throughout the judicial system, including WA prisons. This can enable the range of needs to be met with an appropriate range of options, including early intervention that may decrease the risk of an individual ever entering prison. There is strong evidence to support the cost efficiency and effectiveness of diversion programs, establishment of prison based therapeutic communities and for extension of the opioid substitution program in WA.

Evidence supporting the **essential role of post-release and through-care** is apparent throughout this report. This remains an essential component to the success of all alcohol and other drug treatment and support programs delivered in prisons and as such should be included within the scope of this review.

6.4 Support for offenders with cognitive impairment

Reports from other jurisdictions suggest that people with intellectual disabilities or cognitive impairment are overrepresented within prison systems.

> *Community estimates of the prevalence of intellectual disability across Australia, and internationally, vary from 0.3 per cent to 3 per cent (Australian Institute of Health and Welfare, 2003), while estimates of the prevalence of intellectual disability among prison populations range from 1.5 per cent to 29 per cent (Denkowski & Denkowski, 1985; Murphy et al., 2000).*[119]

> *International and national evidence points to widespread over-representation of [persons with mental health disorders and cognitive disabilities] in police work, the courts and juvenile and adult prisoner populations, both as victims and offenders.*[120]

We support the existing engagement of DCS with the Disability Services Commission in this space, however note that many people who have ongoing learning, cognitive or behavioural difficulties as a result of past experiences of trauma or diagnoses such as ADHD, Foetal Alcohol Spectrum Disorder or Traumatic Brain Injury — are often unable to access support services because they do not neatly fit into either the mental health or disability ambits.

Foetal Alcohol Spectrum Disorder (FASD) is caused by a pregnant woman drinking alcohol at levels which harm her unborn child. The consumption of alcohol during pregnancy has been shown to cause brain damage in the child.[121]

> *FASD's effects on the brain can result in cognitive or behavioural deficits. These deficits may include mental retardation, learning disabilities, hyperactivity,*

[119] Department of Justice (Victoria) (2007) *Intellectual Disability in the Victorian Prison System Characteristics of prisoners with an intellectual disability released from prison in 2003-2006*, .
[120] Baldry, E., Dowse, L. & Clarence, M. (2011) Background Paper for the National Legal Aid Conference Darwin 2011: People with mental and cognitive disabilities: pathways into prison,
[121] WA Legislative Assembly Education and Health Standing Committee (2012) *Foetal Alcohol Spectrum Disorder: the invisible disability*.

> *attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.*[122]

The WA Legislative Assembly Education and Health Standing Committee's report into FASD identified the significant cost of FASD to the community:

> *FASD is the leading cause of non‐genetic, intellectual disability in Australia and the Western World. Data reflects an incidence rate of FASD greater than that of Down's Syndrome. When including a cost to the community of FASD, where there has been some contact with the criminal justice system, it may cost up to $25,000 each year averaged across every year of an affected person's life. Thus, by the time a person with FASD is 40 years of age they will have cost the community up to $1,000,000.*[123]

International research indicates that young people with FASD have a high likelihood of coming into contact with the criminal justice system. In a submission to the Federal Government inquiry into FASD in 2012, the Alcohol and Other Drug Council of Australia (ADCA) cited statistics from the National Organization on Fetal Alcohol Syndrome in the US, which stated that 61 per cent of adolescents with FASD in the US have been in trouble with the law.[124] Unfortunately comparable Australian figures are not currently available.

> *Recent research by the Telethon Kids Institute relating to FASD in the WA justice system (including a survey of judicial officers, lawyers, DCS staff and WA Police officers):… indicated a need for more information about FASD, including information to improve the identification of individuals in need of specialist assessment, and guidelines on how to deal with people with FASD.*[125]

FASD is not a diagnosed disability, which contributes to the difficulty for people with FASD to obtain access to those support services — the sorts of services which could potentially reduce their likelihood of coming into contact with the justice system. This concern was addressed in the WA Legislative Assembly's report:

> *Recommendation 8: The Committee recommends that the Government and the Minister for Disability Services support changes to commonwealth and state legislation to better accommodate children and adults with FASD. In particular any reference to disability or intellectual disability to be broadened to include a definition of cognitive impairment as an ongoing impairment in comprehension, reason, judgment, learning or memory, that is the result of any damage to or dysfunction, developmental delay, or deterioration of the brain or mind.*[126]

This report makes a range of further recommendations which have specific implications for youth justice, including (but not limited to):

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[122] US Department of Health and Human Services (2007) *Fetal Alcohol Spectrum Disorders and Juvenile Justice: How Professionals Can Make a Difference*.
[123] WA Legislative Assembly Education and Health Standing Committee (2012) *Foetal Alcohol Spectrum Disorder: the invisible disability*, page ii.
[124] House of Representatives Standing Committee on Social Policy and Legal Affairs (2012) *FASD: The Hidden Harm Inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders*, page 137
[125] Telethon Kid's Institute (2014) *Alcohol & Pregnancy & FASD Research Program Project Summary FASD: Knowledge, attitudes and practice in the WA justice system*.
[126] Ibid, page ix.

