

**Further Submission to the NSW Legislative Council Inquiry into Parklea
Correctional Centre and Other Operational Issues**

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Response

This further submission is in response to a specific request of the committee, following testimony given by me on 2 August 2018, asking that I respond to a paper entitled 'Prison Privatisation in Australia: The State of the Nation', written by Associate Professor Jane Andrew, Dr Max Baker and Dr Philip Roberts, and published by the University of Sydney Business School in 2016.

It is to be noted that this submission does not purport to discuss all of the available evidence concerning the relative performance of contract prisons in Australia. It is, as requested, a response to this particular paper by Andrew et al.

Not Enough Evidence

The authors' primary conclusion is that 'there is not sufficient evidence to support claims in favour of prison privatization in Australia', and that for that reason, they argue, there should be no further privatizations. They acknowledge that their conclusions are based on the available public information, and protest at the lack of information in the public domain. The authors say that they have had to rely 'almost exclusively' on information generated by governments themselves.

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

I am also of the view that the relative performance of providers against their contractual KPIs, and against the rest of the prison system, should be made available to the public in a timely way.

Equally, I can think of no reason why performance standards should not be specified for publicly-managed prisons or why these results and the details of financial management should not be also made available to the public.

Of course, we would need to be careful about how these results (for the public and the private sectors) were published and interpreted, since no two prisons (or prison systems) are ever quite alike (even the same facility before and after some defined moment in time), and in the early years, the quality of the information may not be high.

At the same time, I acknowledge that there are limits to the resources (time, money and people) which government will be prepared to invest in the evaluation of policy

initiatives or management reforms. Managers and policymakers operate within a constrained time-frame – they do not have the luxury of waiting until all the results are in, nor can they make sense of an evaluation where all of the variables are held constant except one. There is the need for evaluation methodologies that are ‘good enough’, given the constraints within which they are obliged to operate. I wrote about this more than a decade ago, when I co-authored a paper on the published evidence of the financial benefits of contestability and contracting.

Some academic commentators have concluded that there is no clear evidence of financial benefits from competition and contracting for public services. Since little of the research is capable of rigorous statistical analysis, some have argued that there is no justification for abandoning the status quo. They argue that public provision under an uncontested monopoly should remain until the empirical evidence clearly establishes that competition almost always makes a significant difference.

For policy makers and public service managers grappling with escalating demands and limited resources, this is not an option. Faced with the need to improve on traditional delivery models, they have increasingly turned to competition as a way of securing better value for money, and the fact that they have persisted with this approach for more than two decades would seem to suggest that, for them, contestability works well enough.

We [the authors of that paper] stand part way between these two schools of thought. We agree that policy should be evidence-based, and we believe that public service markets could be better designed if we understood more about what works and when. But we also recognise that, when it comes to public services, it is unlikely that governments will often invest the time and resources necessary to undertake detailed statistical analysis. For the most part, public services are complex and varied, so it is expensive to gather a body of cost and performance data that is strictly comparable across different service units organised in different ways. And no matter how elegant the model, statistical analysis cannot assist where the quality of the underlying data is poor.

In our view, there is a mid-path. Governments do need to scrutinise the impact of competition and contestability more closely, but academic researchers need to work with them in developing agreed methodologies that are robust enough to permit disciplined analysis, and simple enough that the costs of usage are not prohibitive.¹

I would add that one of the principal difficulties with comparing the performance of publicly- and privately-managed prisons lies in the quality of data from the public sector. By its nature, prison contracting generates a significant amount of information about the performance of the facilities and the money being paid for the delivery of the services in question.

It is often the case that the major difficulty in benchmarking the cost and performance of contract prisons lies in the quality of information available about the

counter-factual. It is rare when governments have high quality information about the performance of a prison prior to contracting, or the performance of public sector benchmarks. It is ever rarer when they have coherent information about the costs of any particular establishment.

This is demonstrated by a 2017 report by the Office of the Inspector of Custodial Services in Western Australia, which described the numerous attempts over 15 years to get the department to provide the indirect costs for a privately-managed prison in that state.²

Contestability vs Privatization

I disagree with the way in which the authors have framed the alternatives to an uncontested state monopoly. As they have presented it, the only significant alternative is privatization. This rather crude categorization fails to distinguish between several profoundly different ways of exposing providers to performance improvement and/or engaging the private sector in the management of prisons.

For example, the United States operates two very different systems of prison contracting: a spot market and a commissioning model:

- In the spot market, private corporations and/or municipal governments build prisons on a speculative basis and offer these in an open market to jurisdictions which need to find out-of-state facilities to place their prisoners.
- Under the commissioning model, national, state and local governments call for submissions in that respond to a specified invitation to tender, and then select the provider most suited to their requirements. (Governments in Australia and the UK have only ever contracted under a commissioning model.)

To my knowledge, there has only ever been one study of the relative performance of these two systems – this found that, under market conditions which prevailed in the USA in the early 2000s, the spot market resulted in smaller facilities, higher costs, weaker monitoring and poorer quality outcomes.³

However, this does not capture all of the variety in contestable systems. There are, for example, two somewhat different kinds of commissioning:

- Market-testing, where competitive tendering is used to test the relative efficiency and effectiveness of the public sector. In this case, the public sector is permitted to bid against private providers, so the outcome may or may not involve some element of privatization. Indeed, on the two occasions when market-testing has been used in the Australian correctional environment – the Woodford Correctional Centre in Queensland in 1994, and the John Marony Correctional Centre in NSW in 2017 – the incumbent public sector provider won.
- Outsourcing, where only private providers are permitted to bid. Inevitably this will result in a non-government provider delivering the service and might be

described as a form of privatization – although it is profoundly different from the kind of privatization involved when the state divests itself of the ownership of a national airline.

