

**REPORT OF THE  
INDEPENDENT INVESTIGATION  
INTO THE  
MANAGEMENT AND OPERATIONS  
OF  
VICTORIA'S PRIVATE PRISONS**

October 2000

*"It doesn't matter if a cat is black or white,  
so long as it catches mice."*

*Deng Xiaoping, Premier of China,  
"Time", 6 January 1986*



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# INDEPENDENT INVESTIGATION INTO THE MANAGEMENT AND OPERATIONS OF VICTORIA'S PRIVATE PRISONS

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**Chairperson: Mr Peter Kirby**

Ground Floor, 55 St Andrews Place, Melbourne Vic 3000  
GPO Box 4356QQ, Melbourne Vic 3001  
Telephone: (03) 9651 0324  
Facsimile: (03) 9651 0543

27 October 2000

The Hon Andre Haermeyer MP  
Minister for Police and Emergency Services and  
Minister for Corrections  
Level 1, 55 St Andrews Place  
MELBOURNE VIC 3002

Dear Minister

The Panel has now completed its work and we are pleased to submit our report for your consideration.

In the course of our investigation we received the fullest of cooperation and support from Departmental officers in your portfolio and, in particular, from management and staff in the Commissioner's office, CORE and those public and private prisons we visited. Full support was also given to us in our more limited contact with the Office of Post Compulsory Education, Training and Employment, and the Department of Human Services.

Our work was greatly aided by the information and advice provided to us by individuals and interested organisations through the many submissions we received and our consultations.

Mr Kevin Phelan of Maddock Lonie and Chisholm provided invaluable support to the Panel in responding quickly and comprehensively to our many requests for legal advice.

We wish to record our great appreciation of the support given to the Panel by Liz Penter, our Executive Officer, and Isabel Keeling our Office Manager. Their work was consistently of the highest quality and they never failed to meet the many pressing timelines. We are most grateful for their professional assistance.

Together with the recommendations of other recent reviews of Victoria's prisons, we are confident that the proposals in our report will assist the Government to integrate the State prison system into one which will be recognised internationally as best practice.

Yours sincerely

Peter Kirby  
(Chairman)

Vivienne Roche  
(Member)

Brian Greaves  
(Member)

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# Chapter 1

## Introduction

### 1.1 CONDUCT OF THE INVESTIGATION

On the 27 April 2000 the State Coroner, Graeme Johnstone, handed down his findings into five deaths at Port Phillip Prison.

In response to these findings, the Minister for Corrections requested the Secretary, Department of Justice, to commission an independent investigation into the management and operation of Victoria's three private prisons. The investigation was to draw upon work conducted to date by the Office of the Correctional Services Commissioner.

#### 1.1.1 Terms of Reference

The terms of reference of the investigation were:

- i) Examine the present legislative and contractual arrangements to determine whether they provide adequate specifications, incentives and accountabilities to achieve an appropriate standard of quality in service provision within private prisons. Recommend additional measures or changes to commercial arrangements where appropriate, to ensure quality service provision can be both achieved and effectively sustained.
- ii) Examine the contractual framework and individual contractual arrangements to identify opportunities to streamline and simplify contract management arrangements for private prisons, with a view to better support effective and timely management of service provision under the contracts including resolving issues such as service profile adjustment, performance shortcomings and emergency situations.
- iii) Consider the operation of private prisons in relation to their correctional services performance and examine the adequacy of present arrangements including security management; safety for prisoners, staff and visitors; the adequacy of training; and staffing models.
- iv) Recommend measures to ensure that the Victorian corrections system operates in a more consistent, cohesive and integrated manner, particularly in relation to the provision of health services, risk identification and management, and prisoner management issues.

The Private Prisons Investigation Panel (Investigation Panel) was appointed and commenced its inquiries in early July 2000. The Panel comprised Peter Kirby, Chairperson, Vivienne Roche, Senior Policy Analyst, and Brian Greaves, Correctional Services Expert.

During the course of its investigations, it conducted a literature review, received 49 written submissions in response to public advertisements, met with more than 55 individuals and groups, and received specialist advice in relation to legal issues. The Panel visited the Metropolitan Women's Correctional Centre, Fulham Correctional Centre and Port Phillip, Melbourne Assessment, Tarrengower and Loddon Prisons, and consulted with staff and prisoners at each of these locations. The Panel also consulted a number of people with special knowledge and/or experience in aspects of prison management. Details of all of these contacts are contained in appendices I and II.

A steering group comprising senior officers of the Department of Justice provided assistance to the Panel and was a valuable 'sounding board'.

The Panel's investigations have taken account of the legislative, contractual, management and systemic issues identified in other reports,<sup>1</sup> as well as the submissions and opinions of individuals and groups consulted. The findings and recommendations are, however, the responsibility of the Panel.

## 1.2 EMERGING GAINS

*In addition to the financial benefits, Victorian prisoners are now accommodated in new, state of the art facilities which are much improved compared with the 19th Century prisons some of them replaced. There is little doubt that these new prisons would not have been deliverable in the timeframe if they had been funded purely from the State budget.<sup>2</sup>*

It is important to take a balanced view of the impact of the changes to the Victorian corrections system. While media and public attention has tended to focus on specific incidents at individual prisons, it is important to acknowledge that there have been a number of areas where the introduction of new providers has had positive outcomes.

- The standard of **prisoner accommodation** has improved. The opening of the three new private prisons enabled the closure of out-dated, inadequate facilities at Fairlea, Coburg (Pentridge and Metropolitan Reception Prisons), Sale and Morwell River. Less than 10% of prisoners are now accommodated in prisons built more than 100 years ago, and more than 70% of design capacity across the prison system is now less than 15 years old.
- **Standards of care** for prisoners have been clearly documented. Although issues are starting to arise that have been attributed to the lack of input standards, the specification of output and outcome standards that apply to all prisons has been most important in developing a more transparent policy framework and public accountability for the provision of prison services in Victoria.
- An **accountability framework** has been implemented that incorporates the monitoring of contractual compliance, accreditation of various services (including health), scrutiny by Official Visitors, the Ombudsman and community groups, and by public reporting of performance data relating to individual prisons. The current level of scrutiny applied to the private providers is unparalleled in the history of the corrections system in Victoria.
- The multi-provider model has brought greater attention to prison and prisoner management **systems**. The establishment of forums to engage stakeholders at all levels has the potential to develop a more collaborative culture with benefits for further initiatives in, and development of, Victoria's prison system.

## 1.3 EMERGING ISSUES

*The performance of private prisons, as with government prisons and any other services provided for people under statutory care, must be measured on service quality.<sup>3</sup>*

Certain sectors of the community are ideologically opposed to privatisation, particularly in the provision of correctional services. This has been fuelled by the media focus on deaths and other incidents within private prisons, and has demonstrated the extent to which public perceptions of the prison system as a whole can be influenced by such events.

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<sup>1</sup> Russell, E. W. 2000, *Audit Review of Government Contracts: Contracting, Privatisation, Probity and Disclosure in Victoria 1992-1999*; Johnstone, G. 2000 *Deaths in Custody at Port Phillip Prison: Record of investigation into the deaths of George Andrew Drinken, Adam Courtney Irwin, Vienh Chi Tu, Michael Filips and Rodney David Koers, Part 1 Findings, Discussion, Recommendations and Comments*; Auditor-General of Victoria 1999, *Special Report No. 60: Victoria's Prison System: Community Protection and Prisoner Welfare*; Victorian Correctional Services Task Force 1998, *Review of Suicides and Self Harm in Victorian Prisons*.

<sup>2</sup> Submission from Dennis O'Neill, CEO, AusCID.

<sup>3</sup> Submission from the Victorian Council of Social Service.

Concerns about these incidents have led to a number of reviews and investigations, and the resulting reports have identified a range of problems. The Investigation Panel was encouraged to find that a number of identified problems have already been resolved, and that strategies have been (or are being) implemented to eliminate, or at least minimise, such incidents in the future.

Nonetheless, problems remain, including:

- the limitations of the **contractual and legislative framework**;
- inadequacies in the **performance monitoring model**, which is focused primarily on measuring throughput rather than providing incentives to enhance service delivery;
- the **fragmentation** of the corrections system at all levels;
- the limited provision of **health services**, particularly in country prisons;
- inadequate prison **programs**, particularly for preparation for release;
- inadequacies in the competency-based model of **staff training** for the corrections system;
- the variable interpretations of '**case management**';
- **information management systems**; and
- **resourcing** of the Office of the Correctional Services Commissioner.

When considering the performance of the State's prison system (both public and private prisons) it is important to recognise that the system's management is affected by a number of factors beyond the prisons' control. Changes to the law, law enforcement and sentencing policy, reflecting (as they may) changes in society and community expectations, have led to increasing prisoner numbers and rates of imprisonment. In turn, this has resulted in overcrowding in the State's prisons and a higher number of prisoner movements. Both these results give rise to significant additional difficulties for prison management.

Since the introduction of private prisons, Victoria has more prison accommodation in non-metropolitan areas than in the metropolitan area. The location of prisons and the changing prisoner profile (for example, the substantial increase in prisoners with some degree of drug dependency) have aggravated the problems of overcrowding.

On the face of it, these problems are unrelated to the introduction of private prisons; yet, they call for more prison accommodation and greater differentiation in the treatment of prisoners. They have implications for the way existing prison accommodation is developed, and more built. The Government confronts the question of whether it should use public funds to modify and extend prison accommodation, or whether to again turn to private contractors to finance the capital requirements.

The Government has made a commitment to develop more and better managed alternatives to confinement in prisons. In time, these developments should reduce the growth in prisoner numbers, but they will involve costs and place pressure on the corrections budget.

In light of these facts, and the Government's contractual obligations, the Investigation Panel took the view that private prisons may be expected to be a part of Victoria's corrections system for at least the 20 years of their contracts. Therefore, the system's objectives should be founded on the need to:

- integrate private and public prisons in one seamless system;
- support improved performance in all the State's prisons; and
- develop collaborative approaches to sharing information, and designing and implementing programs for the security, safety and rehabilitation of prisoners.



## Chapter 2

# The Corrections System in Victoria: An Overview

In Victoria, the Department of Justice is responsible for the adult corrections system, which comprises prison services and community correctional services.<sup>4</sup> The Government's key outcome for the correctional services system is that offenders in Victoria are treated in a just and humane manner, and encouraged to adopt law-abiding lifestyles.

### 2.1 PRISON SERVICES

The 13 prisons in Victoria provide a total design capacity of 2,875 places, but they currently accommodate over 3,000 prisoners, including persons remanded in custody.

Ten of these prisons are managed by the public provider, CORE – the Public Correctional Enterprise (CORE). CORE also manages all Community Correctional Services in the State, such as Intensive Correction Orders, Community Based Orders and Parole Orders. It also manages the Security and Emergency Services Group (SESG), which is used on a contract basis by private prison providers and by the Correctional Services Commissioner.

Corrections Corporation of Australia (CCA) manages the Metropolitan Women's Correctional Centre (MWCC). It also has the contract for prisoner transport, security and escorts at the higher courts in Victoria.

The Fulham Correctional Centre is managed by Australasian Correctional Management (ACM). It also has the contract for prison health care services at nine CORE prisons through its subsidiary Pacific Shores Health Care. ACM took over the management of the Melbourne Custody Centre (previously managed by the Victoria Police) in March 1999.

Group 4 Correction Services manages the Port Phillip Prison. This prison houses the system-wide secondary and tertiary medical services, including a prison hospital and long-term psychiatric unit. Group 4 also has the contract for the Victoria Police prisoner transportation service.

Approximately 55% of prisoners are held in the ten prisons operated by the public provider, and 45% of prisoners are held in the three prisons owned and operated by private sector companies.

**Table 2.1 Publicly Operated Prisons in Victoria**

Prison	Design Capacity	Security Level	Prisoners	Commenced Operation
Ararat Prison	256	Secure	Male	1967
Barwon Prison	250	Secure	Male	1990
Beechworth Prison	123	Secure	Male	1860
Bendigo Prison	80	Secure	Male	1863
Dhurringile Prison	106	Open	Male	1965
Langi Kal Kal Prison	100	Open	Male	1993
Loddon Prison	250	Secure	Male	1990
Melbourne Assessment Prison	250	Secure	Male	1989
Tarngower Prison	38	Open	Female	1987
Won Wron Prison	127	Open	Male	1964

<sup>4</sup> Young offenders are managed by the Department of Human Services, except in special circumstances.

**Table 2.2 Privately Operated Prisons in Victoria**

<p>Metropolitan Women's Correctional Centre (MWCC)</p>	<p>Prison security level Design capacity Operator Completion date<sup>5</sup> Description</p>	<p>Secure 125 females; maximum, medium and minimum security ratings Corrections Corporation of Australia 20 August 1996 MWCC is a multi-purpose prison providing a complex mix of facilities and services including reception, maximum security, medium security and specialist accommodation for remand and sentenced, mainstream and protection women prisoners. Accommodation is provided in single cells in cottage style units and special cell blocks. Increasing numbers of female prisoners have resulted in capacity being temporarily increased by up to 30 beds.</p>
<p>Fulham Correctional Centre</p>	<p>Prison security level Design capacity Operator Completion date Description</p>	<p>Secure 590 males; medium and minimum security ratings Australasian Correctional Management 7 April 1997 Fulham Correctional Centre incorporates:  <ul style="list-style-type: none"> <li>• medium security cell blocks and lodges;</li> <li>• medium security protection units;</li> <li>• minimum security cottages; and</li> <li>• a drug treatment unit.</li> </ul> Prisoner accommodation is in single cells.</p>
<p>Port Phillip Prison</p>	<p>Prison security level Design capacity Operator Completion date Description</p>	<p>Secure 580 males; maximum, medium and minimum security ratings Group 4 Correction Services 10 September 1997 Port Phillip Prison provides 13 accommodation units with single cells. The primary male remand, and most complex, prison in Victoria, this multi-purpose prison provides a mix of remand and sentenced, mainstream, protection and specialist accommodation including:  <ul style="list-style-type: none"> <li>• a management/security unit for male prisoners;</li> <li>• protection accommodation for male remand and sentenced prisoners;</li> <li>• a 20-bed inpatient hospital unit providing statewide secondary inpatient and outpatient health services;</li> <li>• a psycho-social unit for male prisoners;</li> <li>• a special care unit for male prisoners who require special regimes such as vulnerable, physically disabled or intellectually disabled prisoners; and</li> <li>• short-term accommodation for prisoners awaiting transfer to other prisons or pending resolution of health or legal matters.</li> </ul> </p>

<sup>5</sup> The initial Service Term runs for five years from the Completion Date.

## 2.2 GROWTH IN PRISONER NUMBERS

Victoria's current imprisonment rate is 85.4 per 100,000 adult population. This is the lowest of any Australian State. Historically, Victoria also has an extremely low rate of imprisonment compared to other countries.

**Table 2.3 National Imprisonment Rates**<sup>6</sup>

	<b>Imprisonment Rate</b> June quarter, 2000
Northern Territory	459.3
Western Australia	218.1
Queensland	182.2
New South Wales	151.0
Tasmania	120.4
South Australia	114.9
Victoria	85.5
<b>Australia</b>	<b>143.9</b>

Nevertheless, in recent years Victoria has experienced significant growth in prisoner numbers (in common with other States and relevant international jurisdictions). Since 30 June 1996, Victoria's prison population has grown by 29%.

On 30 June 1996, Victoria's prison population was 2,440. On 10 September 2000, the total number of prisoners peaked at 3,254 – an increase of 814 prisoners. This growth is due to three main factors:

- an increasing number of offenders being sentenced to prison (increasing receptions);
- increasing sentence lengths for serious offences (compounding growth); and
- the impact of the drug problem, which has increased the rate of receptions, particularly for prisoners serving short sentences, and contributed to a wide range, and seriousness, of offences. It is estimated that 70–85% of prisoners have drug problems.

### 2.2.1 Growth in Numbers of Male Prisoners

The number of male prisoners in Victoria increased by 28% from 30 June 1996 to 30 June 2000, peaking at 3,047 on 10 September 2000. The number of men received into prison custody each year has also increased from 3,761 in 1995-96 to 4,343 in 1998-99, an increase of 15%.

### 2.2.2 Growth in Numbers of Female Prisoners

Over the five years to 30 June 2000, the number of women prisoners in Victoria increased by 58% from 116 to 183. During the same period, male prisoner population increased by only 28%. The number of women prisoners in Victorian prisons peaked at 210 on 9 September 2000.

The number of women received into prison custody each year has also increased, from 374 in 1995–96 to 535 in 1998–99, an increase of 43%. Male prisoner receptions increased by 15% over the same period.