Recommendation 11: The Committee recommends that the Attorney General make available additional funding in the 2013 budget for justice and corrective services to enable:

a. The identification of people with FAS/FASD or who have a cognitive impairment.

b. Additional programs to be developed to assist people with FAS / FASD or a cognitive impairment during their pre-sentence period, incarceration and following discharge to help them function in society.

Diagnoses such as FASD, traumatic brain injury and other learning or cognitive impairments (such as ADHD) do not appear on Australia's *List of Recognised Disabilities*[127], thus limiting access to support services and to payments for carers. However, the prevalence of such diagnoses amongst young people who come into contact with the criminal justice system cannot be ignored.

For example, research has found that history of traumatic brain injury (TBI) — a blow to the head resulting in a loss of consciousness or blacking out[128] — is high amongst prisoners, with 37% of WA prisoners reporting having suffered from a TBI.[129] People with TBI:

… may experience long-term changes in one or more of the following areas— physical and sensory abilities, cognition, behaviour and personality, communication and medical status.[130]

The high rate of TBI amongst prisoners "may be attributed to the neuropsychological deficits and aggressive, violent, criminal behaviours that can result from TBI."[131] TBI can be both a result of criminal behaviour, but may also contribute to it — for example, if a child suffers from sustained, serious physical abuse.

In addition, up to 70% of Youth Legal Service clients indicate some impairment of learning or cognitive abilities — the most common being attention deficit hyperactivity disorder (ADHD).[132]

Legislators and government departments need to be more actively seeking opportunities to both prevent people suffering from such conditions, and to find ways to encourage young people with such diagnoses to engage in positive and meaningful ways.

There is a need to better understand the rates, causes and consequences, of cognitive impairments amongst prisoners in WA — with particular attention given to disabilities or impairments which are currently undiagnosed. **Improved data collection and analysis is needed to accurately evaluate the need for services within prisons; to plan and manage/support prisoners once they are released back into the community; and to develop effective crime-prevention strategies.**

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[127] Australian Government (2012) *Social Security Act 1991: 1.1.R.90 Recognised disability (CA (child))*.
[128] Loss of consciousness following an injury to the head is an indication that there has been an effect on the brain.
[129] Australian Institute of Health and Welfare (2011) *The health of Australia's prisoners 2010*, p. 37.
[130] Ibid, page 37.
[131] Ibid, page 37.
[132] Information provided by Cheryl Cassidy-Vernon, Director, Youth Legal Service WA.

Best practice suggests that prisoners with impaired capacity should have a care plan created for them, and should receive treatment as soon as possible after their admission to prison. Ideally, such treatment should be provided in a separate unit by a multidisciplinary team of specialist staff, at least some of whom are based in the community so that prisoners may receive continuity of care after they are released (UK Social Exclusion Unit 2002; Lurigio, Fallon and Dincin 2000; Ogloff et al 1991).[133]

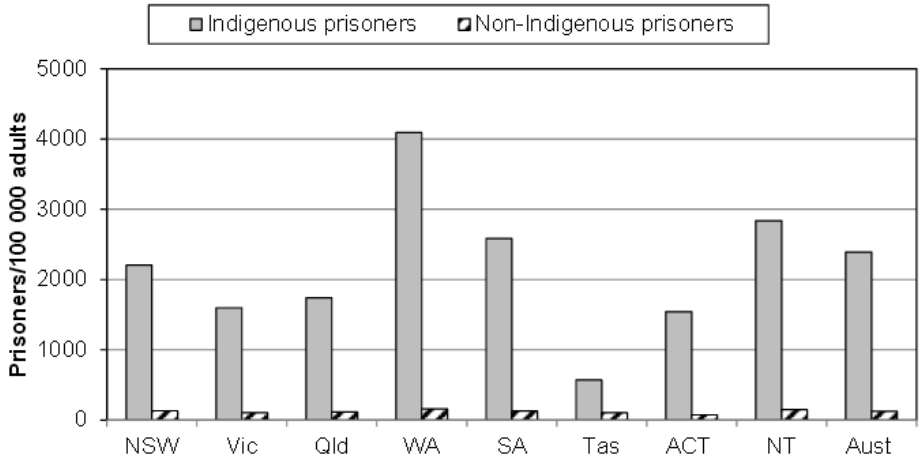
Prisoners are often people with extremely complex needs who need integrated multi-department/service responses to get the best outcomes for both individuals and their communities.

6.5 Support for other prisoners from at risk groups

Mental health, alcohol and other drug use, and disabilities are three of the key **factors** which have been shown to contribute to people coming into contact with the criminal justice system. However there are a number of other at risk groups within the community whose over-representation within WA prisons deserves mentioning, the most significant of which are Aboriginal Western Australians.

Aboriginality — It is essential the ERA specifically consider the impacts of the higher rate of Aboriginal incarceration in WA compared to other Australian jurisdictions, as a central issue in this Inquiry.

Figure 10: Indigenous and non-Indigenous crude imprisonment rates, 2012-13[134]



As Figure 10 shows, WA has by far, the highest rate of Indigenous imprisonment in Australia. The over-representation of Aboriginal people within the WA prison population has many ramifications. These include in the nature of offending, the complexity of needs of the majority of the Aboriginal prison population, issues relating to culture, higher incidence of

[133] Walsh, T. (2004) *INCORRECTIONS: Investigating prison release practice and policy in Queensland and its impact on community safety*, Faculty of Law QUT.
[134] Ibid, p. 8.

mental health issues[135] and drug and alcohol use. In particular, recidivism rates, and the needs of transition from prison to community for those in rural, regional and remote areas is often more complex, bringing significant cost implications.

These factors have significant impacts on prison operations, and therefore cost and effectiveness. These include, but are not limited to, assessment of needs, the types of programs required generally, the need for specialist programs and approaches appropriate to Aboriginal culture, the need to make cultural adjustments, transition to community and local prison infrastructure.

> *An efficient prison mental health service with good consultative links with Indigenous health services and employing Indigenous mental health workers will identify and assist many prisoners with mental illnesses or disorders. Again however a broader preventive approach is needed which directly addresses the emotional distress and despair common to most Indigenous prisoners and their underlying causes.*

The forcible removal of Aboriginal and Torres Strait Islander children from their parents and communities has been demonstrated to have serious long-term impacts, including substance abuse and imprisonment.[136] The over-representation of Stolen Generations peoples within the WA prison system is an issue which requires culturally appropriate and multidisciplinary responses.

The over-representation of Aboriginal people within the WA prison population is not a new problem. However, it clearly shows that current approaches to addressing those issues and vulnerabilities which lead a disproportionate number of Aboriginal Western Australians to end up in contact with the criminal justice system, are not working.

Significant work needs to be undertaken across government and in partnership with the Aboriginal community in order to seek options to addressing a range of complex and interrelated issues. The collective impact, *Just Reinvest NSW* project building in the town of Bourke at the moment provides an interesting new approach to:

> *… to demonstrate that justice reinvestment offers a real solution to Australian communities seeking to tackle problems around offending and incarceration, while at the same time creating alternate pathways for young people.*[137]

Aboriginal community engagement and leadership, and partnerships with government and non-government agencies are significant elements of this project. We also draw the ERA's attention to one of the key aims of this project (which is highly relevant to *this* Inquiry):

> *[To] convince all tiers of Government to shift policy and spending from incarceration and services which are currently not effectively utilized in the*

[135] The 2004–05 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) (2006) found Indigenous Australians were twice as likely to report high or very high levels of psychological distress as non-Indigenous Australians.
[136] Australian Human Rights Commission (2012) *Face the Facts (2012) - Some Questions and Answers about Indigenous Peoples, Migrants and Refugees and Asylum Seekers, chapter 1.13.*
[137] Just Reinvest NSW (2014) *Justice Reinvestment in Bourke, NSW*.

community, to be reinvested into programs which address the underlying causes of youth crime and meet community need.[138]

Child Protection — Research by the *Australian Institute for Health and Welfare* has found that early experiences of poverty, child abuse and neglect mean makes it significantly more likely that a person will end up within our criminal justice system.[139]

> *Extensive research demonstrates that there are considerable overlaps between homelessness, child abuse and neglect, and criminal activity. For example, children who are abused or neglected may be at greater risk of being homeless and committing criminal activity than children who have never been abused or neglected.*
>
> *Quantifying the extent of multiple-sector involvement for these children and young people would provide a number of benefits. For example, having information about children who are likely to end up homeless or commit criminal activity would allow policy makers to devise and implement early intervention strategies. Similarly, knowledge about the extent of multiple-sector involvement and the types of children and young people who are involved would allow government and non-government agencies to provide more targeted services.*[140]

Better information and knowledge about the links between offending behaviour and child protection, may provide opportunities to proactively address the overlap between the two troubling areas.[141]

Homeless/Poverty — In considering all of the various issues arising from the over-representation of specific disadvantaged and vulnerable groups within our justice system, a crucial issue we must not overlook is the relationship between social and financial disadvantage, and the likelihood of offending behaviour and incarceration.

The diversity of factors which have been shown to contribute to people coming into contact with the criminal justice system, again, highlights the need for better information about the affected population cohort in Western Australia to drive effective and efficient program and system responses by DCS (in partnership with other government and non-government agencies).