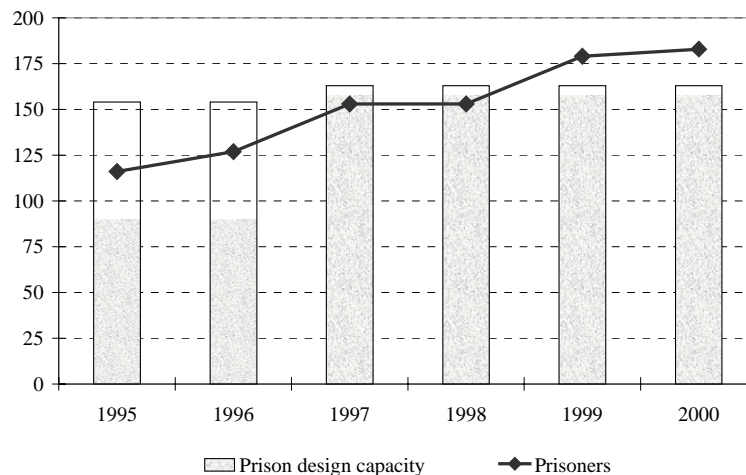
The imprisonment rate for women has similarly increased from 6.6 per 100,000 adult population at 30 June 1995 to 10.3 per 100,000 for the June quarter 2000.

<sup>6</sup> Imprisonment rate per 100,000 adult population. Australian Bureau of Statistics 2000, *Corrective Services, Australia: June Quarter 2000*.

### 2.2.3 Prison Occupancy

As a result of the increase in prisoner numbers, there is significant crowding in Victorian prisons and police cells. The Victorian prison system is currently operating well in excess of its design capacity, and this has meant using more than 450 temporary beds (such as stretchers and bunk beds) across the system.

**Figure 2.1 Prisoner Numbers and Prison Capacity as at 30 June**



Projections suggest that the growth in prisoner numbers is likely to continue, and may climb to 3,500 as soon as 2002 if current trends are maintained.

### 2.2.4 Proposed New Capacity

In addition to a range of diversionary initiatives, various strategies have been proposed or endorsed to accommodate and manage the increased number of prisoners. The Minister for Corrections announced a major Prison Capacity Expansion Program as part of the 2000–2001 State budget, which provided funding for an additional 357 permanent places. These included:

- 50 beds at the Metropolitan Women's Correctional Centre;
- 68 minimum security beds at Fulham Correctional Centre delivering the first part of a community transition program;
- three 20-bed community-based transitional facilities based in metropolitan Melbourne providing pre-release programs (two for men, one for women);
- expansion of two existing public prisons to provide 145 extra beds for male prisoners (75 maximum security beds at Barwon and 70 medium security beds at Loddon); and
- expansion of specialist metropolitan prison capacity with the provision of 34 new beds, including additional beds for prisoners in need of acute psychiatric assessment, at Port Phillip Prison.

However, the number of new beds is fewer than the number of temporary beds currently being utilised.

## 2.3 PRISONER MOVEMENTS

One of the Victorian prison system's principles is that the number of prisoner movements should be minimised. Excessive movement around the system is unsettling for prisoners; it increases the risk of escape and, for vulnerable prisoners, the risk of self-harm.

Anecdotal evidence suggests that the number of prisoner movements has increased. The total number of prisoner movements over the past two financial years has been high, but stable.<sup>7</sup> During 1999–00, the total number of prisoners averaged slightly over 3,000. In this 12 months there were:

- almost 5,000 prisoner receptions and discharges;
- approximately 10,000 prisoner transfers from one prison to another;
- more than 18,000 movements within prisons (that is, prisoners moving from one unit to another within the same prison);
- more than 11,000 movements to court; and
- around 4,500 occasions on which prisoners were escorted from a prison to attend a medical or hospital appointment.

The Panel heard that this large number of movements was caused by an increase in prisoner numbers, and the rate of movement around the system has risen to maximise occupancy. Reduced prison beds in the metropolitan area has meant prisoners have limited time to remain in Melbourne to ensure legal, medical or other issues are resolved prior to their transfer to non-metropolitan prisons. Instead, prisoners are transferred to country prisons for periods as short as one week, returned to Melbourne to access court or health services, and then returned to their classified location.

## 2.4 PRISONER PROFILE

The majority of prisoners received into the Victorian prison system are characterised by serious offending or repeat offending, as well as by complex personal needs and problems. Over 60% of male prisoners and over 58% of female prisoners have previously been in prison.

Young people (aged between 17 and 24 years) have traditionally been the largest group of offenders in the criminal justice system. Although the proportion of young people in the community is decreasing, the proportion of young people in the criminal justice system is increasing. In addition, international research suggests there is a strong but complex link between crime and drug use. Illicit drugs have a pervasive influence on prisoners' behaviour and the nature of their offences. This is reflected in the increasing number of drug offences, and in the incidence of other serious crimes such as robberies, assaults and homicides.

Aboriginal and Torres Strait Islanders continue to be overrepresented in the prisoner population. Indigenous male prisoners comprise between 4% and 5% of the total male prisoner population; however, their imprisonment rate is more than 10 times higher than the overall imprisonment rate. Indigenous female prisoners also comprised around 4% of the total female prisoner population until 30 June 2000, when the proportion more than doubled to 8.2% (that is, 15 prisoners).

Approximately 75% of prisoners were born in Australia. Of those born overseas, the largest group is those born in Vietnam (4.3% of male and 6.6% of female prisoners), followed by the United Kingdom (3.9% of male and 3.3% of female prisoners).

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<sup>7</sup> During 1996 and 1997, the number of prisoner movements increased significantly as a result of the three new prisons opening, five older prisons closing, and the Melbourne Assessment Prison (formerly the Remand Centre) being reconfigured. Therefore, 1998–99 and 1999–00 are the only two years for which data exist that relate to prisoner movements within the current prison system.

**Table 2.4 Profile of Victorian prisoners<sup>8</sup>**

<b>Male Prisoners</b>	<b>Female Prisoners</b>
<p>Male prisoners comprise the overwhelming majority of the Victorian prison population. They account for approximately 90% of all prisoner receptions and about 94% of the prison population.</p> <p>As at 30 June 2000 there were 2,970 male prisoners in Victorian prisons:</p> <ul style="list-style-type: none"> <li>• 21.5% were under 25 years of age;</li> <li>• 11.3% were 50 years of age or over;</li> <li>• 4.1% identified themselves as Aboriginal or Torres Strait Islander;</li> <li>• 60.5% had been in prison previously (including periods spent on remand);</li> <li>• 86.6% were undergoing a sentence of imprisonment;</li> <li>• 38.7% of sentenced prisoners were serving 12 months or less;<sup>9</sup></li> <li>• 44.2% of sentenced prisoners reported that they had committed their offence(s) under the influence of drugs and/or to support a drug habit;</li> <li>• 24.1% had been identified as a suicide risk;</li> <li>• 24.6% were recorded as 'protection' prisoners;</li> <li>• 88.3% had not completed secondary schooling;</li> <li>• 60.1% had been unemployed at the time of their reception into custody; and</li> <li>• 29.8% were married or in defacto relationships at the time of their reception into custody.</li> </ul> <p>The most serious offence for which male prisoners were sentenced or remanded was:</p> <ul style="list-style-type: none"> <li>• offences against the person (31.9%);</li> <li>• robbery/extortion (12.6%);</li> <li>• property offences (26.1%);</li> <li>• offences against good order (10.9%);</li> <li>• drug offences (11.7%);</li> <li>• motor vehicle/traffic offences (2.8%); and</li> <li>• other/unknown (4.0%).</li> </ul> <p>A profile of male prisoners undertaken in early 1999 revealed:</p> <ul style="list-style-type: none"> <li>• 83% had a drug problem;</li> <li>• 6% were on methadone;</li> <li>• 85% had been imprisoned previously <b>or</b> placed on community based orders;</li> <li>• 57% had been imprisoned previously <b>and</b> placed on community based orders; and</li> <li>• 64% had breached a correctional order.</li> </ul>	<p>Female prisoners comprise a relatively small proportion of the Victorian prison population. They account for approximately 10% of all prisoner receptions and about 6% of the prison population.</p> <p>As at 30 June 2000 there were 183 female prisoners in Victorian prisons:</p> <ul style="list-style-type: none"> <li>• 27.3% were under 25 years of age;</li> <li>• 5.5% were 50 years of age or over;</li> <li>• 8.2% identified themselves as Aboriginal or Torres Strait Islander;</li> <li>• 58.5% had been in prison previously (including periods spent on remand);</li> <li>• 78.7% were undergoing a sentence of imprisonment;</li> <li>• 59.0% of sentenced prisoners were serving 12 months or less;<sup>9</sup></li> <li>• 60.4% of sentenced prisoners reported that they had committed their offence(s) under the influence of drugs and/or to support a drug habit;</li> <li>• 30.6% had been identified as a suicide risk;</li> <li>• 21.3% were recorded as 'protection' prisoners;</li> <li>• 79.8% had not completed secondary schooling;</li> <li>• 76.0% had been unemployed at the time of their reception into custody; and</li> <li>• 35.5% were married or in defacto relationships at the time of their reception into custody.</li> </ul> <p>The most serious offence for which female prisoners were sentenced or remanded was:</p> <ul style="list-style-type: none"> <li>• offences against the person (18.6%);</li> <li>• robbery/extortion (19.1%);</li> <li>• property offences (30.6%);</li> <li>• offences against good order (9.8%);</li> <li>• drug offences (16.4%);</li> <li>• motor vehicle/traffic offences (1.1%); and</li> <li>• other/unknown (4.4%).</li> </ul> <p>A profile of female prisoners undertaken in early 1999 revealed:</p> <ul style="list-style-type: none"> <li>• 66% had an existing drug habit;</li> <li>• 15% were on methadone;</li> <li>• 85% had been imprisoned previously <b>or</b> placed on community based orders;</li> <li>• 47% had been imprisoned previously <b>and</b> placed on community based orders;</li> <li>• 59% had breached a correctional order; and</li> <li>• 24% had a partner who was also in prison.</li> </ul>

<sup>8</sup> Figures for 30 June 2000 are from the OCSC Data Warehouse. All figures are provisional, pending publication of the Australian Bureau of Statistics Prison Census 2000.

<sup>9</sup> Note that the proportion of sentenced prisoner receptions serving less than 12 months is significantly higher than the stock figure reported in the table. For 1998-99, for example, 75.5% of male and 87.9% of female prisoners who were sentenced at the time of reception into custody or who were unsentenced at the time of reception but who subsequently received a sentence of adult imprisonment, received a sentence of less than 12 months.

## **2.5 THE STRUCTURE OF THE CORRECTIONS SYSTEM IN VICTORIA**

Historically, the government owned and operated all prisons in Victoria. Until 1992, the Office of Corrections (OOC) operated as a separate government department that reported to the Minister for Corrections. Established in August 1983, the Office of Corrections was responsible for policy and planning of the adult corrections system, and for the delivery of all prison and community correctional services.

However, since 1992, the corrections system has undergone a significant change that involved the private sector's participation in financing, designing and constructing prison facilities, and operating prisons under contractual agreements.

### **2.5.1 System Developments 1992–96**

In October 1992, the Office of Corrections was abolished and reconstituted as the Correctional Services Division of the new Victorian Department of Justice. A Director, Correctional Services was appointed to head the new Correctional Services Division, which initially retained all the functions of the previous Office of Corrections.

In the following year, the Corrections (Management) Bill was introduced into State Parliament. This Bill established the legislative framework for private sector involvement in the corrections industry. Later in 1993, the then Government announced that expressions of interest would be sought from the private sector for the design, financing, construction and management of three new prisons to replace the Coburg prison complex and Fairlea Women's Prison.

In deciding to facilitate private sector involvement in the delivery of correctional services, the then Government agreed to the following objectives for the New Prisons Project:

- replace inadequate and ageing plant at Pentridge Prison, the Metropolitan Reception Prison and Fairlea Prison with new facilities and increase the capacity of correctional facilities to meet projected demand;
- ensure the scope and quality of services to prisoners is maintained and/or enhanced;
- meet government policy objectives of private sector involvement in prison operations with consequential transfer of risk to the private sector;
- establish competition among private and public sector providers of correctional services;
- retain the ability to test the competitiveness of the Contracted Provider from time to time;
- introduce private sector investment funds (equity) into Victorian prison infrastructure; and
- introduce new approaches to the design, construction and management of prisons.

During 1994, the then Victorian Government awarded the tender for prisoner transport, security and escorts at the higher courts to Corrections Corporation of Australia. It also introduced the Corrections (Amendment) Bill. This Bill enabled the Minister for Corrections to enter into contracts for the financing, construction and operation of privately owned prisons, and provided for the appointment of a Commissioner for Correctional Services.

The Office of the Correctional Services Commissioner (OCSC) commenced operations within the Department of Justice in 1995. The following year CORE was established separately within the Department of Justice and headed by its own chief executive.

In August 1996, the Metropolitan Women's Correctional Centre opened and Fairlea was closed. Fulham Correctional Centre opened in April 1997 and enabled the closure of the Sale, Morwell River and Pentridge prisons. Five months later, Port Phillip Prison opened and the Metropolitan Reception Prison was closed.

## 2.5.2 Organisational and Regulatory Environment 1994–99

The Briefs to Short-Listed Parties for the three private prisons' establishment each included a description of the proposed corporate, organisational and regulatory environment within which both publicly and privately operated prisons would function. The proposed organisational structure's objective was to establish a competitive market between public and private correctional services providers, and to provide a clear separation between the purchaser and provider roles, and between policy and service delivery.

Under this model, the Department of Justice retained the key roles of setting policy and standards to ensure the safe custody and welfare of prisoners and offenders. However, responsibility for providing correctional services was contracted out to one public and three private providers.

The major parts of this correctional model were the Minister for Corrections (as the 'purchaser' of services); the Department of Justice (as the organisation that sets policy and standards, and monitors performance of service providers); and the providers of prison and community correctional services. (See figure 2.2 below.)

Within the departmental structure, the Secretary is responsible to the Minister for the strategic management of the Justice portfolio, which includes police and emergency services, consumer affairs, and legal structures and processes as well as corrections. Under the *Corrections Act 1986*, the Secretary is deemed to have custody of all prisoners.

The Deputy Secretary, Justice Operations has overall responsibility for the operation of the corrections system.

The Director, Justice Policy within the Department of Justice fulfils the role of Contract Administrator, whose role is to:

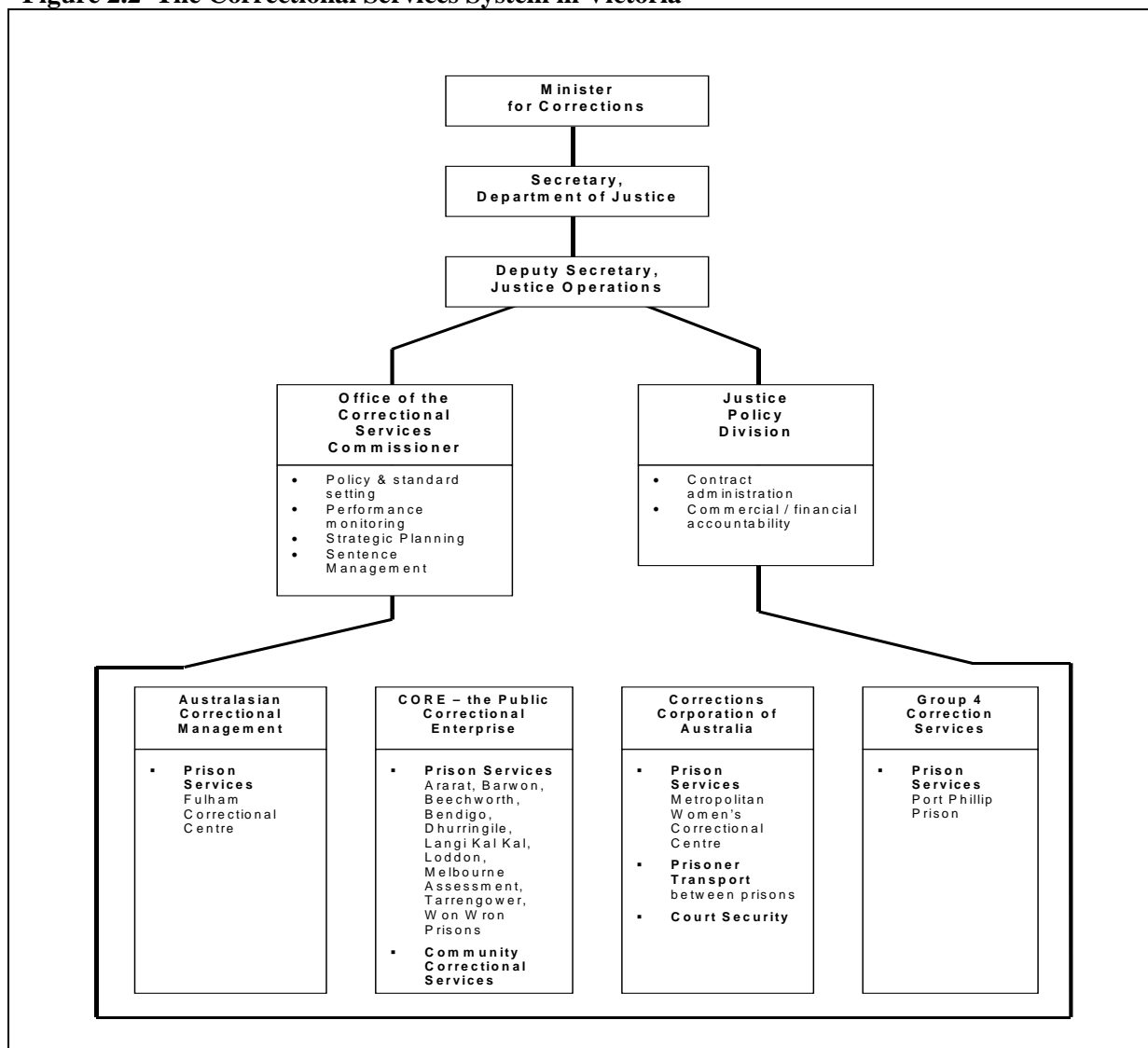
- identify the correctional services to be purchased by the State;
- establish appropriate contractual arrangements; and
- administer the contracts on behalf of the Minister for Corrections.

The Contract Administrator regularly reviews reports from the Correctional Services Commissioner concerning the performance of the service providers, and levels of compliance with their contractual obligations.

The Corrections (Amendment) Bill, introduced in October 1994, provided for the appointment of a Commissioner for Correctional Services within the Department of Justice. The Commissioner's role is described in section 8A of the Corrections Act. It states that:

- (1) *The Secretary may under the Public Sector Management Act 1992 appoint a person to be Commissioner for the purposes of this Act.*
- (2) *The Commissioner is responsible for –*
  - (a) *monitoring performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders; and*
  - (b) *exercising any other functions relating to correctional services that the Secretary may determine from time to time.*
- (3) *The Commissioner must endeavour to exercise his or her functions in relation to correctional services impartially between all providers of correctional services so far as this is consistent with the safe custody and welfare of prisoners and offenders and the proper operation of the correctional services.*

**Figure 2.2 The Correctional Services System in Victoria**



The Office of the Correctional Services Commissioner is the organisational unit that assists the Correctional Services Commissioner to oversee and provide system-wide leadership. The OCSC:

- strategically plans and develops the correctional services system;
- develops and sets statewide policy and standards;
- independently monitors the quality and consistency of delivery of correctional services by both public and private providers; and
- advises the Minister about each provider's performance and level of compliance with contractual obligations.

The OCSC is also responsible for key statewide functions such as the management of prisoner sentences, including prisoner assessment, classification and placement (through the Sentence Management Unit), sentence calculation through Central Prisoner Records, and the provision of administrative support to the Adult Parole Board.

## 2.6 LEGISLATION

As noted above, the Corrections Act and the Corrections Regulations provide the legislative basis for the provision of correctional services. Two sets of amendments to the Corrections Act have enabled correctional services to be delivered by private providers in Victoria.

The Corrections (Management) Bill introduced in March 1993 set out the legislative framework for private sector involvement in the corrections industry. It enabled the Department to engage a person or organisation to perform any of the functions and exercise the powers conferred by the Corrections Act.

The Corrections (Amendment) Bill introduced in October 1994 enabled the Minister for Corrections to enter into contracts for the financing, construction and operation of privately owned prisons; and provided for the appointment of a Commissioner for Correctional Services.

## 2.7 THE CONTRACTUAL FRAMEWORK

### 2.7.1 Prison Services Agreements

The three prisons managed by private providers are under contracts known as Prison Services Agreements between the State of Victoria and the Contractor responsible for the development, management and operation of the prison. Each Contractor also has arrangements with its financier who is not party to the Prison Services Agreement. A separate tripartite deed between the State, the Contractor and the financier gives the financier certain rights in relation to the Prison Services Agreement governing the relevant prison.

In addition to clauses relating to the construction and commissioning of each prison, the Prison Services Agreements require the Contractors to provide specific services:

- **Accommodation Services** – to provide and maintain facilities to house the required number of prisoners. Each private provider owns the prison that has been built on Crown land and leased to the provider by the Government; and
- **Correctional Services**, which includes the general operation of the prison, prisoner education and training, prison industries, other prisoner programs, and health services. These correctional services have to meet required standards, known as 'Prison Management Specifications'.

The owners are currently obligated to provide prison facilities for 20 years (with provision for extensions), and prison services for five years. The Minister has the option to re-tender for the provision of correctional services every three years after the initial five-year period, but is subject to certain limitations.

### 2.7.2 Operating Agreements or Deeds

Each Contractor has the right to appoint an Operator to manage the prison and provide the Correctional Services. The relationship between the Contractor and the Operator is governed by an operating agreement or deed to which the State is not party (although the Secretary must approve such arrangements). Notwithstanding the appointment of the Operator, the Contractor remains responsible for providing all services under the Prison Services Agreement and is liable to the State in the event of any breach of the Prison Services Agreement's terms.

### 2.7.3 Payments

The State pays the Contractor through three separate charges:

- the Accommodation Services Charge;
- the Correctional Services Fee; and
- the Performance Linked Fee.

The Accommodation Services Charge and Correctional Services Fee may vary in line with prisoner numbers or certain defaults. The Performance Linked Fee is directly linked to the Contractor's performance in providing the Accommodation Services and Correctional Services<sup>10</sup>. These are calculated by referring to the Contractor's performance measured against the specified service delivery outcomes. The Performance Linked Fee was intended to form the Contractor's return on equity, or the profit.

### 2.7.4 Defaults

The Prison Services Agreements contain remedies for failure to meet the terms of the contracts, providing for reduction of fees, claims for damages and, most seriously, a right to terminate the agreement and request the appointment of another operator.

Apart from the remedies for failure to meet the Prison Services Agreement's requirements, the Minister also has the power under section 8F of the Corrections Act to intervene in the management of the prison if there is an emergency or a failure to provide competent management and the Minister considers that it is in the public interest or the interest of the safe custody or welfare of prisoners to intervene.

If a material breach of the contract or a serious default led to termination of the Prison Services Agreement, the State would be responsible for paying out the Contractor's obligation to its financier.

## 2.8 MONITORING PERFORMANCE

### 2.8.1 Standards

Each Prison Services Agreement includes Prison Management Specifications (annexure T of each contract). These reflect the *Correctional Policy and Management Standards* that apply to all prisons in Victoria. The standards focus on outcomes and were intended to encourage the delivery of innovative services by describing the service outputs required, while leaving the delivery method to the Operator.

### 2.8.2 Service Delivery Outcomes

Each of the Prison Services Agreements includes a number of Service Delivery Outcomes (SDOs) that measure performance against a range of key correctional services. These are contained in an annexure to each Prison Services Agreement in the case of private prisons, and in the Service Agreement with CORE in the case of public prisons

These SDOs establish specific, quantitative targets against which performance of the Operator is measured. The levels of performance in relation to each SDO were based upon data accumulated over the three to four years prior to the contracting out of prison services.

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<sup>10</sup> For MWCC, Accommodation Services comprise 40% and Correctional Services comprise 60% of the Performance Linked Fee. For both Fulham Correctional Centre and Port Phillip Prison, Accommodation Services comprise 35% and Correctional Services 65% of the Performance Linked Fee.

Payment of the Performance Linked Fee to private prison Contractors is linked to prison performance as assessed by the achievement of targets established against each of the SDOs for each prison. While the newness of the Service Delivery Outcome approach has required a focus on monitoring, the Performance Linked Fee represents only 5% of overall funding.<sup>11</sup>

The major categories of SDOs measure the following areas:

- **Prison Operations:**
  - escapes;
  - incidents of self-mutilation or attempted suicide;
  - assaults on prisoners, staff or others; and
  - prisoners who test positive to non-prescription drugs;
- **Education and Training:**
  - enrolments in, and completion of, modules relating to adult basic education and vocational training;
- **Prison Industries:**
  - prisoners' participation rates; and
  - number of skill areas/functions in which prisoners are able to participate,
- **Health:**
  - medical screening on reception into prison;
  - psychiatric assessment;
  - complaints regarding health issues; and
  - Primary Care (comprising measures such as percentage of prisoners who are medically screened by a health care professional within 24 hours of reception into the prison, percentage of 'at risk' prisoners assessed by a psychiatric care professional within two hours of referral, and number of valid complaints made by prisoners to the Health Services Commissioner and/or the Ombudsman regarding health care issues).
- **Other Programs:**

Participation in:

  - Sex offender treatment programs; and
  - Substance abuse awareness, education and treatment programs.

## 2.9 PRISONER MANAGEMENT

Prisoners are to be managed in such a way as to meet the Government's objectives of containment and supervision, rehabilitation, and reparation to the community.

Prisoner Management encompasses all aspects of managing a prison. The prison management system should effectively:

- (a) *control and supervise prisoners in a humane and just manner while maximising the protection of the community;*
- (b) *provide for the personal safety of staff and prisoners through a prison environment that aims to protect the physical and emotional wellbeing of individuals;*

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<sup>11</sup> KPMG Consulting for the Office of the Correctional Services Commissioner 2000, *Review of Service Delivery Outcomes: Final Report*, p. 8.

- (c) *encourage prisoners to develop responsibility for their actions and reinforce law-abiding and non-violent participation in the community; and*
- (d) *provide prisoners with opportunities for rehabilitation.*<sup>12</sup>

While there is one Prison Management Specification related to prisoner management, in fact all specifications relate, directly or indirectly, to the effective management of prisoners.

## **2.10 PRISONER PLACEMENT**

The Sentence Management Unit (SMU) within the Office of the Correctional Services Commissioner determines prisoners' placements and their subsequent progression through the prison system. The SMU must balance security, management concerns, needs of prisoners, the public's need for protection, and the efficient and effective operation of the correctional system.

The Sentence Management Unit's prisoner management function commences with:

- determination of a prisoner's security classification (maximum, medium and minimum security are the three classifications utilised within the system);
- creation of an individual management plan for the prisoner, including consideration of any special needs of the prisoner (such as a special protection requirement); and
- optimum placement of the prisoner to a selected prison.

Following the prisoner's arrival at the selected prison, responsibility for prisoner management decisions transfers to the prison operator who is required to:

- provide prisoners with sufficient information and adequate orientation upon reception into the prison;
- undertake an individual assessment of the prisoner with a view to establishing treatment needs;<sup>13</sup>
- assign the prisoner to a particular unit within the prison;
- designate a case manager to supervise the prisoner's individual management plan, including the programs designed to meet the management of the prisoner or to support the prisoner in achieving rehabilitation goals; and
- form a local Review and Assessment committee comprising representatives of prison management and other corrections and program staff at the prison to review the prisoner's progress against the individual management plan.

### **2.10.1 Monitoring**

The OCSC progressively monitors the ongoing tasks undertaken at the local prison level in managing prisoner plans, and reviewing progress against plans. In other words, the SMU has the key responsibility, beyond its important initial decisions (as described above), for monitoring the overall effectiveness of prisoner management functions progressively undertaken within prisons.<sup>14</sup>

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<sup>12</sup> Office of the Correctional Services Commissioner 1995 *Correctional Policy and Management Standards: Women's Prisons in Victoria* p.17 and Office of the Correctional Services Commissioner 1996 *Correctional Policy and Management Standards: Men's Prisons in Victoria*, p.17.

<sup>13</sup> For example, under the *Correctional Policy and Management Standards*, the prison provider must ensure that all prisoners' literacy and numeracy skills are assessed within one month of their arrival in the prison, and subsequently provide access to accredited adult basic education, including workplace literacy programs for those who require it.

<sup>14</sup> Auditor-General of Victoria, op. cit., pp. 105-06.

The Monitoring and Review Unit within the Office of the Correctional Services Commissioner conducts a second layer of review and monitoring. It is responsible for assessing the extent to which correctional services in the public and private sectors have been delivered against the required standards.

## **2.11 INDUSTRIES AND EDUCATION**

The Corrections Act establishes the authority for the provision of prison industry sites and prison industries. In section 84H, the Act provides that the Secretary of the Department of Justice may, for or in connection with the management of prison industries and prison industry sites, direct sentenced prisoners to work, and requires prisoners to comply with such directions.

There are three types of industries in prisons: primary, manufacturing and service. Primary industries include agriculture and horticulture, landcare, landscaping, reforestation, and beef production. Manufacturing industries include formed wooden products, metal fabrication, electronic component assembly, and textiles. Service industries include activities associated with the operation of kitchens, laundry, internal cleaning and general maintenance within prisons.

Prisoners are required to work for six hours per day, 10 days per fortnight and are paid at a rate approved by the Correctional Services Commissioner. Time off from work can be approved to allow prisoners to undertake part-time studies and, wherever possible, the accredited training programs they undertake are to be integrated with their work. Allowance is also made for prisoners to participate in certain rehabilitation programs during work hours.

Prison Operators are required to keep a separate set of accounts for prison industries. Any profits made by the private prison operators from the operation of prison industries are to be disbursed in agreement with the Secretary of the Department of Justice. The Corrections Contracts Branch oversees this component of the Prison Contracts.

The *Correctional Policy and Management Standards* require that 'prisoners are given opportunities to develop skills necessary for effective participation in the labour market after their release'.<sup>15</sup> To this end, prison managers must provide accredited education and training programs that enable prisoners to continue training as they move through the prison system. They must also allow prisoners to pursue part-time studies that are accredited with outside education providers.

### **2.11.1 Corrections Industry Training Board (CITB)**

The Corrections Industry Training Board is the principal source of advice to the Correctional Services Commissioner regarding training. This Board is responsible for ensuring that the allocation of resources for training to the adult corrections and juvenile justice systems is in line with policy developed by the OCSC in overseeing both public and private sector custodial agencies.

The policy requires all prison providers and Community Corrections Services to ensure adult prisoners and offenders on community corrections orders have access to accredited vocational education and training programs that will assist them to develop employment skills for use in the labour market upon release.

The CITB:

- provides advice to the Correctional Services Commissioner and the General Manager of the Office of Post Compulsory Education, Training and Employment on the education and training needs of adults and juveniles in custody and on community corrections orders;

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<sup>15</sup> Office of the Correctional Services Commissioner 1995, *Correctional Policy and Management Standards: Women's Prisons in Victoria* Department of Justice, p.38 and p.39; Office of the Correctional Services Commissioner 1996, *Correctional Policy and Management Standards: Men's Prisons in Victoria* Department of Justice, p.38 and p.40.

- oversees the development of the annual Corrections Industry Training Plan; and
- develops strategies for ensuring the ongoing delivery and monitoring of accredited training to public and private sector prisons, and to adult and juvenile offenders on community corrections orders.

### **2.11.2 The Corrections Education Management Consortium**

The Corrections Education Management Consortium reports to the CITB and is responsible for coordinating vocational education and training programs across the corrections system, and for developing initiatives in vocational education and training for the corrections system.

All Prison Operators are required to provide information pertaining to the education and vocational training needs of the prisoner population on an annual basis to inform the development of the annual Corrections Industry Training Plan.

The *Correctional Policy and Management Standards* for both women's and men's prisons require all prison providers to supply accredited education and training programs that are consistent with, and link to, the priority programs and pathways outlined in the annual Corrections Industry Training Plan.

### **2.11.3 Post-Release Employment and Further Training Programs**

No systemic Post-Release Employment and Further Training Program has been in operation since 1993, although a pilot project for Aboriginal prisoners operates from Loddon Prison, funded by the Commonwealth Government.

Significant scope exists for programs that ensure more effective re-integration of prisoners, and which particularly emphasise placement in the labour market or in related training programs.

Such a program would be in line with Recommendations 24–29 of the 1996 Senate Inquiry into Education and Training in Correctional Facilities. This inquiry sought the development of strategies by State/Territory and Commonwealth agencies to coordinate services and programs for prisoners, pre- and post-release.

## **2.12 PRISONER HEALTH SERVICES**

### **2.12.1 The Health Model**

The changes to Victoria's prison system resulted in a revised approach to prison health care service provision. The following three-tiered intervention model was developed to encompass all health care needs:

- *Primary Health Care:* Services routinely provided at a local level, such as medical practitioner sessions, psychiatric consultations, nursing services, dentistry, optometry and limited access to pathology and radiology.
- *Secondary Health Care:* Services usually found in a community or district hospital. These services are usually subject to referral from primary care. Such services may include inpatient services (acute medical, surgical and accident and emergency), inpatient nursing, ambulatory care, psychiatric services not requiring involuntary admissions, and specialist medical outpatient services. Secondary services may also include support and allied health services such as physiotherapy, occupational therapy and diagnostic services.
- *Tertiary Health Care:* Services usually found in a major hospital or referral centre including the highest levels of diagnostic and treatment services. These services are usually subject to referral from primary or secondary care.