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[138] Just Reinvest NSW (2014) *Justice Reinvestment in Bourke, NSW*.
[139] AIHW (2012) *Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice*, Australian Institute of Health & Welfare.
[140] Ibid, p.1.
[141] With regards to research examining children and pathways to imprisonment we note the existence of the *Developmental Pathways in WA Children* project being undertaken by researchers from the Telethon Kids Institute and the University of Western Australia in collaboration with a number of state government departments (including DCS). This project has "established the process of linking together de-identified longitudinal, population-based data collected and stored by a large number of these WA government departments and the Telethon Kids Institute, to create a fantastic cost-effective research and policy planning/evaluation resource".

7.0 Measuring prison performance

7.1 Data: Quality, transparency and sharing

Through this submission, we assert there is significant room for DCS to improve both its collection and use of data to drive its policy, planning and procurement decisions. A commitment to evidence-based continuous improvement is needed, but the ongoing paucity of comprehensive data (gathering and use) inevitably means that the efficiency and effectiveness of the prison system is going to be undermined.

In 2001, the Australian Bureau of Statistics (ABS) published *The National Criminal Justice Statistical Framework*. In the Framework, the ABS identified "number of important questions about criminal justice and the CJS that either cannot or have not been addressed by currently available data."[142] While the ABS report was national, some of the findings of the report remain congruent with the use and availability of data within the WA jurisdiction today. For example, a *Social Ventures Australia* report commissioned by DCS (published in September 2014) made a number of observations about the Department, including that there was a:

- *Lack of readily available baseline data, particularly around youth recidivism;*
- *Lack of evidence base in the sector for performance against the reoffending baselines;*
- *Lack of an integrated IT system [which] is a barrier to: Understanding the complexity of offenders' needs and interactions with various Government departments; and developing a strong evidence base and directing funding based on what works to reduce reoffending.*[143]

Key issues identified by the ABS included:

- *An inability to distinguish characteristics of offenders (a lack of detailed offender information).*
- *An inability to track offenders through the criminal justice system.*
- *The lack of information of victim and offender ethnicity and Indigenous status.*
- *The lack of information of drug, alcohol and firearm involvement in crime.*
- *The lack of adequate data to examine recidivism (including the lack of a standard definition of a recidivist).*
- *An inability to evaluate comprehensively programs to reduce recidivism and other intervention / prevention programs in order to determine accurately the types of strategies that are effective.*
- *The lack of collection of data for research and evaluation requirements, rather than just for operational needs.*
- *The existence of many systems to store data, but no integration of that data.*
- *The lack of uniform standards in some parts of the crime and justice field.*

[142] Australian Bureau of Statistics (2001) *4525.0 - The National Criminal Justice Statistical Framework, Jul 2001*.
[143] Social Ventures Australia (2014, September) *Social Impact Bonds: reducing reoffending in Western Australia*, Department of Corrective Services, p.10.

- *The need for geo-coded data for regional comparisons at small local area level.*
- *The lack of a substantial link between crime data and other data to help identify factors contributing to crime.*[144]

The ABS also argued that:

> *Better integrated data should also facilitate answering some of the key questions in the criminal justice field. Examples of such questions include:*
> - *What are the causes of crime in Australia?*
> - *How big is the crime problem?*
> - *Is crime getting better or worse over time?*
> - *Who is most at risk for becoming a victim or a multiple victim of crime?*
> - *Who is most at risk for becoming an offender?*
> - *Why are certain groups over-represented in the criminal justice system?*
> - *What is the role of alcohol and drugs in crime?*
> - *How does crime vary across small local areas?*
> - *How afraid are people of crime?*
> - *What is the relationship between fear of crime and actual levels of crime?*
> - *How much crime goes unreported? Why?*
> - *Is crime reduction achieved more effectively via increased enforcement or via a focus on prevention strategies?*
> - *Which programs are most effective for preventing crime? For decreasing recidivism? For diverting offenders out of the system?*
> - *What is the relative effectiveness of various criminal justice strategies?*
> - *How effective is the criminal justice system as a whole in reducing crime?*
> - *How does the public perceive the effectiveness and efficiency of various elements of the criminal justice system?*
> - *How satisfied is the public with the criminal justice system?*
> - *What is the flow-on effect of policy changes on the rest of the system?*
> - *What proportion of people who enter the criminal justice system end up spending time in prison?*
> - *How much recidivism is there?*
> - *Can effective measures of recidivism be developed?*
> - *How can data from multiple sources be understood and integrated?*
> - *How can we make sense of differences in crime statistics across jurisdictions?*
> - *How can different jurisdictions share data more effectively?*
> - *How are health and education and other social and economic factors linked to crime in Australia?*[145]

Answering many of *these* questions may require ongoing and detailed empirical research. This is research which academics may be better placed to undertake. However, DCS has developed a reputation for being unsupportive of academic research being undertaken within the prison system.