All prison operators are responsible for providing primary health care services within their own prisons. The current model allows for the health service delivery to be sub-contracted (as is the case at Port Phillip Prison and all CORE prisons) or provided in-house (as at Fulham and MWCC).

Secondary and tertiary general health care services are provided by the contracted health care provider (St Vincent's Correctional Health Service) at Port Phillip Prison pursuant to a Health Agreement.

### **2.12.2 Corrections Health Board**

The Corrections Health Board was established in May 1999 following the release of the report of the *Review of Suicide and Self Harm in Victorian Prisons* (Kirby Report) which recommended the establishment of the Board.

The functions of the Corrections Health Board are summarised in the Board's terms of reference:

- to oversee and direct the planning of health and related services for offenders, and to provide advice in respect of policy development, standards setting and performance monitoring of health services in the Victorian correctional system;
- to promote system-wide participation and collaboration in the development of 'best practice' in the standards and delivery of health services; and
- to oversee and advise on research and development initiatives that will enhance service standards and system performance.

Members are appointed jointly by the Minister for Corrections and the Minister for Health. The Policy and Standards Unit of the OCSC provides executive support to the Board.

## **2.13 STAFFING**

Standards for correctional services do not specify staffing requirements, apart from a general requirement that staff must be appropriately selected and trained, sufficient in number, and deployed in a manner that facilitates the achievement of the required correctional services outcomes.

Each Contractor (through the Prison Operator) is responsible for:

- recruiting, selecting and training of staff employed at the prison;
- providing pre-service and in-service training programs;
- rostering and deploying staff employed at their prison; and
- selecting and arranging hours of contractors.

The Commissioner is responsible for:

- approving the initial training program;
- approving any other staff training programs; and
- providing authorisation and clearance of all proposed staff, in compliance with the requirements of the Corrections Act.

## **2.14 ADVISORY COMMITTEES AND BOARDS**

### **2.14.1 Official Prison Visitors**

The Official Prison Visitors scheme provides the Minister for Corrections with independent advice regarding the operation of the prison to which the Official Visitor is appointed. A secondary role is to facilitate contact and involvement between the prison and the community. The scheme was established in July 1986.

Official Visitors are expected to meet with prisoners and staff at the prisons to which they have been appointed at least once every four weeks. They must provide a written report to the Correctional Services Commissioner following each visit.

The OCSC seeks interested applicants through a public advertising process. The OCSC assesses applicants and makes recommendations to the Minister for Corrections. Appointments are made for a period of two years under section 35 of the Corrections Act.

Meetings of Official Visitors, which the Minister usually attends, are held every six months.

The OCSC's Monitoring and Review Unit provides support services to the Official Visitors scheme and addresses any issues raised in the monthly reports received from Official Visitors.

### **2.14.2 Chaplains Advisory Committee (CAC)**

The Corrections Act guarantees prisoners the right to practise the religion of their choice. The only exemption would be if this requirement would result in a situation contrary to the good order and security of the prison.

All prison providers fund chaplaincy programs within their prison. CORE directly funds a number of chaplains, from a range of denominations, to provide services within the public prison system. Each private provider funds a position of Coordinator of Chaplaincy Services. The Coordinator then negotiates to ensure prisoners' religious needs are met. This can be done through the Coordinator providing services, or by arranging for other chaplains to come to the prison. Appointments to chaplaincy positions are made on nomination from the churches and the advice of the Chaplains Advisory Committee.

The Chaplains Advisory Committee was established in 1965 to provide advice and a forum for discussion on chaplaincy services between the churches and prison managers. The OCSC assumed responsibility for liaison with the Committee in July 1998 and regular six-monthly meetings are held between the CAC, OCSC and prison providers to discuss issues of concern.

### **2.14.3 Ministerial Community Advisory Committee (MCAC)**

The Ministerial Community Advisory Committee (MCAC) was established by the then Minister for Corrections in September 1989. MCAC oversees the Custodial Community Permit, or temporary leave of absence Program (CCPP).

Custodial community permits may be issued to prisoners for health, physical fitness, education, administration of justice, community assistance, family ties, or rehabilitation/reintegration reasons.

MCAC is only involved with rehabilitation/reintegration permits, which aim to prepare a prisoner for release by enabling them to establish community ties, look for work and accommodation, or to undertake other relevant activities. Prisoners serving a minimum sentence of three years or more are eligible to participate during the last 12 months of their sentence. Prisoners serving a minimum sentence of six years or more may apply to participate during the final third of their sentence (up to a maximum of three years). These applications are considered by MCAC.

MCAC also advises the Minister, when necessary, about 'high-profile' prisoners who are participating in the program, and responds to matters referred by the Minister.

The Sentence Management Unit of the OCSC provides executive support to MCAC.

#### **2.14.4 Prison Industries Advisory Committee**

The Prison Industries Advisory Committee advises the Minister for Corrections on issues relating to the operation of industries within the Victorian prison system. An officer of the OCSC provides executive support to the Committee.

#### **2.14.5 Community Liaison Committees**

Group 4 Correction Services at Port Phillip Prison and Australasian Correctional Management at Fulham Correctional Centre have established community liaison committees to address issues raised by local communities about the prison. In addition to community representatives, membership of the committees includes the OCSC and local government representatives. The committees meet on a quarterly basis.

#### **2.14.6 Victorian Women's Prison Council**

The Victorian Women's Prison Council was established in September 1953 as the Consultative Council for Female Prison Reform to provide advice on matters relating to reforms for women prisoners. Thirteen councillors are appointed biennially by the Minister for Corrections.

## Chapter 3

# The Contractual Arrangements

*The contract as a legal device can only ever give the Government limited control over the quality of the services which it contracts out.<sup>16</sup>*

This section of the report examines the scope for streamlining and simplifying contract management arrangements, and the flexibility that the contracts provide for addressing changes to requirements or resolving performance issues. The contracts with the private prisons are now the central feature of the State's management of the provision of correctional services.

The previous Victorian Government decided that there were advantages for the State in entering into contractual arrangements with private companies for the provision of prisons and prison services. Chapter 2 briefly outlines this process and describes the features of the Prison Services Agreements (PSAs), but it is by no means complete. The contracts are complex and detailed. They have continually required the Department of Justice to take legal advice on their provisions and scope. For example, apart from the PSA governing the agreement between the State and the MWCC, there are a number of related documents including:

- the *Accommodation Services Support Agreement*;
- the *Operator Manual*, which forms part of the PSA as noted in the definition agreement;
- the *Design and Construction Guidelines* – defined as guidelines that exist from time to time for the design and construction of prison facilities in Australia and overseas including without limitation:
  - the applicable United Nations Standard Minimum Rules of Treatment of Prisoners 1984;
  - standard guidelines for prison facilities in Australia and New Zealand 1990;
  - American Correctional Association Standards for adult correctional institutions, second edition ACA 1991; and
  - new prison policy guidelines, design criteria, standard design documents and space standards, California Department of Corrections 1993.
- the *Education Agreement* entered into between the Contractor and the State Training Board;
- *Equity Support Agreement* entered into by the Contractor and others on or about the date of the PSA;
- the *Lease* relating to the land that is the site of the prison;
- the *Operating Agreement*;
- the *Project Contracts* defined to mean the Construction Contract (the contract between the Contractor and the builder for the construction of the facility);
- the *Project Facility Agreement* between the Contractor and Societe Generale Australia Limited; and
- the *Tripartite Agreement* between the Minister, the Contractor's financier and the Contractor.

These contractual arrangements underpin the multi-provider correctional services system and impact on the Victorian Government's capacity to adjust policy and make changes to the prisons' operations.

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<sup>16</sup> Submission from the Centre for the Study of Privatisation and Public Accountability, Law Faculty, Monash University.

### 3.1 THE FLEXIBILITY OF CONTRACTS

*In the case of private prisons, the contractual model can actually impede resolution because the operator and the Government can become locked in contractual enforcement mechanisms, rather than the Government simply directing that the problem be resolved.<sup>17</sup>*

Contracts are, by their very nature, inflexible; they are designed to give certainty to the parties involved. However, within the corrections system, it is often impossible to anticipate changes to prisoner numbers and profiles, particularly in the medium to longer term. The prison system as a whole cannot 'gate keep'. It cannot establish waiting lists, but must be able to accept all persons sentenced to a term of imprisonment or remanded in custody. Therefore, the system must be able to respond quickly and appropriately to fluctuations in prisoner numbers, to changes in the management needs of the prisoner population, and to changes in government policy.

Given the complexity of prison management and the financial imperatives influencing the operations of private prisons, the Contractors (as might be expected) have taken care to ensure they will not be commercially disadvantaged if the State wishes to change the arrangements.

As with any contract, the PSAs can be amended with the consent of the parties (that is, the Contractor and the Minister for Corrections, on behalf of the State). However, it is likely that Contractors will only consent to the contract's amendment if they are compensated for any additional expense or risks associated with that change.

Each of the three PSAs includes clauses relating to 'Change in Policy', where the State can propose a variation, including changing the legislation. The contracts detail the process to be followed in such cases, and include notification of the proposed change, consideration of consequent changes to operating manuals and fees, implementation of the changes, and dispute resolution where aspects of the change cannot be agreed.

The Investigation Panel was advised that making amendments may involve an issue of compensation for the costs of implementing the change, and any additional ongoing costs introduced by the change. When confronting a proposal for a significant change to the arrangements, the Contractor will naturally assess all of the potential effects that such a change may have. This explains why the change in policy provisions in the PSAs provides for consultation and negotiation between the parties, and for any change to be made only after agreement is reached.

The Panel heard from a number of stakeholders about frustrations with the inflexibility of the current contractual arrangements, whereby changes to requirements may necessitate complex and protracted negotiations. By comparison, the relationship between the State and the publicly operated prisons is seen to support the State's ability to swiftly respond to operational requirements without needing to resort to 'duelling lawyers'.

The Panel noted that sixteen 'Change in Policy' notices have been issued since the commencement of the private prisons, requiring, for example:

- an increase in the size of the drug treatment program to 68 beds, establishment of a 16-bed peer educators' unit, and additional weekly urinalysis screening for all prisoners in the two intensive drug treatment program modules at Fulham Correctional Centre;
- implementation of a methadone program at Fulham Correctional Centre; and
- suicide prevention programs at all three private prisons.

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<sup>17</sup> Submission from the Victorian Council of Social Service.

The Panel also noted that the Department of Justice plans to utilise the Change in Policy provisions to increase the capacity at each of the three private prisons using funding from the 2000–2001 State budget.

While the Change in Policy process is somewhat convoluted, the Panel did not hear that the process had impeded consideration of proposals for, or implementation of, changes to the delivery of correctional services. However, the nature of the process undoubtedly makes the Department and the Minister reluctant to seek change. In contrast, the public provider has indicated a preference for a more formal process so changes to service delivery requirements in CORE prisons would be adequately described and costed, rather than simply being told to 'just do it' within existing budget.

It is clear that the PSAs do not allow the State a great deal of flexibility to alter the arrangements from time to time without cost consequences. Legal advice<sup>18</sup> suggests that this is normal in a commercial contract and reflects the complexity of the arrangements with the Contractors. The Panel believes that such contractual arrangements will always impose restrictions on the State's ability to change arrangements for the delivery of correctional services. The commercial basis of these contracts will continue to result in some inflexibilities, whatever streamlining of the contracts' terms is able to be achieved.

### 3.2 RESPONDING TO PERFORMANCE ISSUES

The Panel heard of similar matters to those outlined above in relation to the process for resolving issues arising from the Operator's performance.

A further complication ensues from the contractual arrangements in these cases: the terms of the operating agreement or operating deed between the Operator and the Contractor are binding on the Operator, but the PSA is not. Of course, the PSAs' terms still have an effect, as they bind the Contractor who is responsible for the services provided by the Operator.

Where problems with an Operator's performance arise, the contracts provide little flexibility to change the arrangements. Changes to the PSA might be made but they would have to be the subject of negotiation, almost certainly resulting in compensation to the Contractor if agreement is reached to the changes. Where a material default in the operations of a prison is not remedied, the Government can require the Contractor to remove the Operator, but the Contractor (not the Government) is responsible for appointing a new Operator.

At the end of a Contractor's Service Term (initially five years), there is an opportunity for the Government to call tenders. However, any successful tenderer would need to enter into an operating agreement with the Contractor, not the Government, since the Government is not a party to the operating agreement. Moreover, the replacement of an Operator as a result of a tender process would not, of itself, provide for amendment of the PSA.

*The major difficulty which the government faces in responding to deficiencies in service delivery is that the contracts effectively require the Government to tolerate significant shortfalls in performance.*<sup>19</sup>

Therefore, the Government is confronted with major difficulties if it tries to respond quickly and flexibly to changes in a prison Operator's performance, and to changes in circumstances governing prisons or the requirements of a prison system. The contractual arrangements' limitations mean that although it may be possible to make the enforcement mechanisms for inadequate performance more stringent, it is questionable whether the use of the contractual remedies will ever be sufficient to secure the outcomes the Government may desire.

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<sup>18</sup> The legal advice referred to in this section was provided by Maddock Lonie and Chisholm.

<sup>19</sup> Russell, E. W., op. cit., p. 21.

*It is difficult if not impractical to enforce adherence to qualitative outcomes in a contractual agreement. This is a major problem inherent in using contract as the preferred method of service delivery.*<sup>20</sup>

By its nature, the contract imposes obligations on the parties and limits their ability to make changes. In the case of the PSAs, this means there will be restrictions on the Government's ability to secure all the outcomes it might want from the operation of correctional services. The need to leave the Operator and Contractor with some measure of discretion and operational autonomy will inevitably rob the Government of some control.

Nevertheless, in the case of the MWCC PSA there is a provision whereby the contractor agrees to indemnify the Minister and the Minister's employees against any losses or liabilities related to or arising out of the exercise by the contractor of its powers, including any omission or failure to act. Neither the Fulham PSA nor the Port Phillip PSA include an indemnity clause in these terms. The Panel believes that the Minister should seek to include in those PSAs a similar clause to bolster the State's common law rights relating to, amongst other things, breach of contract and the tort of negligence.

### **3.3 THE LEGISLATIVE IMPERATIVES**

The limitations placed on operational flexibility by the contractual arrangement are not eased by the current legislative framework (the Corrections Act and Corrections Regulations). In fact, the Panel considers that the Act does not fully reflect the changes to the operational framework brought about by the introduction of the private providers.

Although the legislation provides powers for the rights of access by authorised persons to a private prison, and emergency powers for intervention by the Minister in the operation of a private prison, most of the matters relating to the operations of private prisons are left to the detail of the contracts.

The panel has received advice which indicates that, as a result of the contractual relationship between the parties, a common law duty of care is owed by the contractor to the State in respect of the services performed by the contractor. Advice also indicates that a similar duty is owed by the contractor to the prisoners in its care. The Panel is of the view that these duties are an essential component of the private prison arrangements. The Panel suggests that the continued existence of these duties in unfettered form should be protected by an appropriate amendment to the *Corrections Act* 1986. For example, section 8C of the Corrections Act could be amended to include the following subsection:

- "(3) An agreement under section 8B(1) must not contain any clause that expressly or impliedly derogates from the duty of care owed by the contractor:
- (a) to the Crown; or
  - (b) to any prisoner or offender."

### **3.4 CONTRACTUAL ARRANGEMENTS IN WESTERN AUSTRALIA**

In view of the limitations imposed by the contractual arrangements between the State and the private prisons in Victoria, the Investigation Panel sought advice on the legislative and contractual arrangement that had been made for the new Acacia Prison in Western Australia (WA).

It was known that the WA authorities had studied the contract terms and operational experience of private prisons in other States (including Victoria) before drawing up the arrangements for the latest private prison, Acacia. Therefore, the Panel sought legal advice on the main differences between the

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<sup>20</sup> Submission from the Centre for the Study of Privatisation and Public Accountability, Law Faculty, Monash University.

WA contract and those of the three Victorian private prisons. In particular, the Panel wanted to identify the advantages and disadvantages of each approach in responding to the need to make operational changes from time to time.

There are differences between the two in respect of organisational and management arrangements (for example, with regard to the Monitor and, in the WA case, Inspector of Custodial Services). These matters are covered in chapter 4 of this report.

The key difference in legislative regimes governing private prisons is the greater detail incorporated into the WA legislation. Although both the WA Act<sup>21</sup> and the Victorian Act<sup>22</sup> set out certain matters that must be included in the prison services contracts, the WA Act contains more detail in relation to those requirements. Section 15C of the WA Act includes the following matters that are not considered in the Victorian Act:

- codes of ethics and conduct to be approved by the Chief Executive Officer (CEO);
- notification of any change in the control, management or ownership of a Contractor or a sub-contractor;
- the financial and other consequences of intervention by the CEO in a private prison contract;
- reporting procedures to notify the CEO of escapes, deaths of prisoners and other emergencies or serious irregularities; and
- investigation procedures and dispute resolution mechanisms for complaints about the provision of prison services under the contract.

In Victoria the PSAs, not the legislation, include those provisions in one form or another.

The WA legislation also goes further than the Victorian legislation in:

- expressing (section 15H) that provisions of the Act override anything to the contrary in a prison services agreement; and
- providing for an annual report by the CEO to the Minister on each Contractor providing prison services.

### **3.5 COMPARISON OF PRIVATE PRISON CONTRACTS**

The Acacia contract and the Victorian PSAs differ markedly in one respect: the Acacia contract deals almost solely with the provision of correctional services. There are separate contracts between the WA Minister for Works and contractors dealing with the design and construction of Acacia Prison, and the prison's maintenance. Acacia Prison is owned by the State.

As described in chapter 2, in Victoria the Contractors have, at their cost, built the prisons and recoup their investment in those developments through providing accommodation and correctional services. In this way, Victoria has avoided a large initial capital investment but has to meet that expense by way of recurrent expenditure.

The advantage of the WA arrangements is that there is a separate contract relating to the provision of correctional services. This means any newly appointed contractor can commence providing services without needing to make an initial capital investment in the prison. This reduces the risk for the contractor, and therefore could be expected to result in lower recurrent costs for the State. Of course, the benefit has been brought about by the State's large investment in the prison's construction.

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<sup>21</sup> *Prisons Act 1981* (WA)

<sup>22</sup> *Corrections Act 1986* (Vic.)

When the Acacia operational contract expires, the State can extend the operation period, or appoint a new contractor. It has no obligation to the existing contractor in terms of negotiating a further term, or justifying the appointment of another contractor.

The arrangements in Victoria vary from prison to prison, but all PSAs place more obligations on the State than the Acacia contract. As the Contractors in Victoria hold substantial equity in the prisons, they are exposed to significant debt in respect of their investments.

The provisions in Victoria's PSAs are more detailed than in the Acacia contract: they require consultation and correspondence between the parties, and result in greater delays in making changes. The PSAs require that a number of preconditions be met before there can be a change in the prison operator. In the context of the competitive review process relevant to Fulham and Port Phillip prisons, these preconditions include negotiations with the Contractor, setting of benchmark costs and the requirement that any new operator purchase the Contractor's equity (including any subordinated debt) in the prison. This would represent a significant initial capital investment by any new operator and could be expected to result in higher recurrent costs to the State.

The MWCC PSA differs from the other two PSAs in that there is no requirement for the incoming operator to purchase the Contractor's equity. Under the MWCC PSA (clause 61) the Minister may initiate a competitive review process leading to a request for tenders, but with no obligation on the Minister to set a benchmark price or negotiate with the existing Contractor.

In contrast, Fulham PSA (clause 61) provides that, in the first instance, the Contractor may submit an offer to the Minister for the provision of correctional services for a further term. If this is done, the Minister must negotiate with the Contractor and, within a certain time, advise the Contractor whether the offer is above or below what the Minister determines is the benchmark cost for running the prison for a further term. Only if the Minister and the Contractor cannot agree on a basis for the provision of correctional services by the Contractor may the Minister then initiate the competitive review process and request tenders. If any new operator is chosen as a result of the tender process, that operator must purchase the existing Contractor's equity in the prison.

The default provisions in the WA contract and Victoria's PSAs are relatively similar, although there are some differences:

- the definition of a default in the Acacia contract is broader than in the PSAs;
- termination is available for any default under the Acacia contract whereas, under the PSAs, a more narrow category of default enables termination; and
- a clause in the Acacia contract provides an option for the State to issue a default notice where there has been a degradation in performance even though it does not constitute a default.

Under the PSAs, there may be situations where a failure to comply with the agreement does not constitute a Correctional Services Default according to the definition in the PSA. Any such failure would constitute a default under the Acacia contract. The Panel is of the view that Victoria's approach (where default circumstances are set out in detail) is less advantageous to the State than the approach followed in the Acacia contract. In the Acacia contract, a default is defined more broadly as any breach by the Contractor of its obligations under the contract or of those imposed by law.

### 3.6 THE COMPETITIVE REVIEW OF OPERATIONS

The potential exists for the Minister for Corrections to make changes to the requirements for the provision of correctional services in the private prisons when undertaking the competitive review after the first five years of operations. There are limitations on the Minister in conducting the competitive reviews, but the Panel favours calling for fresh tenders whenever the opportunity arises.

The Panel received legal advice that it is not clear whether the terms of the PSAs require the Minister to offer further terms on the basis of all of the existing requirements. Whether or not that is the case, the Panel is of the view that the Minister should seek improvements to the existing arrangements whenever the Operational Agreements come up for review.

The Investigation Panel considers that the balance between legislative provisions, and the contractual terms for the private prisons' operation, should move more toward legislative control. This would be achieved through amending the legislation and referring to those amended provisions in the revised PSAs. Placing certain terms in legislation would set minimum requirements across the system. As these minimum requirements could not be negotiated without legislative amendment, the State would gain some protection from undesirable contract terms, although it would reduce the flexibility of the arrangements still further. In compensating for this, changes should be sought in the terms of the contracts with regard to a wider application of the default notice provision.

The Panel does not believe that the PSAs provide sufficient clarity regarding the position of the Secretary, Department of Justice in the selection of a private prison's General Manager/Director, although each PSA includes a clause requiring the Secretary's approval for the employment of any prospective employee by a private prison.

While these clauses give the Secretary a right to veto, they do not give the Secretary a clear right to be involved in the selection process for a new General Manager/Director. Given the vital importance of that position to the good operation of a prison, the Panel considers that the PSAs should make clear the Secretary's powers in respect of such appointments.

Other changes to the performance measures, standards and monitoring are dealt with in subsequent chapters of this report.

#### Recommendations

1. The Panel recommends that the duties of care owed by the contractor to the State and to the prisoners in their care should continue in unfettered form and be protected by an appropriate amendment to the *Corrections Act 1986*.
2. The Panel recommends that the Minister for Corrections amend the provisions of the Prison Services Agreements to:
  - (a) provide for the issue of a default notice in any case where there is a breach of the Contractor's obligations under the contract or of those imposed by law; and
  - (b) ensure that the Secretary, Department of Justice, or an officer nominated by the Secretary, is involved in the process of selection of a General Manager/Director of a private prison.
3. The Panel recommends that the Minister for Corrections amend the Prison Services Agreements relating to Fulham Correctional Centre and Port Phillip Prison to include an indemnity clause similar to clause 71 in the Prison Services Agreement for the Metropolitan Women's Correctional Centre.
4. The Panel recommends that the Minister for Corrections call for fresh tenders for the operation of the private prisons whenever there is an opportunity to do so.



## Chapter 4

# Monitoring Performance

The previous chapter outlined the Investigation Panel's concerns regarding the limitations of contractual arrangements to secure all the outcomes the Government may require from the operation of correctional services. This section of the report examines the adequacy of current mechanisms to assess how well each prison is performing.

### 4.1 AN OUTCOMES-BASED APPROACH TO PERFORMANCE MEASUREMENT

Each of the Prison Services Agreements with the three private prisons specifies arrangements for the management and operation of the prison, and the basis on which performance will be assessed. However, as the Auditor-General's Report<sup>23</sup> and the Russell review<sup>24</sup> have previously concluded, the current performance measures do not provide a very comprehensive picture of whether or not a prison is well run.

The development of private prison contracts and associated performance monitoring arrangements took place in an environment that was very critical of traditional performance management systems. Traditional approaches were criticised because they managed by '*driving (and measuring) inputs rather than outcomes*'<sup>25</sup> on the assumption that, by refining systems and processes, the outcome must get better.

In Victoria, the model that was adopted had a clear focus on measuring outcomes. Consistent with public sector management and contracting out principles applying in the early 1990s, the correctional management standards<sup>26</sup> with which all operators are required to comply are deliberately outcome- and output-focused. By making the operators responsible for determining the way they provided the required services, this approach sought to encourage operators to maximise cost-effectiveness through innovation, provided that the level and quality of services was maintained or improved.

### 4.2 SPECIFICATION OF STANDARDS

As outlined in chapter 2, each Prison Services Agreement includes 'Prison Management Specifications' that reflect Victoria's outcome-focused *Correctional Policy and Management Standards*.

Standards that focus exclusively on outcomes and outputs will be worded broadly, and this is true of the current standards. Although these standards may allow for variability and innovation at the local level, they are imprecise. In some instances, this lack of specificity has led to problems in areas such as differing prisoner property entitlements, where prisoners are able to have different items and/or quantities of property in different prisons. Given that prisoners may move several times during the course of their sentence, this can cause major difficulties for the prisoner and for prison management.

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<sup>23</sup> Auditor-General of Victoria, op.cit.

<sup>24</sup> Russell, E. W., op. cit.

<sup>25</sup> Viljoen, John 1998 'Strategic measurement – measuring the relevant', paper presented at *Measuring Public Sector Performance: Benchmarks of Effectiveness*, Institute of Public Administration Australia, p. 2.

<sup>26</sup> The *Correctional Policy and Management Standards* appear as 'Prison Management Specifications' at annexure T in each of the three Prison Services Agreements.

*There is a need for a system wide property policy to be introduced which provides some certainty to prisoners in terms of the type and amount of property they are allowed to have and the variety of foodstuffs and amenities available through prisoner shops.<sup>27</sup>*

The Investigation Panel heard that the development of agreed definitions related to the Standards (such as those applying to prisoner property entitlements) ought to be able to be resolved through mechanisms such as the Providers' Forums. However, this does not appear to be the case and the Panel heard from several sources that these forums have been singularly unsuccessful in resolving such issues. This is regrettable, since the effective operation of mechanisms such as these could contribute significantly to developing the consistency of procedures and practices so important for promoting cohesiveness across the correctional system.

Moreover, many of the current output standards provide limited assistance in describing the levels of service quality desired by Government. It appears that many of the standards could be met without providing any indication about the quality of that service.

Consequently, the Investigation Panel believes that the *Correctional Policy and Management Standards* should be reviewed, in consultation with providers, to develop a set of standards based upon the philosophy and practice of a healthy prison.<sup>28</sup> It is suggested that the review should:

- assess the adequacy of the current standards to underpin the consistent implementation of correctional policy and services in Victoria;
- identify any gaps or omissions, such as standards relating to minimising incidents of self-harm; and
- investigate the extent to which relevant and meaningful performance indicators and targets can be developed that determine whether an individual standard has been met, and provide a guide to assessing the quality of service provision.

#### **Recommendation**

5. The Panel recommends that the OCSC review the *Correctional Management and Policy Standards* for Prisons to enhance the extent to which they support the application of consistent practices and procedures for prisoners. The review should examine the extent to which the Standards can support an evaluation of the quality of service provision.

### **4.3 MEASURING PERFORMANCE THROUGH SERVICE DELIVERY OUTCOMES**

In addition to describing the required correctional management standards in terms of outcomes to be achieved, each of the Prison Services Agreements includes a number of Service Delivery Outcomes (SDOs) that measure performance against a range of key correctional services.

As described more fully in chapter 2 (section 2.8.2) these Service Delivery Outcomes establish specific, quantitative targets against which the performance of the Contractor and the Operator is measured. The levels of performance in relation to each of the SDOs were based upon data accumulated over the three to four years prior to the contracting out of prison services.

As many submissions to the Panel have noted, the current suite of Service Delivery Outcomes has a number of deficiencies. They have a short-term orientation, they are heavily focused on negative prisoner behaviours, are singularly quantitative in nature, and do not adequately reflect all key aspects of operator performance.

<sup>27</sup> Submission from CORE – the Public Correctional Enterprise.

<sup>28</sup> HM Inspectorate of Prisons, *Tests of a Healthy Prison, H M Inspectorate of Prisons Strategic Plan 1999-2000*. The four main principles that should be used as tests of the health of establishments are: the weakest prisoners feel safe; all prisoners are treated with respect as individuals; all prisoners are busily occupied, are expected to improve themselves and given the opportunity to do so; all prisoners can strengthen links with their families and prepare for release.

Quantitative measures have the advantage of generating measurable results and, as such, are enforceable through a contract. On the other hand, as the Auditor-General<sup>29</sup> and others have noted, such measures do not necessarily lead to the achievement of desired outcomes. Perhaps more importantly, it is very difficult (if not impracticable) to measure and enforce adherence to quality outcomes in a contractual agreement. Yet qualitative measures are a very important aspect of determining how well correctional services are being provided in a given situation.

As is widely believed, this is a major problem inherent in using a contract as the preferred method of service delivery because it may be possible for a prison *'to excel in terms of those benchmarks [Service Delivery Outcomes] and still run an appalling prison'*.<sup>30</sup>

A further difficulty is that performance measures, particularly quantitative measures, often have the unfortunate impact of driving the wrong aspect of performance: *'what you measure is what you get'*. For example, it could be argued that measuring enrolments in education may simply encourage Operators to maximise prisoner enrolments without actually delivering a relevant or quality education service.

Similarly, as has been pointed out in many submissions to the Investigation Panel, there appears to be a disincentive to report incidents because the Service Delivery Outcomes (in respect of reportable incidents) are taken into account in the calculation of the Performance Linked Fee, and there are no direct penalties for underreporting incidents. *'Most offences go unreported' ... 'The minor offences register is used for all offences including threats to staff.'*<sup>31</sup>

The Panel supports the recommendation of the *Audit Review of Government Contracts* that, wherever possible, financial or contractual penalties for underreporting should be specified in contracts.

Moreover, quantitative measures such as the SDOs often have other unintended consequences. It has been suggested that they lead prison management to implement 'risk aversion' practices such as a stricter security regime, or an increase in the number of prisoners having a 'protection' classification. Such practices, although minimising the number of reportable incidents, may not always be in the best interests of longer term prisoner management.

*Group 4 is not averse to the principle of penalties being imposed for poor performance. But the consequence, when failure to meet benchmarks can result in a heavy financial penalty, is that providers are likely to concentrate on managing the benchmarks at the expense of looking for opportunities to take risk and introduce innovation.*<sup>32</sup>

The other major criticism of the Service Delivery Outcomes is that they are not sufficiently comprehensive. Both the Auditor-General's report<sup>33</sup> and the *Audit Review of Government Contracts* pointed to the need for additional measures in areas such as rehabilitation, recidivism, quality and effectiveness of staff recruitment, and training and post-release employment.

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<sup>29</sup> Auditor-General of Victoria *op cit*

<sup>30</sup> Haermeyer, A. 2000, *Public Accounts and Estimates Committee: Police and Emergency Services and Corrections Sub-Committee; Inquiry Into 2000-01 Budget Estimates*, p. 327.

<sup>31</sup> Submission from the Community and Public Sector Union, p. 8.

<sup>32</sup> Submission from Peter Olszak, Group 4 Securitas.

<sup>33</sup> Auditor-General of Victoria *op cit*

The Investigation Panel supports the recommendations of the *Audit Review of Government Contracts* that a two-tiered system of performance measurement should be established in contracts, that incorporates:

- a series of quantitative measures, and benchmarks against which contractual performance can be assessed; and
- a series of measures, both qualitative and quantitative, which would act as general indicators of the performance of a private provider. These measures, while perhaps not directly enforceable through the contract, should be publicly disclosed to enhance accountability.<sup>34</sup>

Whatever suite of performance measures is used, it should be applied to both public and private prisons. Although there is less scope for financial penalties to be imposed on public prisons for under reporting or inadequate performance, appropriate sanctions should be developed. At a minimum these should include references to the performance failings in the public reports on the system proposed in section 4.9.

#### **4.4 REVIEW OF SERVICE DELIVERY OUTCOMES**

The Government has recognised the limitations of using Service Delivery Outcomes for evaluating the performance of private prison Contractors. For this reason, the Office of the Correctional Services Commissioner engaged KPMG to assess the adequacy of the current range of Service Delivery Outcomes in measuring the quality of service delivery for key aspects of operator performance, and to recommend changes and enhancements.

In its Final Report KPMG<sup>35</sup> concluded that, in general, the Service Delivery Outcomes are soundly based, although they lack sophistication and have varied between providers, and this has led to concerns about their objectivity and equity. The review recommended some modifications to existing SDOs and the addition of several others.