[144] Australian Bureau of Statistics (2001) *4525.0 - The National Criminal Justice Statistical Framework, Jul 2001*
[145] Australian Bureau of Statistics (2001) *4525.0 - The National Criminal Justice Statistical Framework, Jul 2001*

DCS is also known for its general reluctance to share data in a timely manner, or in a useful or usable format.[146] Frustratingly, since 30 June 2014, DCS has not even published its high-level "Weekly Offender Statistics".[147] We believe the Department's fear of being criticised may be why they are preventing (or discouraging) independent analysis. Furthermore, we question whether this hesitancy may also be driven by the Department's lack of robust internal data/analysis — that is, if criticism were to be levelled at a prisoner management approach DCS are taking, it seems possible that DCS may not have the evidence available to refute criticism, and/or to argue that their approach *is* evidence-based and most appropriate.

While we acknowledge there may be instances when DCS's refusal to allow a research project may (rightly) reflect concern regarding risks to the safety or wellbeing of prisoners, as a general rule, we encourage DCS to view research projects as an opportunity to gain access to information which can be used to inform service planning and delivery.

We note that DCS's *2013-14 Annual Report* says:

> *Long term planning for 2016 to 2024 has commenced and is based on a revised prisoner projections model being developed in conjunction with the Department of Treasury. It provides for a detailed cohort analysis to ensure infrastructure and services address the physical, mental and criminogenic needs of the prisoner cohort.*[148]

We welcome the plan to undertake a "detailed cohort analysis", though question whether the Department's intent is for this to be a one-off analysis undertaken to inform this planning process, or whether the Department is committing to an *ongoing* process of analysing and monitoring the physical, mental and criminogenic needs of prisoners.

We suggest that making this detailed cohort analysis publicly available, and engaging non-government service providers in the process, would improve the quality of data collected, as well as improve the accountability of the Department.

7.2 Benchmarks

The ability to establish appropriate and meaningful baselines/benchmarks is a major issue in performance measurement; as is the ability to identify the causal factors behind performance measures:

> *Figuring out these causal factors is important for at least two reasons (beyond merely understanding the process). One is to have a sense of what input or output measures to use if the outcome measures aren't available in a given case. Another*

[146] DCS data (such as the Weekly Offender Statistics) is provided in PDF format, which is an unhelpful format, which stymies attempts by interested agencies to examine this (publicly available) data.
[147] The explanation for this (previously weekly published) data not having being available for 6 months is that "reform processes" are currently underway. DCS's decision to make this dataset unavailable at the time of a significant Inquiry into the prison system, reflects poorly on the Department and its interest in transparency and evidence-based decision making.
[148] Department of Corrective Services (2014) *2013-14 Annual Report*, p.45.

is to be able to properly assign credit, so providers who get a bad (or good) population of inmates aren't blamed (or praised) for bad (or good) results.[149]

Data driven policy, planning and procurement will help the government conceptualise what makes for a good prison, including what measures are most effective and efficient in reducing offending behaviour as a precursor to reduced prison costs. At present however, we do not believe that DCS has the data available to establish appropriate and meaningful baselines, benchmarks, and performance improvement goals.

7.3 The ability to compare WA prisons

The Issues Paper provided an insight into the daily cost of holding a prisoner in each WA prison[150], but as often happens (having been provided with no associated commentary), the graph raised far more questions than it answered.

There are a range of factors which make us question how reasonable it is for the State Government to seek to compare individual prisons. Such factors include:

- **Location** - There will be significant challenges comparing a prison located in a regional centre (i.e. Geraldton), a remote area (i.e. West Kimberley), and a metropolitan prison (i.e. Casuarina, Bandyup). Costs will be impacted by factors including the payment of remote allowances for staff, and transportation costs. Effectiveness may be impacted by the ability of DCS to procure local community service-provided offender, training and/or throughcare services.
- **Size** - It is difficult to compare a very large prison (i.e. Hakea), and a small prison. A very large facility has the potential to deliver efficiencies of scale (i.e. Acacia), whereas a smaller prison can deliver a more case-based, targeted service (i.e. Wandoo).
- **Security level** - Maximum security prison will need higher levels of staffing, and will need to deliver a different range of programs/services, compared with a minimum security prison. Holding medium security prisoners in maximum security facilities will likely be more expensive than holding medium security prisoners in medium security facilities - this is worth noting in the context of this Inquiry given the serious oversupply of maximum security beds within the WA prison system at present.
- **Security level mix** - There are cost implications relating to the need to provide a wider range of services, when holding a more diverse population. For example, Acacia (compared with Hakea) currently has the benefit of holding *only* medium security level prisoners.
- **Remand rate/length of sentence** - Approximately 22% of people in prison were on remand (unsentenced) at the time DCS last published their Weekly Offender Statistics (26 June 2014).[151] It is not immediately clear what impact higher rates of prisoners being held on remand will have on cost - though it appears possible that costs may be

[149] Volokh, S. (2014, February 26) *The advantages of performance measures for prisons*, Washington Post.
[150] Economic Regulatory Authority (2014) *Inquiry into the Efficiency and Performance of Western Australian Prisons: Issues Paper*, p.13.
[151] Department of Corrective Services (2014, June 26) *Weekly Offender Statistics (WOS) Report as at 26 June 2014 00:00 hours*.

lower since prisoners are often ineligible/unable to access any services while on remand/serving a short sentence; in this context we must be careful not to equate cost with effectiveness.