##### **4.4.1 Service Delivery Outcomes Structure**

KPMG proposed that the structure of future Service Delivery Outcomes be changed to a classification that may better reflect community expectations of correctional services:

- public safety and prison security – including number of escapes and assaults on staff;
- prisoner health/wellbeing – including self-mutilations, assaults, random positive drug tests, health outcomes;
- prisoner rehabilitation/reparation – including education, training, and industries; and
- preparation for release/re-integration into the community – including pre-release and other programs aimed at addressing offender behaviour.

The Investigation Panel supports the proposed change to the classification of Service Delivery Outcomes so that targets are more closely aligned with the Government's objectives for the correctional services system.

##### **4.4.2 Assessing Quality in a Contractual Framework**

The KPMG report<sup>36</sup> suggests that it would be possible to develop an index that could assess the quality of a prisoner's general environment. This assessment might refer to prisoner and staff surveys, and be complemented by independent audits arranged by the Office of the Correctional Services Commissioner.

<sup>34</sup> Russell, E.W., op. cit., Recommendation 1.4.

<sup>35</sup> KPMG Consulting, op. cit., p. 1.

<sup>36</sup> *ibid.*, p. 74.

Aspects of assessment might include consideration of areas such as physical condition (excluding overcrowding), food, access to health and dental care, personal safety, hours out of cell, access to recreational resources, access to telephones and mail, visitation rights, ability to earn money via prison employment, and the nature of disciplinary sanctions and rewards.

The Panel believes that the approach it proposes to performance evaluation (described in section 4.8) will better capture the quality of a prisoner's general environment. Consequently, it considers that the development of an index should be deferred.

#### **4.4.3 Enhancing Current Service Delivery Outcomes**

The KPMG report also makes specific recommendations to enhance the accuracy of existing SDOs in a number of areas.

In terms of escapes, the KPMG report notes that while all are significant, varying levels of responsibility can be assigned to the provider depending on the level of security at which the prisoner is being held, and the category of escape. The Panel supports the KPMG view that this SDO should be reframed to account for the prisoner's level of security and should emphasise measurement of escapes of higher security prisoners. The measure should also differentiate between escapes from direct prison supervision, from elsewhere in the prison system, or from outside the prison system.

A reframing of this SDO would appear to address the concerns highlighted in CORE's submission to the Panel:

*CORE operates four minimum-security open camps and it is escapes from these facilities that may create the impression that CORE experiences a high number of such incidents in comparison to other providers. Affording equal weighting to all escapes from prisons, regardless of the security level, creates an incorrect impression as to the relative seriousness of the incident. CORE submits that the definition of escapes requires an acknowledgment of the security level of the prison and the need to make appropriate allowances for the difference in escapes from a medium and maximum-security prison as opposed to a minimum-security prison<sup>37</sup>.*

In terms of assaults, the KPMG review proposes amending the SDO relating to assaults by prisoners. The Panel supports the view that this Service Delivery Outcome be reframed to take account of the level of harm inflicted, and first versus repeat episodes of behaviour.

The Panel also supports reframing the SDO in relation to random positive drug tests to account for differences between cannabinoids and opiates/other drugs. It believes the SDO could be enhanced by improved sampling methodology comprising larger samples and randomised timing.

#### **4.4.4 Development of Additional Service Delivery Outcomes**

The KPMG review proposes that consideration should be given to developing measures of key aspects of correctional practice, including:

- deaths from unnatural causes;
- assessment of improvements to literacy, numeracy and problem-solving skills;
- provision of disease prevention and health promotion programs, and measures of their effectiveness; and
- provision of pre-release programs.

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<sup>37</sup> Submission from CORE – the Public Correctional Enterprise.

As a general principle, the Investigation Panel does not support the development of additional Service Delivery Outcome measures. Although these are significant issues, the Panel believes they will be better addressed in the more holistic approach to performance measurement that it has recommended in section 4.8.

#### **4.4.5 Measures of System-Wide Performance**

Although performance measurement is primarily targeted to assessing the performance of individual prison providers, the KPMG review proposes the development of a range of Service Delivery Outcomes to capture aspects of system-wide performance. These could include hours per prisoner spent in meaningful activity, measures of overcrowding, cost per prisoner, and measures of rehabilitation (for example, ex-prisoner employment) and recidivism (for example, reincarcerations).

The Panel does not dispute the importance of assessing system-wide performance but, again, it believes that the comprehensive approach to evaluating performance outlined in section 4.8 will provide a better basis for system monitoring than developing yet more Service Delivery Outcome measures.

#### **4.4.6 Measures that Provide Incentives for Improving Performance**

KPMG suggests that a number of approaches could be developed to provide performance incentives. These include a sliding scale of measurement for prisons performing within a band immediately adjacent to an absolute benchmark level (that is, 0% or 100%). This would provide an incentive to continue striving for high performance despite having failed to reach the benchmark.

The Panel broadly supports the development of such a sliding scale of measurement that would have the effect outlined above.

#### **4.4.7 Investigating Factors that Impact upon Individual Prisons**

In any service environment, a number of factors are outside the provider's control and impact on the organisation's capacity to meet its performance targets. Factors impacting on prison performance may include prison overcrowding, behavioural triggers (for example, sentence reviews, court appearances, time since reception), and prisoner characteristics (security ratings). KPMG proposes that a number of Service Delivery Outcomes to cover these areas require further investigation and ongoing review.

Although the Investigation Panel recognises the importance of investigating these factors, it does not support developing SDOs in these areas. It believes these issues are best addressed through its proposed performance monitoring approach (see section 4.8) and through the establishment of a program of research and analysis (see chapter 8).

#### **4.4.8 Establishing Quantitative Models for Benchmarking Performance (and Considerations of Relief)**

The KPMG report also proposes that quantitative models for benchmarking performance (and considerations of relief) be established once sufficient data on current and future Service Delivery Outcomes are available. As an interim measure, the KPMG review proposes:

- the Office of the Correctional Service Commissioner (OCSC) may deduce an expected benchmark level, and commence collection of relevant information without linking to performance fee until sufficient data are available to firmly establish that benchmark level; and
- where overcrowding exceeds 110% of maximum prison capacity, the Office may consider approaches from service providers to enter into negotiations regarding relief from penalties associated with failure to achieve benchmarks relating to self-mutilation/attempted suicide,

assaults on staff, and industry participation. The Office would consider negotiations and any relief on a case-by-case basis.

The Investigation Panel supports further consideration by the OCSC of ways to achieve greater flexibility in the way SDOs are assessed in the light of factors such as overcrowding.

#### **4.4.9 Development and Implementation of Process Indicators**

KPMG proposes the Office of the Correctional Service Commissioner investigate the development and implementation of process indicators that evaluate systems and procedures underlying the management of existing Service Delivery Outcomes. This would enable potential problems to be identified early, and the quality of the systems underpinning service delivery to be assessed.

These indicators would evaluate the quality and effective deployment of prison staff (staff training and development, experience, qualifications, job morale, job satisfaction, sickness, turnover), appropriate gender and ethnic diversity, and the potential to utilise Australian Quality Council recognition (or equivalent) to establish management systems that focus upon continuous quality improvement.

Measures such as those described above should form part of the more comprehensive quality reviews proposed by the Investigation Panel in section 4.8.

Given the limitations of quantitative measures in providing a comprehensive view of how well a prison is performing, the Investigation Panel, while supporting KPMG's overall approach, does not believe the OCSC should devote substantial time and effort to reframing the SDOs. The Panel believes a different approach to performance management is required to enable a greater understanding of the strengths and weaknesses of an individual prison.

#### **4.5 A DIFFERENT APPROACH TO PERFORMANCE MANAGEMENT**

*Managing strategically means aligning all outputs, processes and inputs with the required outcomes ... [and] then installing a performance management system to ensure that it works in practice.*<sup>38</sup>

The Panel considers that KPMG's proposed changes to the Service Delivery Outcomes may enhance the range of available information relating to important aspects of prison performance. Nevertheless, the Panel has concluded that neither increasing nor streamlining the number of such measures will adequately address the issue of providing comprehensive qualitative information about correctional services performance in individual prisons. Even the most thoughtful and comprehensive list of performance measures will only provide a partial picture of prison operations, especially in light of the differences between prisons in prisoner profiles, physical design and infrastructure, size and geographical location.

The Investigation Panel believes the contracts provide neither sufficient safeguard against poor operational performance, nor incentives for innovation and improved performance. It also believes a monitoring approach focused on compliance does not enable examples of good practice and innovation to be described and shared across the correctional services system.

*If one's starting point is that the prison regime should be improved, it is not just the private sector to which one is referring but also the segment run by the public sector.*<sup>39</sup>

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<sup>38</sup> Viljoen, J., op. cit. p. 2.

<sup>39</sup> Harding, Richard 1992, 'Private Prisons in Australia', *Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice*, No.36.

As the Panel heard from many stakeholders, quantitative measures alone cannot provide a comprehensive evaluation of the overall performance of a prison, the quality of its prisoner management, or the effectiveness of programs provided to prisoners. Simply knowing that out-of-cell hours for prisoners have increased is meaningless unless this information leads to a greater understanding of what prisoners are doing during those hours. Furthermore, even if prisoners are engaged in a given number of hours of work, education, or structured programs, it is equally important to evaluate whether these hours are effective in helping prisoners become less likely to repeat their offending behaviours.

Consequently, a different approach is required that provides for an holistic evaluation of the overall health of a prison, and recognises the interdependence between different aspects of the *Correctional Policy and Management Standards* in achieving quality outcomes. It is the Panel's view that KPMG's recommendations need to be incorporated into a broader performance management framework for Victoria's prison system. The current performance management approach needs to be strengthened to better reflect the essentially qualitative aspects of service provision in corrections, to balance compliance monitoring with a strategy to encourage the sustained delivery of quality service, and to encourage innovation.

The Panel considers that a performance management framework for prison services should:

- determine compliance with legislative and contractual obligations;
- enable the early identification of performance issues;
- recognise innovation and best practice wherever it occurs;
- encourage a culture of continuous improvement through system-wide learning;
- provide the basis for regular reporting to the public on individual and system-wide performance; and
- ensure an ongoing focus on prisoners and the community.

The performance management framework should be applied consistently to private and public providers, include qualitative as well as quantitative measures, and measure system-wide performance as well as that of individual prisons/Operators.

Several frameworks for managing organisational performance are commonly used across different types of industries. Based on driving strategic performance, the Australian Quality Council's Business Excellence Framework provides a useful example of an approach to quality that could be applied to prison services. This framework could encompass quality measures such as the "tests of a healthy prison"<sup>40</sup>, developed by HM Chief Inspector of Prisons in the United Kingdom (see section 4.7.1).

### **Recommendations**

6. The Panel recommends that the OCSC develop a model of quality service provision based on a set of characteristics of a 'healthy prison'.
7. The Panel recommends that the OCSC refine its current performance management framework to include qualitative and quantitative measures of performance that encompass input, process, output and outcome evaluation.

<sup>40</sup> H M Inspectorate of Prisons op cit

#### 4.6 CURRENT ARRANGEMENTS FOR MONITORING COMPLIANCE

*Obviously a structure of accountability must be established in conjunction with any privatisation initiative. Accountability in the use of public funds, the maintenance of discipline, the use of force, and other conditions of confinement, may be established through constitutional provisions, special legislation or specific contracts. An appropriate structure of accountability should include the setting of clear standards, as well as the establishment of monitoring and enforcement mechanisms.*<sup>41</sup>

There is a powerful body of opinion<sup>42</sup> 'that a strong accountability regime is essential in corrective services and is even more essential when private providers deliver services on behalf of the government'.<sup>43</sup>

The ability to review and report on prison operations is a cornerstone of any accountability framework. Within Victoria, the Correctional Services Commissioner has a legislative responsibility for 'monitoring performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders' (section 8A, Corrections Act).

The OCSC's Monitoring and Review Unit undertakes the monitoring role by assessing performance, providing formal feedback to providers, advising the contract administrator of the level of adherence to contractual requirements, and advising the Minister on the provision of services, providers' performance, and service system issues and trends. Monitoring includes assessing compliance of service delivery with legislation, government policy, *Correctional Policy and Management Standards*, and operating manuals.

A number of issues relating to the perceived effectiveness with which the OCSC undertakes this monitoring role were raised with the Panel, particularly the direction of the majority of monitoring effort to the three private prisons, and the apparent focus on quantitative measurement rather than qualitative evaluation. Other concerns related to the lack of strategic analysis of statistical information and the absence of any public reporting of monitoring outcomes.

#### 4.7 ALTERNATIVE MODELS FOR MONITORING PERFORMANCE

*The quality of the experience of prisoners' confinement, even acknowledging the constraints and limitations, is the basis on which performance should be measured.*<sup>44</sup>

The Panel received a number of submissions that proposed changes to the way performance in Victoria's prison should be monitored. Several submissions suggested that the most appropriate method would be to have an independent team of inspectors monitor key aspects of prison operations. These inspectors would report to a Victorian Inspector of Prisons similar to HM Chief Inspector of Prisons in the United Kingdom.

##### 4.7.1 HM Chief Inspector of Prisons

In 1980, the United Kingdom established an independent body to report on the condition of prisons and the treatment of prisoners. A planned inspection program, comprising a number of full inspections, is undertaken each year. A full inspection requires approximately three weeks per prison. Shorter, unannounced inspections are also carried out, which concentrate upon specific issues or examine whether previous recommendations have been carried out. Following each inspection, best practices are identified (to encourage broader application to other facilities), recommendations for

<sup>41</sup> Chan, J. B. 1994, 'The privatisation of punishment: a review of the key issues' in Moyle, P (ed) *Private Prisons and Police: Recent Australian Trends*, ed. P. Moyle, Pluto Press, Leichhardt.

<sup>42</sup> See, for example, Harding, R. 1997, *Private Prisons and Public Accountability*, Open University Press. Buckingham (UK); Moyle, P. op. cit.

<sup>43</sup> Peach, F. J. 1999, *Corrections in the Balance: A Review of Corrective Services in Queensland*, Queensland Government, p. 43.

<sup>44</sup> Submission from Victorian Council of Social Service.

improvements are made, and an action plan is formulated. Areas specifically examined during full inspections include:

- prisoner treatment;
- quality of service delivery (including prisoner work and education);
- quality of health care delivered to prisoners;
- preparation for prisoner release;
- physical condition and environment of the prison;
- management of the prison; and
- staff and prisoner morale.

The focus is upon the quality of outcomes achieved by individual prisons, and is distinguished from the quantity of outcomes that are specified in key performance indicators, operating standards and other documents (which are audited by different teams outside of the inspectorate).

The framework for inspection of quality is based upon four criteria for a 'healthy prison'. These are:

- **the weakest prisoners feel safe** (minimum criteria include regular monitoring of prisoner wellbeing, an effective anti-bullying strategy, incentives to encourage responsible behaviour, rules that are explained to prisoners and fairly administered, and appropriate standards of record keeping for individual prisoners);
- **treating prisoners with respect to promote self-esteem and model desirable behaviour** (minimum criteria include regular monitoring of the involvement of senior management with prisoners; regular monitoring of prisoner wellbeing and offering of support as needed by staff; prisoner understanding of how to receive attention when needed, access services, and maintain links with family; prisoner access to health care services of recognised standards; and prisoner right of access to appeal decisions);
- **a full, constructive and purposeful regime that provides a range of opportunities for self-improvement and staff skills that actively encourage prisoners to utilise these opportunities** (minimum criteria include prisoner occupation in purposeful activity for a part of each working day, provision of a range of meaningful activity allowing for some prisoner choice, encouragement for prisoner program participation and completion, opportunities for prisoner improvement in basic literacy and numeracy, recognition of prisoner need to achieve qualifications, provision of opportunities for self-expression, and ongoing evaluation of program range and type against individual prisoner needs); and
- **strengthening family links and provision of resettlement training to prevent re-offending** (minimum criteria include provision of programs to reduce re-offending behaviour, provision of resettlement programs, prisoner management culture supporting programs to reduce re-offending behaviour, involvement of other agencies to provide ongoing care after release, and ensuring that suitable accommodation is arranged at release).<sup>45</sup>

The Inspectorate also points out that a 'healthy prison' is also vital to staff wellbeing in that employees also feel safe, are treated with respect, informed and consulted, work in an environment that demands high standards, receive good leadership, and respect their own health.

These criteria form the basis of inspection reports for each facility and are considered to represent the key criteria required for quality service delivery outcomes in correctional services in the UK.

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<sup>45</sup> HM Inspectorate of Prisons, op. cit.

#### **4.7.2 Inspector of Custodial Services (Western Australia)**

This model has also been adopted in Western Australia. The *Prisons Act 1981* (WA) (as amended) contains provisions for the appointment of an Inspector of Custodial Services (Inspector). The Inspector is to inspect each prison at least once every three years and at any other times, and report to the WA Parliament. The Governor appoints the Inspector who is not a public servant.