- **Prison utilisation** - The utilisation level of a prison will impact its comparability. At present, we believe the rate of overcrowding in WA prisons make costs and rehabilitative outcomes difficult to compare both between prisons and over time. If a prison is overcrowded, costs may be lower due to economies of scale, or they may be higher because more prisoners means more staff/services are needed and more incidents occur. The effectiveness may also be lower because fewer prisoners may be able to access services. Meeting human rights standards also becomes a key concern with regards to overcrowded prisons.

Given the differences between prisons on many, if not all of these measures, we suggest that it may be inappropriate or meaningless to undertake "comparisons of the performance of individual prisons in WA". We do however encourage the development and implementation of the processes necessary to build a transparent evidence base upon which the performance of individual prisons can be measured today, and improvements can be measured over time. We suggest that only once a sound baseline for each individual prison has been developed, will fair and reasonable comparisons of prison performances be possible.

7.4 Measuring recidivism

In October 2014, the Department of Corrective Services published a report on recidivism rates in WA. The report opened with the following comment from DCS Commissioner James McMahon [emphasis added]:

> *Recidivism rates in Western Australia have bucked national trends and dropped significantly over the last five years. I would like to think that this is because of the hard work that the Department of Corrective Services has undertaken to rehabilitate the men and women, and young people, who have come under its responsibility. In truth, however, I am not sure that this is the case.* ***The reasons why recidivism rates are reducing among both adults and young people in Western Australia are unclear.*** *There is no doubt that some of what we are doing is highly effective, but without reliable evidence to the contrary, I must assume that some of the measures we currently undertake in an effort to reduce recidivism do not work.* ***To find out for certain will require a robust framework of reliable data collection and monitoring, along with independent evaluation.***[152]

Like the Commissioner, we welcome the fall in recidivism rates. However, the lack of *any* explanation as to *why* recidivism rates have fallen means that the Department has *no* evidence upon which to base future decisions into order to replicate/continue/expand/address those programs/services/factors which have contributed to these improved results. The Commissioner's comments are a shocking indictment on the Department and its ability to measure and evaluate its own performance at present. **Without robust measurement and evaluation, how can the Department determine whether the**

[152] Department of Corrective Services (2014) *Recidivism trends in Western Australia with comparisons to national trends*, p.2.

programs and services it offers to prisoners are effective? Understanding such things is critical to improving the performance of the prison system in WA, and should be the priority of the Department and its stakeholders.

This lack of data also raises significant questions regarding what evidence/data DCS uses (and has been using) to determine its service provision and procurement within the prison system. This concern was reflected in the September 2014 report by OICS on *Recidivism rates and the impact of treatment programs*:

> *The Department still lacks comprehensive evaluation of the programs they deliver, which is a significant risk. Without this evaluation it is impossible to determine if one or more programs delivered by the Department works as intended or makes the prisoner more likely to offend. This issue was raised in the Mahoney Inquiry in 2005, where it was stated that the Department is "unable to advise with any confidence that its rehabilitation programs are working". Nearly a decade later, this still has not been adequately addressed.*[153]

There are a range of factors which may impact whether or not an individual reoffends post-release. Such factors include:

- Access to appropriate offender and education programs/services while in prison (may be impacted by issues including overcrowding, waiting lists, timing of prisoner transfers, variation in range of services available at each facility);
- Establishment and implementation of a care plan (relating to AOD, mental health, disability etc., as appropriate);
- Whether an individual has a supportive network of family and friends outside prison upon whom they can rely post-release;
- The level of dysfunction or disadvantage in the prisoner's home/community;
- The availability of safe, secure, appropriate accommodation post-release;
- Whether the offender has access to individual case management services and support pre- and post-release; and
- Ability of the individual to achieve employment.

While every individual's circumstances are going to be different, undoubtedly there will be commonalities and trends which emerge through ongoing monitoring and evaluation of outcomes. As such, it is critical that DCS seeks to answer the question of "why" people reoffend post-release, the recidivism rate is just a number reported in the Department's Annual Report. By asking why, and seeking to determine the factors which influence the rate of reoffending, DCS are more likely to identify means by which offending rates can be reduced, and incarceration rates can be lowered (thus reducing State Government costs).

- Used to drive both policy, planning and procurement decisions within the DCS;
- Used to drive policy, planning and procurement within other Government agencies, and optimise spending across the State Government to deliver safer communities.