The position appears to be one of an independent auditor of prisons. The Inspector primarily reports to the Speaker of the Legislative Assembly, the President of the Legislative Council and to the Minister. Although the Minister may exercise limited control of the Inspector, the position permits significant scope for independent investigation of prisons.

The Inspector is not empowered to deal with complaints or grievances concerning individuals.

#### **4.7.3 Strengths and Weaknesses of Applying this Model to Victorian Prison Services**

The Investigation Panel believes an inspectorate or audit team approach has some merit because it enables the more qualitative aspects of prison performance to be monitored, including the management systems established to support service delivery outcomes. In addition, this kind of approach may be useful as a means of validating any performance measures that may be developed relating to the quality of service delivery as proposed in the KPMG Report (for example, quality of prison environment, and staff training, skill and development). Combining a program of formal inspections or audits, with unannounced inspections that focus upon specific issues or the progress made since previous inspections, would maintain motivation and momentum in bringing about improvements.

This independence of the Inspector is also a strength of this approach. An inspectorate that is separate from the bureaucracy can provide an independent source of advice to the Minister regarding the overall performance of individual prisons and emerging trends and issues.

However, there are a number of difficulties with adopting an inspectorate approach to evaluating the quality of correctional service delivery. The first is resourcing an appropriately qualified team of inspectors. In the UK, a significant challenge has been to identify sufficient qualified resources to conduct a planned program of full inspections. Although the original aim was to conduct a full inspection of all prisons every five years, this has not been achieved.

The second and perhaps more important problem concerns the impact of this approach on correctional service providers. The prison system has already been subject to a number of external reviews and reports (particularly the private prisons). External reviews, like outsourcing, do not serve to enhance organisational learning. Too often the response to external reviews is a defensive rebuttal of the review team's recommendations and allegations that 'they got it wrong' or didn't fully understand the complexities of the situation. As more fully discussed in the next section, the Panel considers that, on balance, an approach that involves providers in the review process and builds on the application of a model such as the Australian Quality Council's Business Excellence Framework is preferable at this time.

### **4.8 PROPOSED ARRANGEMENTS FOR PERFORMANCE MONITORING OF THE VICTORIAN PRISON SYSTEM**

The Office of the Correctional Services Commissioner's Monitoring and Review Unit has focused, to a large extent, on contractual compliance. In response to performance issues, it has devoted a significant proportion of its resources to intensive on-site monitoring at one of the private prisons. These activities have not been inappropriate given the Unit's resourcing level, the stage of maturity of the industry, and the level of concern in relation to performance shortcomings, particularly at MWCC.

Nevertheless, the Panel has formed the view that the monitoring effort needs to achieve a greater balance between compliance and quality evaluation. To achieve this, the Investigation Panel strongly believes that a quality review process should be established that includes:

- ongoing compliance monitoring and data validation exercises;
- regular, rotating audits of every prison, at least once every two years based on the tests of a healthy prison and covering all aspects of a prison's operation. This would include identifying those elements that have enabled the prison to deliver positive outcomes such as better security, reduced drug use, and the quality of interaction between staff and prisoners;
- random evaluations conducted without notice to assess specific aspects of prison performance;
- thematic reviews across the prison system; and
- surveys of staff and prisoners (such at the 360° feedback model) in relation to the operation of each prison. Survey based evidence is preferable to anecdotal evidence, and feedback should include all key stakeholder groups including staff and prisoners.

The Panel believes that much value can be gained from a program of quality reviews conducted by teams that comprise a balance of staff from across the correctional system, including:

- staff from the Monitoring and Review Unit;
- staff from prison operators seconded for the period of the review; and
- representatives from other organisations with specific professional expertise in certain areas.

In this way, correctional staff from public and private prisons would be involved in evaluations and gain greater understanding of correctional practice in different environments. Bringing together correctional staff from across the system will help to break down the climate of suspicion that seems to exist in some organisations, and increase organisational learning across the system more generally. The Investigation Panel believes that bringing together multi-disciplinary teams composed of officers with individual expertise is important because it helps to drive organisational learning, and because this approach enables a flexible use of skills and resources.

The evaluation process would utilise information from documentary evidence, the evaluation team's observations while at the prison, and what they were told by prisoners, staff, visitors and others (including surveys). This process would build up a detailed and comprehensive picture of all aspects of the prison's operations. It should identify both strengths and weaknesses. The Panel believes it is as important to recognise, highlight and praise good practice as it is to point out deficiencies. The emphasis should be on reinforcing good practice and fostering a culture of continuous improvement within each prison and the prison system as a whole. This would be the major approach to assessing the quality of the service.

The Panel has considered the issue of whether the Monitoring and Review function should remain within the OCSC where it reports to the Commissioner, or whether it should be established as an independent body that reports to the Secretary of the Department of Justice or the Minister.

On the one hand, the view has been expressed that locating the monitoring function with the OCSC compromises independence, is more prone to 'capture', and lacks transparency in reporting. On the other hand, establishing a separate, independent monitoring function has the potential to further fragment the prison system and reduce the opportunity for operational input into policy development. It would also require resources to be duplicated within a prisons system that is comparatively small by Australian and international standards.

On balance, the Panel believes that the Monitoring and Review function should remain within the OCSC, but that accountability should be strengthened by a more rigorous and predictable monitoring regime that is supported by a schedule of full and timely public reporting of results.

Although one of the advantages of this approach is seen to be the involvement of a range of staff from across the correctional system, it will also require a strengthening of the resources available in the current Monitoring and Review Unit. The Panel has been informed that considerable operational expertise exists in CORE. Transferring appropriate staff from CORE to the Commissioner's Office would considerably enhance the OCSC's ability to provide the program of quality performance audits proposed by the Investigation Panel. These staff would be transferred on a permanent basis to strengthen the operational expertise available within the OCSC.

As part of the process of developing and implementing the proposed program of quality performance reviews, the Investigation Panel considers that a review of current reporting requirements should be undertaken. It is important to ensure all data collected is relevant, that its provision 'adds value' to the system and, desirably, is useful to service providers as well as to the OCSC.

### Recommendations

8. The Panel recommends that the OCSC review the system of service provider reports and audit trails to ensure only relevant data are collected, and to avoid duplication of effort.
9. The Panel recommends that the Correctional Services Commissioner ensure the Monitoring and Review Unit within the OCSC establishes a schedule of quality reviews (as described in this report) for all prisons; and that these quality reviews be undertaken by teams that include personnel seconded from providers and professionals representing other disciplines or services where appropriate, commencing from 1 January 2001.
10. The Panel recommends that the Secretary, Department of Justice identifies and oversees the transfer of appropriate staff from CORE to the OCSC to support the proposed program of quality reviews.

## 4.9 PUBLIC REPORTING

*The people who run prisons and the staff within those prisons have a very large degree of power over the inmates of those prisons, so you have to maintain a very high degree of transparency and accountability in the way they are run.<sup>46</sup>*

Many submissions to the Investigation Panel highlighted the need for more information to be publicly available about the operation of the prison system. There was a widespread perception that a climate of secrecy has led to speculation rather than insight. A number of examples were given to the Panel as illustrations of allegedly deliberate non-disclosure by the previous Government of information relating to the operation of the prison system. Other submissions simply reflected the lack of readily available, up-to-date, factual information.

### 4.9.1 Contractual Documentation

*. . . contracts are now fully publicly available documents, with the exception of small parts of the Port Phillip Prison contract. Generally our view is that these contracts should be publicly available and able to be scrutinised.<sup>47</sup>*

The Prison Services Agreements were originally regarded as commercial-in-confidence and, although executed between June 1995 and July 1996, were not published until June 1997. The published versions excluded specific details for reasons of commercial confidentiality and/or prison security (such as payment details, refurbishment schedules, cure periods, and Service Delivery Outcomes). After a protracted period of litigation, the PSAs relating to MWCC and Fulham were made available in their entirety. The PSA relating to Port Phillip remains subject to further hearings before the Victorian Civil and Administrative Tribunal (VCAT).

<sup>46</sup> Haermeyer, A., op. cit., p. 334.

<sup>47</sup> *ibid.*, p. 334.

The Operating Manuals for each of the three private prisons were originally regarded as 'Commercial-in-Confidence', as they were considered to comprise part of the suite of contractual documents. After a legal challenge before VCAT, the Operating Manuals (minus parts relating to security) were made available for perusal under certain conditions.

#### **4.9.2 Performance Reporting**

The Panel heard that, in the *Statistical Profile: The Victorian Prison System*, performance data related to incidents of prisoner self-harm were changed in the second edition. While these and other variations were explained in footnotes, a number of stakeholders neither understood nor accepted this reasoning.

The OCSC compiles daily, weekly, monthly, quarterly and annual reports in relation to various aspects of provider and/or system performance; however, none of these reports are publicly available. The Panel understands that the OCSC is moving to release quarterly reports in relation to each private provider as a set at the end of the performance year to which they relate. While the Panel accepts the desire not to prejudice perceptions of performance by releasing quantitative information part way through a performance year, it is desirable that a method of interim reporting be established. This is especially important to counter the often negative and sometimes inaccurate perceptions of performance generated by the media.

#### **4.9.3 Annual Report**

*A useful tool in assessing correctional services performance would be the annual report which monitors the prison system and must be made to the Director General annually.*<sup>48</sup>

There is no current equivalent of the once lengthy annual report published by the then Victorian Office of Corrections (1984 to 1992). The information incorporated into the Department of Justice Annual Report is scant by comparison. While some of the factual information regarding prisoner profiles is now incorporated into the *Statistical Profile: The Victorian Prison System*, there is a need to provide a more consolidated picture of the corrections system over each 12-month period.

#### **4.9.4 Implementation of Coronial Recommendations**

Implementation plans arising from the recommendations of reports and reviews, including Coronial inquiries are not publicly available. Reports detailing the progress of implementation are similarly unavailable; therefore, a status report is included as appendix III to this report.

The Victorian Government is committed to developing Victoria as an open, transparent and accountable government. In the case of the prison system, which is traditionally perceived as a closed and secretive environment, it is crucial for public confidence and accountability that adequate information is available for public scrutiny.

### **Recommendation**

- 11.** The Panel recommends that the Correctional Services Commissioner:
  - (a) develops and implements a communication strategy that includes making information available to the public about the performance of Victoria's prisons; and
  - (b) reports at least annually on the activities of the corrections system in Victoria.

<sup>48</sup> Submission from Tina Millar, President, Law Institute of Victoria.

## Chapter 5

### Staffing

It is estimated that there are currently 909 custodial staff working in the Victorian prison system. The Public Correctional Enterprise (CORE) employs 535 custodial staff. In the three private prisons, Fulham Correctional Centre (FCC) employs approximately 130, Metropolitan Women's Correctional Centre (MWCC) employs 58 and Port Phillip Prison (PPP) employs approximately 186 custodial staff.<sup>49</sup>

Custodial officers work in a very demanding environment, where prisoners are often a difficult and at times dangerous group of individuals to manage. During the course of its visits to prisons, the Panel encountered many staff who approached their job with dedication, commitment and energy. It observed that the way staff interact with and manage prisoners in their care is a critical component of the overall quality of prisoner management.

This chapter discusses issues relating to the recruitment, selection and training of staff as well as staffing models currently operating in the three private prisons.

#### 5.1 CONTEXT

Prior to 1995, the Victorian prison system operated a centralised model of recruitment and staff training. During this period, the then human resource department within the Office of Corrections (OOC) was responsible for recruitment processes for all prisons in Victoria. Training for newly accepted custodial staff was conducted as a residential program that initially consisted of 12 weeks in a training facility operated and staffed by the OOC. The course included an 'on-the-job' module of two weeks in the second half of the program at selected prisons.

With the introduction of private sector prison operators into Victoria in the mid-1990s, this centralised model of training was discontinued in favour of procedures requiring each of the four providers to be responsible for their own recruitment, selection and training processes. With this diversification in prison management, subsequent training at each of the private prison locations is now designed to meet individual contractual obligations in conjunction with the operator's specific industry philosophy.

Up until recently, the role of custodial staff was centred primarily on security and containment, and their authority was reinforced by the well-defined hierarchical order established within the prison system. In essence, the job of correctional staff was to oversee the good order of the prison, keep records, and maintain a social and psychological distance from prisoners. In the early 1990s, case management (in an embryonic form) was gradually introduced throughout the prison system under the generic heading of 'unit management'.

*This was a style of managing prisoners which allowed for greater interaction amongst prisoners and prison staff in order to develop greater security and safety, as well as encouraging rehabilitation through increased and better structured program participation.<sup>50</sup>*

<sup>49</sup> Staffing figures do not include approximately 113 industry staff employed across the system in public and private prisons, nor do they include education and program staff or casual employees.

<sup>50</sup> Submission from CORE – the Public Correctional Enterprise.

This development has probably had more impact on the role of prison staff and their relationships with prisoners than any other policy decision. Such changes clearly have implications for the type of staff who are recruited, and the nature of the training provided to custodial officers.

## 5.2 RECRUITMENT AND SELECTION OF STAFF

Victoria's *Correctional Policy and Management Standards* require that prisoners are to be managed by appropriately selected and trained staff.<sup>51</sup> To meet the obligations outlined by this Standard, it is imperative that quality custodial staff are recruited. At present, there is no formally established recruitment standard across Victorian corrections.<sup>52</sup>

At the outset of operations, private prisons had an initial philosophy to recruit staff from non-correctional backgrounds in an effort to establish a 'new' prison staff culture. Generally, this bold experiment has fallen short of expectations, and the deliberate practice of recruiting large numbers of inexperienced staff has led to high staff resignation rates and associated impacts on morale. Furthermore, the failure or refusal to recruit staff made redundant from public sector prisons inevitably meant a loss of professional expertise in the corrections system. Some private operators (in particular MWCC) have reassessed past practices and, in an effort to provide balance and stability within their prisons, are now beginning to recruit experienced custodial staff.

There are substantial differences in the way the four providers currently recruit staff.<sup>53</sup> In essence, these differences arise as a result of quite separate and distinct company policies, diversity in locations,<sup>54</sup> and the non-uniform practice of employing casual custodial staff.

Given that a major input affecting the achievement of correctional services standards is the number, quality and effective deployment of prison staff, the importance of effective recruitment and training practices should not be underestimated.

As such, the Panel believes that the development of more uniform standards for policy and procedures for recruitment of custodial staff is desirable and may contribute to achieving greater consistency across the correctional services system. In developing uniform standards, the Panel considers that the Correctional Services Commissioner should investigate the possibility that recruitment processes be ISO-9002 accredited or eligible for such accreditation. This is particularly relevant to the private operators with contractual obligations to implement a quality framework.

Some providers currently utilise psychological testing to measure an applicant's learning ability, temperament and suitability for custodial positions. It is suggested that when the proposed recruitment and selection standards are developed, consideration be given to a requirement that all recruitment, selection, psychological testing (if it is to be used) and assessment tools be uniformly standardised across all Victorian prison providers.

### Recommendation

12. The Panel recommends that the OCSC develop a personnel manual that sets out uniform standards for recruitment policy and procedures in Victoria's prison system.

<sup>51</sup> OCSC 1995, op. Cit., p.56; OCSC 1996, op.cit., p.58.

<sup>52</sup> As a result of reviews in the late 1990s, CORE established a set of standards, procedures and process maps for all recruitment activities. These are detailed in Operating Procedure No 9.1. In addition, in 1997 CORE developed medical guidelines for the recruitment of custodial staff.

<sup>53</sup> Audit Victoria established that FCC has successfully completed the process of quality accreditation to the ISO-9002 standard. It also found that PPP bases its recruitment activity on a staff recruitment and selection policy designed by its principal organisation in Britain, and that MWCC had no recruitment policy and procedures manual. (Auditor-General of Victoria, op. cit., pp. 6-12.)

<sup>54</sup> For example, the pool of potential recruits to Fulham Correctional Centre is limited by virtue of its location in Gippsland.

### 5.3 CURRENT TRAINING PRACTICES IN PRIVATE SECTOR PRISONS

Each prison provider in Victoria is responsible for recruiting and training custodial staff according to the Training Package for Correctional Services (CSC 98) released in 1998. All four prison providers are registered training organisations (RTOs) and have demonstrated a commitment to the National Competencies Standards and the Certification III, IV and V programs.

It is common practice for the private prison operators to utilise the traineeship Training Packages funded through the Commonwealth Government. These packages incorporate training that takes place over two years and is subject to continuous competency assessments. By comparison, CORE has adopted a model that engages a pool of casual employees. These staff may be considered to fill any longer term vacancies as they arise, and training in Certificate III Correctional Practice is provided at that time.