[153] Office of the Inspector of Custodial Services (2014, September) *Recidivism rates and the impact of treatment programs*, p. 30.

For example, if it was found that a common reason people were returning to prison was AOD use by people who had sought but were unable to access appropriate AOD programs. This is information which could/should be used by both DCS and other government departments (Department of Health and Drug and Alcohol Office). The cost of funding services to meet the unmet demand for community AOD services, could be compared with the cost of returning someone to prison. **These are the sort of "smart justice" approaches where DCS should be seeking to actively work with other Departments and non-government agencies to deliver improved outcomes and reduce the long-term costs to Government.**

Similarly, if it is identified that the level of disadvantage and dysfunction within a community/geographic area are resulting in higher rates of arrest/imprisonment/recidivism, the costs of incarceration may be better spent working with that local community to address its underlying disadvantage. **Treating offending patterns only as *individual* issues, and not as *wider community* issues, means that opportunities to identify and address factors which underlie offending behaviour are missed.** This may be particularly relevant to some Aboriginal communities in Western Australia. Opportunities may present for DCS to work in collaboration with local communities, non-government agencies, and government agencies (such as the Departments of Health, Child Protection and Family Support, Education, the Drug and Alcohol Office and Mental Health Commission) to make a real difference for whole communities and reduce the long term justice costs to governments.

8.0 Smarter, collaborative initiatives to prevent or respond to offending

To optimise its contribution to the community safety objective, we also suggest DCS needs to improve its collaboration with other government agencies. On this issue of collaboration, we refer the ERA to the 2011 report of the Economic Audit Committee which wrote:

> *Regardless of structures, cooperation and collaboration are required within and across agencies and sectors. The Auditor General has previously noted that "the evidence around agencies working cooperatively or collaboratively is that it consistently needs improvement. We do not see really good examples of agencies working cooperatively together.*
>
> *Collaboration has to become a 'mode of operation' and this requires both formal and informal opportunities for interaction. Most of the work of government is (and should continue to be) undertaken by individual agencies, since structures of governments are designed to allow this to happen. The more challenging instances are where the necessary authorities to effect change are dispersed across agencies and/or Ministers.*
>
> *A collaborative approach is appropriate to solving these often complex, intractable problems and achieving consensus on an agreed set of objectives among the relevant public sector, community and/or industry groups. A key challenge for public management is to develop and maintain, in the people and the systems, a capacity for ongoing problem solving of these complex interagency issues.*

> *Collaboration requires the appropriate leadership environment, people with the right skills and motivation and the necessary systems and policies to support it. Embedding a collaborative approach will require a sustained effort so that agencies work together and with community employers, social enterprises, community organisations and the private sector over an extended period to find ways in which they can use their collective resources to enhance service delivery.*[154]

DCS is not currently a member of the *Partnership Forum* - the body established "to enhance the relationship between the Government, community sector and the State public sector with a view to improving outcomes for all Western Australians".[155] However, we commend many aspects of this collaborative model of working to DCS and the ERA. In order to address the complex issues which result in people coming into contact (or repeatedly coming into contact) with the corrective services system, partnership approaches - both between government agencies, and between the public and community services sectors - are needed. Of the work undertaken in line with the *Delivering Community Services in Partnership Policy*[156], we note, in particular the work being undertaken in partnership between the government and non-government sectors in outcomes measurement and value of co-designing services, which is highly relevant to this Inquiry.

9.0 Options to deliver improved efficiency and effectiveness

The community services sector doesn't want to see such a high level of spending on the most acute end of the offending spectrum. In the same way that we know that the provision of primary, preventative medicine is cheaper and more effective than hospital-based tertiary services, the available data suggests that there are many opportunities for the State Government to reduce the need for expensive prison services by investing much "smarter" to prevent offending (and reoffending).

Supporting *communities* to address the underlying problems which often lead people to offending behaviour should be at the core of State Government justice and corrections policy. While prisons are an essential part of the justice system, they should only be used as a last resort. As the WA State Budget shows, imprisonment is our most expensive means of responding to offending behaviour (especially when you factor in the wider costs of offending, including - courts, police, insurance, and victim support services).

When imprisonment is deemed necessary, emphasis needs to be placed on the rehabilitative opportunity a period of incarceration provides, because almost all prisoners are released back into the community at some point. The wider context, within which DCS's operations exist, must be addressed within this Inquiry because:

> *The criminal justice system does not exist in a vacuum; rather, it is situated within a complex social milieu that incorporates other social and economic factors. Crime can be considered a social phenomenon, to which the criminal justice system is a*

[154] Economic Audit Committee (2009) *Putting the Public First: Partnering with the Community and Business to Deliver Outcomes*, Government of Western Australia, pp. 17-18.
[155] Department of the Premier and Cabinet (2012) *Putting the Public First - Economic Audit Committee*.
[156] Department of Finance (2014) *Delivering Community Services in Partnership Policy*.

> *societal response. As such, it is vital to consider the interactions of broader contextual factors in relation to crime to understand its social elements. It is often these environmental factors that determine the levels and types of crimes committed, the response of the criminal justice system where applicable, and the impacts and outcomes for victims, offenders and communities.*[157]

We note that (preceding this Inquiry), the Minister for Corrective Services and Department of Corrective Services are reported as having indicated their interests in increasing the level of privatisation within the WA prison system[158] and introducing new financing methods, including social impact bonds.[159] There is little evidence from other jurisdictions to indicate that measures such as privatisation or social impact bonds will reliably deliver significant savings for the State Government. As such, we remain unconvinced that either of these approaches are where the State Government and DCS more specifically, should be focusing its efforts and resources at this point in time.

We note that *Social Ventures Australia's* recent report for DCS on social impact bonds similarly suggests [emphasis added]:

> *Separately, and irrespective of whether the Department chooses to progress with [social impact bond] development, SVA* ***recommends investing in building an evidence base of what works to reduce reoffending in WA.***[160]

The community services sector would be pleased to work alongside DCS and other government agencies to build and maintain the evidence base needed to improve the efficiency and performance of the corrective services and justice systems in WA.

At this stage, we encourage:

- DCS's commitment to improve its processes for the ongoing collection and analysis of data (relating to people in contact with the justice system) in order to build a better understanding of the factors driving offending (and reoffending) behaviour in WA. This information needs to be used to drive the mix and scale of DCS's procurement and delivery of offender and education programs and services within the prison system.

- The establishment of government and non-government inter-agency mechanisms (in line with the aims of the *Delivering Community Services in Partnership Policy*) to ensure that research and insights relating to the causes of offending behaviour are shared with other agencies, and identified opportunities for program and/or system responses targeting those causes are developed and implemented.

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[157] Australian Bureau of Statistics (2007) *4525.0 Information Paper: National Criminal Justice Statistical Framework*, p. 5.
[158] Mercer, D. (2014, October 24) *Overhaul Probe for WA Jails*, The West Australian, p. 26; and Banks, A (2014, February 1) *Privatisation plan for prisons*, The West Australian.
[159] Strutt, J. (2014, July 21) *WA Government looks to private investment to address high re-imprisonment rates*, ABC News.
[160] Social Ventures Australia (2014, September) *Social Impact Bonds: reducing reoffending in Western Australia*, Department of Corrective Services, p.17.

- The introduction of transparent and accountable program evaluation processes (for both DCS and non-government provided) programs and services.

- The State Government to review the objectives, costs and outcomes of policies including mandatory sentencing and imprisonment as an option to 'cut-out' fines.

As mentioned earlier in this submission, we are aware, from the Department's 2013-14 Annual Report, that the *Knowledge and Information Technology (KIT) Directorate* has recently been established. However, there is little information available about the functions and priorities of this Directorate. It is unclear what the capacity of this Directorate is, and whether the Directorate's work will include:

- Analysis of existing DCS data sets;

- The design and implementation of more comprehensive data collection processes (such as those relating to mental health, alcohol and other drugs, and cognitive disabilities);

- Evaluations of programs and services delivered to offenders. Transparency in this process is critical. We recommend that contracted service providers (such as our members) be engaged to design evaluation measures and outcomes;

- Engagement with community services sector in the development and delivery of (new) service models informed by improved data collection and analysis processes;

- Ensuring all data issues identified by the ABS (refer to page 48) are addressed;

- Increasing the availability and usability of publically available data to encourage transparency, accountability, and collaborative design of innovative and responsive service models;

- Proactively seeking opportunities to link DCS and other agencies' data sets[161] to better encourage the identification of trends in offending behaviour and opportunities to intervene earlier to prevent offending behaviour, and reduce the need for imprisonment.

- Participating in much needed analysis of the impact of low rates of parole approvals, the introduction of mandatory sentencing legislation, and imprisonment as an option to 'cut-out' fines. While DCS is not directly responsible for these decisions or policies, the impact of such factors is highly relevant to the efficiency, performance and cost of DCS operations;

- Engaging with external researchers as a means of building knowledge and information about the effective and efficient operation of prisons.

[161] Most obviously those of the courts and police, but potentially also agencies including (but not limited to) the Department of Health and Drug and Alcohol Office.

We posit that undertaking approaches such as further privatisation or the introduction of social impact bonds — without DCS (and ultimately the wider justice system) first committing to improving its collection and use of data to inform decisions — would be ill-conceived.

A strong and transparent evidence base — developed and maintained in partnership with other government and non-government agencies — is where the Department needs to focus its efforts and resources at this time. *This* is the area of work which ultimately has the greatest potential to "improve the efficiency and performance of public and private prisons", and make the greatest contribution to the ultimate objective of community safety.