The Panel believes that a traineeship model of staff training has a number of advantages. It enables new staff to receive a 'fully rounded education' in all aspects of the job, and it provides structure to on-the-job learning so there are no gaps at the end of the process. In addition, this model provides new staff with clear development goals and a specific time frame for the completion of competencies. It has the potential to provide skills for supervisors and so promote better supervision practices. If CORE was also to adopt this model, it would not only enable greater scrutiny of the public system's training and assessment practices, but could also lead to a more consistent and professional prison service.

Induction training varies across all providers and ranges between two and six weeks in a combination of on- and off-the-job delivery modules. Training covers subjects that include organisational structures, legislation, operational procedures and critical incident training. Other training consists of national correctional services competency standards<sup>55</sup> and refresher training in skills subjects such as first aid and fire awareness.

*Certificate III qualification is the appropriate standard for correctional services work; very few prison officers in the private prisons have completed that qualification despite the fact that the private operators have gained the status of Registered Training Organisations, which allows them to access public funds for training delivery.*<sup>56</sup>

Concerns were expressed to the Panel that the competing demands and roles of the quite separate functions of custodial services and training reduced the effectiveness of the training provided at some locations. The Panel noted, however, that training organisations were in a process of transition as they moved from providing training and assessment in the existing curriculum (that was specific to their organisation) to providing training and assessment in units of competency from the Training Package.<sup>57</sup>

Interviews with management, correctional staff and prisoners highlighted the seemingly universal lack of confidence and credibility among key stakeholders regarding the adequacy of current training provided to custodial officers.

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<sup>55</sup> The term 'competency' can be defined as the specification of knowledge and skills and their application in the workplace. As such, competency has five main dimensions: task skills (the ability to do a task), task management (the ability to undertake multiple tasks), contingency management (the ability to deal with problems arising), job role environment skills (the ability to undertake these tasks to the expectations of others), and transferability (the ability to undertake these tasks to other contexts and situations).

<sup>56</sup> Submission from the Community and Public Sector Union.

<sup>57</sup> The Training Package determines the condition, requirements and recognition of training and assessment of competency across the correctional services system. The Training Package is viewed as an important part of the system's strategy to develop a work culture that focuses on quality service, responsiveness to changing public expectations, and higher levels of public accountability.

### 5.3.1 Audit of Prisons as Training Organisations

The Office of Post Compulsory Education, Training and Employment (Office of PETE) undertook an audit and review of training of all Victorian corrections locations certified as RTOs. The audit/review was designed to assess the adequacy of training systems in place, the format of delivery at each of the locations, and the appropriateness of resources utilised and facilities provided.<sup>58</sup> The review identified inconsistencies between all four providers and, as a consequence of these investigations, decided to temporarily suspend one provider's registration to deliver training to its staff.

The Office of PETE audit was critical of private prison operators in a number of areas specifically related to training policies and programs and, in particular, their inability to provide evidence of a strategic approach to training.

*One of the major challenges highlighted by the audit review is the need to separate the business of custodial services from that of a RTO. There is a need to clearly recognise and define the roles and functions of a RTO. These training and assessment functions in turn need to be clearly delineated from the roles and functions of the human resources departments of the prisons.*<sup>59</sup>

The report went on to comment on the quality assurance and continuous improvement mechanisms within the training and assessment systems adopted by the prison operators.

*At each site the general impression was that confusion exists about what is required to establish and manage a training and assessment system. In addition, the role of the RTO becomes blurred with the functions of the prison organisation. As a prison organisation the system has well documented codes of practice, procedures, forms, strategic plans, etc. However, in general the RTO arm of the organisation does not mirror this practice.*<sup>60</sup>

The audit/review also raised concerns about the level of knowledge by the training organisations regarding the Training Package:

*Of concern throughout the audit/review process was the distinct lack of awareness or knowledge of the Training Package and related materials. A number of training and assessing personnel were not familiar with the Training Package and its contents (Qualifications, Assessment Guidelines and units of Competency). In fact, the structure of a unit of competency and how it relates to training and assessment was frequently not understood.*<sup>61</sup>

The investigations of the Panel confirmed the audit findings regarding the lack of understanding across Victoria's prisons about what constitutes an effective assessment instrument. In addition, the lack of knowledge regarding the notion of competency and its dimensions, coupled with the lack of understanding of the construction of a unit of competency and the ability to transfer this to an effective training instrument, was evident.

Clearly, current training regimes are not standardised across the different prison locations or prison providers. This means there is often wide variation in the supervision and general day-to-day handling of prisoners moving throughout the system. Although there is a need for prisons to have a degree of operational flexibility, it is equally important that there be consistency in staff training and the standards of competence expected of individual custodial officers across the Victorian prison system.

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<sup>58</sup> Formerly known as the Office of Training and Further Education (OTFE).

<sup>59</sup> Bateman, A. & King, E. 1998, *Audit and Review of Training within Correctional Services/Registered Training Organisations within the State of Victoria*, Office of Training and Further Education, Melbourne.

<sup>60</sup> *ibid.*, p. 6.

<sup>61</sup> *ibid.*, p. 5.

### 5.3.2 Assessment of Competence

It is essential that all training programs based on the acquisition of specific competencies ensure there is a rigorous and effective process for assessing whether a trainee has achieved the required standard of competence. As such, assessments of custodial staff demand that individuals demonstrate competence in all dimensions of task skills, management and job skills.

Given that a number of audits and reviews have established that the quality of the assessment instruments utilised by the private sector prisons is inconsistent, the Panel believes these assessment instruments should be standardised to enable uniform assessment procedures and outcomes. In relation to on-the-job training, it is equally important that this process not evolve into little more than a 'paper chase' for relevant documents rather than a demonstration of actual competence.

The Panel considers the Correctional Services Commissioner should investigate the potential for establishing a small team of well-trained assessors who would develop standardised assessment procedures and materials, and undertake assessments of competence across all providers of prison services. This approach has the potential to introduce a greater level of consistency into the training of correctional staff while still enabling material to be customised to meet individual provider needs.

The Panel acknowledges that on-the-job training is a legitimate and efficient strategy for learning and maintaining competencies. As a means to achieving satisfactory outcomes, it is vital that the prison-based RTO implement an individualised training plan for each staff member. Such a plan should include units of competency to be achieved, timelines for achieving competencies, frameworks of learning, and assessment processes.

Furthermore, to ensure the success of on-the-job training, it will be necessary for the prison-based RTOs to make greater use of learning and assessment strategies such as job rotation, mentoring, 'buddy system', peer review, and cumulative assessments.

#### **Recommendations**

13. The Panel recommends that the Correctional Services Commissioner support the implementation of the traineeship model across all Victorian prison providers.
14. The Panel recommends that the OCSC, in consultation with prison operators, develop criteria and standards for assessment of training.

### 5.4 PROMOTING LEADERSHIP IN VICTORIA'S PRISON SYSTEM

*Prisons need strong leadership and a degree of stability. The best Governors have a vision for their establishment which informs both policy and practice and which they are able to communicate effectively to other staff.<sup>62</sup>*

The importance of a strong and committed team of managers who show leadership and have the courage to make difficult decisions is well documented in correctional management literature. This is supported by the Investigation Panel's observations. It found many problems at MWCC, for example, appeared to be linked to instability in leadership (MWCC has had four general managers since it commenced operations) and management deficiencies, including a failure to implement structures and processes that facilitate regular communication between prisoners, custodial officers and senior managers.

<sup>62</sup> Home Office 2000, *Modernising the Management of the Prison Service: An independent report by the targeted performance initiative working group chaired by Lord Laming of Tewin CBE*, p. 11.

As is the case in other organisations, effective leadership in a prison environment begins with the general manager, but the support of a competent and able team of managers below them is also critical. These managers must not only be aware of what is going on in their areas of responsibility, but they must also be prepared to make decisions that resolve problems and report on any issues that cannot be immediately settled.

As was noted in section 4.2, the use of targets associated with Service Delivery Outcomes (SDOs) has impacted on management practices. The approach appears to be one of risk-aversion rather than risk management. This is perhaps not surprising given the negative consequences that accompany failure to achieve a prison's required SDOs. Nor are such practices confined to the Victorian prison system. Both the Peach review of corrections in Queensland<sup>63</sup> and the Laming Review<sup>64</sup> of the British public prison system's operations refer to *the paralysing 'blame culture'* that characterises the correctional services system. Changing this culture requires, among other things, training managers in how to assess and manage risk in a complex environment.

Good leadership and management do not occur in a vacuum. One of the distinguishing features of good managers is their ability to articulate and reflect a clear sense of direction that encompasses the outcomes to be achieved and the values that should underpin the work and inform the nature of the relationships between staff and prisoners.

The Panel believes that the Office of the Correctional Service Commissioner (OCSC) has a key role to play in ensuring a coherent strategic vision for the prison system is widely disseminated. Custodial staff should have access to effective training programs to assist them to support the Government's vision for the prison system, and to provide for their ongoing professional development and longer term career needs.

#### **5.4.1 Professional Development and Management Training**

Across the Victorian prison system, there is currently no formal education or management training requirement a staff member must meet to be promoted. This has not always been the case. For example, up until the early 1990s, the then Office of Corrections required the attainment of a mandatory qualification based on successful completion of an internal training package before an employee was eligible for promotion. Different qualifications based on a higher level of training and knowledge were required for each level of the lower promotional stages. In the absence of structured and formal training regimes, promotions for custodial positions are now generally based on standard interview practice and assessment processes.

Since there is little or no expectation within the industry of formal education in management or supervisory training, selection for management positions or succession planning has revolved around correctional staff's experience. This has led to good 'front-line' staff finding their way into senior or management positions, frequently without the requisite skills or necessary knowledge to meet the position's responsibilities.

The Panel heard that, until recently, prison providers have tended to encourage staff to undertake training in their own time, or to participate in ad hoc self-development programs.

The Panel considers that it is imperative that leadership training linked with good 'succession planning' takes place across Victorian prisons. This requires a greater focus on the ongoing training and career development needs of staff in the correctional services system. To achieve this, management training could be promoted and implemented. Such training could include Certificate III in Frontline Management; Certificate IV in Frontline Management; Certificate IV in Management Skills; and Diploma in Management.

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<sup>63</sup> Peach, FJ 1999, *Corrections in the Balance: A Review of Corrective Services in Queensland*. Queensland Government.

<sup>64</sup> *ibid.*, p. 25.

The Panel received information<sup>65</sup> regarding a Diploma in Criminology (Prison Studies). It provides senior prison officers with expertise in strategic leadership, criminal justice and the legal context of prisons, understanding how prisons work, and criminal behaviour. This one-year, part-time course was developed by HM Prison Services and Cambridge Institute of Criminology and is available through the Cambridge University Board of Continuing Education. The Panel received advice from the Vice-Chancellor, Victoria University of Technology (VUT) that, following its recent agreement with the Cambridge University Board of Continuing Education, the Board would be willing to adapt such a course for teaching at VUT's city campus. The Panel strongly supports further investigation of this proposal.

The Panel asked Open Learning Australia (OLA) to look at a model to create a professional career path for the corrections industry. Such a model would provide links to a broad range of existing training/educational programs, and enable considerable flexibility of delivery, such as online materials supported by workplace or local mentors. This proposal is outlined in appendix IV.

The Panel believes there is merit in further considering the feasibility of the OLA proposal. It proposes that a Custodial Officer Education and Training Advisory Committee be established for the purpose of considering the OLA, VUT and other proposals for improving training and further education opportunities in correctional services.

#### **Recommendations**

- 15.** The Panel recommends that the OCSC establish a Custodial Officer Education and Training Advisory Committee, consisting of a management and a training representative from each prison provider, meet at least twice each year to assess, review and make recommendations on all training issues.
- 16.** The Panel recommends that the proposed Custodial Officer Education and Training Advisory Committee investigate the feasibility of requiring that staff promoted to management positions have as a basic qualification a Diploma in Correctional Administration/Frontline Management or Diploma in Criminology (Prison Studies) or equivalent, by the year 2005.

### **5.5 STAFFING MODELS**

This section of the report addresses the Investigation Panel's terms of reference in relation to the adequacy of current staffing models at the three private prisons.

All private providers currently utilise 12-hour shifts for supervisory, custodial and security functions. The Panel heard that these 12-hour shift patterns are well received by staff because they lead to fewer days at work, less travel and the opportunity to pursue other interests.

Providers expressed some concerns with the model of 12-hour shifts. These included the difficulties in maintaining continuity of staff, work performance leading to absenteeism, roster manipulation, boredom and fatigue. The 12-hour shift is linked to the out-of-cell hours requirements and, on that basis, appears to be cost effective.

In real terms, both Port Phillip and MWCC have an operational four-level custodial structure that results in the base-grade custodial officers sharing responsibility for a unit's supervision. Fulham prison has a designated officer-in-charge of each unit in addition to base-grade positions because it recognises that the lack of a clearly identified 'leader' within a unit can result in a situation where no one is willing to take command, and this may create an atmosphere of uncertainty and hesitancy.

Port Phillip Prison has proposed the introduction of a unit manager at the supervisory level for each unit in the prison.

<sup>65</sup> Submission from Professor Jarlath Ronayne, Vice-Chancellor, Victoria University of Technology.

### **5.5.1 Staffing Arrangements at Port Phillip Prison**

Custodial staff numbers at Port Phillip Prison are currently estimated at 186; this is an increase of 39 full-time staff since the prison opened. This has occurred because the original proposal was for one correctional officer per unit, and this has been increased to two.

Group 4 Correctional Services has entered into an agreement with the Community and Public Sector Union (CPSU) to maintain a minimum staffing level. This agreement was developed jointly by the CPSU and Group 4 Correctional Services to address Occupational Health and Safety issues that resulted from an incident earlier this year. The Panel was informed that the initiative taken to introduce a formal minimum staffing model and the increase of staff numbers in accommodation units has been at considerable cost to the operator.

Under this agreement, daily staffing levels are monitored in accordance with the agreed disposition numbers for each shift. Absences are covered by redeploying staff for up to two hours while replacement staff are obtained. Any units staffed below the agreed staffing profile will remain locked down until fully staffed in accordance with the agreement.

The prison operates its roster on a 12-hour shift/76-hour fortnight. The Panel was informed that this model was not without its problems because rostering arrangements mean custodial staff may be absent from the prison for a week or more after completing a continuous shift of duty. This results in issues of continuity for prisoner management due to long absences of individual custodial staff from their unit. It also leads to some problems in relation to management's capacity to address issues quickly with individual staff members because it may be some time before the custodial officer is again on duty at the prison.

Port Phillip Prison has also developed a new organisational structure to address the current demands placed on the prison because of increased prisoner numbers. This new structure is designed to ensure that there is a unit manager in charge of each accommodation unit. This structure is yet to be approved through contractual negotiations.

In the Panel's view, the staffing model used at Port Phillip appeared to meet the prison's needs.

### **5.5.2 Staffing Arrangements at Fulham Correctional Centre**

At Fulham Correctional Centre, the number of custodial staff has been increased by two positions to 130 positions because of increased prisoner numbers. The introduction of the methadone drug program also resulted in one additional custodial position.

Like Port Phillip, Fulham now operates a 12-hour roster. Management informed the Panel that 12-hour shifts do not affect absenteeism or work performance. The 12-hour shifts (which replaced the original 8-hour shifts) resulted from the enterprise bargaining process and have reduced the number of supervisor positions required.

There is not a minimum staffing level set at Fulham, although it is a practice to have a minimum of three staff for the unlock and lockup of each accommodation unit.

Short-term absenteeism is covered only after management considers it necessary and authorises coverage. When coverage is authorised, overtime is used in the first instance, then casuals are brought on. Approximately 2% of the operational budget per month is allocated for overtime.

In the Panel's view, the staffing model used at Fulham appeared to meet the prison's needs.

### **5.5.3 Staffing Arrangements at Metropolitan Women's Correctional Centre**

MWCC's organisational structure is relatively flat. There are four levels of staff ranging from general manager to base-grade custodial officer.

When vacancies occur due to absences of custodial staff, a hierarchy of action is taken. It commences with calling in casuals, using overtime and redeploying staff. If staff are unable to be obtained, the affected unit is locked down. The lock down option appears to be used frequently and the Panel heard concerns that this has become an accepted management practice.

The use of casuals at the Metropolitan Women's prison has been extensive and ongoing due to a high number of permanent vacancies. This has been exacerbated by the opening of a new 16-bed unit that requires two additional staff each day.

It is estimated that permanent custodial staff numbers are currently 58 (down from 67 when the prison commenced operation in 1996). Twelve-hour shifts are worked over an 84-hour fortnight. Lockdowns due to staff shortages occurred on 53 days of a 109-day period reviewed (from 12 May 2000 to 28 August 2000). Staff are also not relieved when they take their authorised 30-minute breaks and these also result in units being locked down.

In the Panel's view, the staffing arrangements at MWCC did not appear to adequately meet the prison's needs.