However, there is also a non-market alternative to an uncontested public sector monopoly – contestability or benchmarking. The better economic analysis (in my view) now argues that it is the credible threat of competition (generally known as contestability) rather than actual competition that drives innovation and improvement. This is a kind of performance benchmarking where management is held to account for delivery against agreed objectives. In this case, the private sector plays no role (except perhaps as one of the alternative sources of management should incumbents continually fail to deliver).

In short, privatization is only one of the alternatives to an uncontested monopoly. One of the consequences of a focus on public vs private rather than contestability vs monopoly, is that researchers will overlook one of the most important benefits from contestability – the possibility that the system as a whole might benefit from benchmarking and/or the involvement of a small number of external providers. Looking just at value-for-money, it seems likely that in a contestable system, the differences between new entrants and incumbents will narrow over time, so that evidence of one of the principal benefits of contestability could only be found through a longitudinal study which sought to identify the possible contribution of the contestability effect.

The Other Benefits of Contestability

There are a number of reasons other than the pursuit of cost savings why government might want to engage external providers in the delivery of custodial services. Andrew et al make no reference to these, and this has led them to the conclusion that there should be a moratorium on competition and contracting until hard evidence of financial benefits from privatization has been produced. A preliminary list of these alternative benefits might include:

(i) **Service Improvement:** As noted in my original submission, the UK Labour government pursued contestability and contracting in prison management between 1997 and 2010, principally as a way of driving service improvement (particularly with respect to its ‘decency agenda’).

(ii) **System Learning:** Organizational theorists have long argued that increased diversity results in better decision-making, partly because ‘outsiders’ bring different perspectives to problems. This might be one of the benefits to come from the involvement of external providers in what was previously a closed system.

(iii) **Performance Management:** Partly because contracting relies so heavily on performance specification and measurement, the experience of contracting for prison operations has made a significant contribution to government’s understanding of and confidence with performance management.

(iv) **Transparency and Accountability:** While governments may have been reluctant to release the information obtained through their performance management regimes,

in conversations with practitioners, it is clear that this has contributed to greater transparency and accountability. The natural suspicion of private contractors has also made a contribution over time to an increase in transparency.

In my submission, the authors of this paper have erred in their assumption that the principal reason why governments employ contestability and contracting is to deliver cost savings.

Price and Quality

As I argued in my testimony to the committee, no one seriously disagrees that competitive tendering is a powerful tool for driving down price. The real concern is that it will be far too effective in doing this, without sufficient attention being given to service quality.

As difficult as it may be to ascertain the true costs of operating a prison (in the public or the private sector), a much greater challenge lies in measuring service quality. It is inevitable, given that the analysis of service delivery depends on qualitative as much as quantitative assessments, that researchers will be obliged to rely on the judgment of independent inspectors and monitors.

Evidence from International Studies

Andrew et al have confined themselves to Australian jurisdictions. There are a significant number of international studies, the quality of which is highly variable. However, there are several robust studies which are deserving of serious attention (of which two are described below).

Even if they were undertaken some years ago, these studies demonstrate that contracting is capable of delivering value-for-money benefits (and not just driving down cost at the expense of quality). Of course, whether it is actually used in that way is a matter that needs to be considered case by case.

United Kingdom (1996-1999)

The statistical unit of the UK Home Office studied the performance of four privately-managed prisons in the second half of the 1990s, with each of these facilities being measured against several carefully-selected public sector comparator prisons (which were changed over time as the roles of some of the contract prisons changed). These comparisons were made over four years, using a consistent methodology that had been developed and debated in advance.

Because of changes over time to the levels of overcrowding, cost per prisoner was the most reliable comparator, and on this measure, the contract prisons were, on average, 11-15% less costly than their public sector benchmarks, for a comparable level of service.

The Home Office claimed that the cost differential between the contract prisons and their public sector benchmarks declined over that four-year period, and this was widely interpreted as evidence of a contestability effect – faced with the challenge, the benchmark prisons improved.⁴

However, as mentioned above, this was based on a measure of cost-per-place, which was particularly sensitive to inmate numbers (which had increased by much more in the contract prisons). Based on cost-per-prisoner, the contract prisons continued to be significantly less costly than their benchmarks, which is confirmed by a number of studies of the comparative labour costs of the two systems.⁵

The Home Office also seems to have underestimated the cost differential by failing to take into account public sector pension costs and the taxes paid to the state by the prison management companies

Florida (2005)

A study of 111 juvenile facilities in Florida, over a period of three years, reported that after controlling for differences in the facilities, programmes and inmate populations, boot camps, operated exclusively by the counties, cost significantly less for each inmate released than state or private facilities. State facilities were significantly more costly than private and not-for-profit institutions. However, once recidivism was taken into account (and the additional costs associated with higher levels of incarceration), county boot camps and not-for-profit facilities were better value for money than those operated by private firms or by the state.⁶

Evidence from Australian Studies

Andrew et al have also overlooked several Australian studies which provide some information on the relative performance of contract prisons, and there are several more which have been published since 2016, when their paper was published. I would also contend that they have been somewhat begrudging in the acknowledgement of the positive outcomes listed in those studies which they did access.

New South Wales

The authors claim that little comparative data has been published on the performance of contract prisons within NSW. I share their frustration at the lack of information in the public domain about the relative performance of these facilities in terms of both service and cost. However, there is more information available than the authors acknowledge.

Auditor General

Andrew et al reported that from 2002 to 2004, at least, the NSW Auditor General discussed the comparative cost of the contract prison at Junee, however, they stated that these documents were no longer publicly available. Their only comment was to refer to a statement made in the 2003 and 2004 annual reports, to the effect that it was difficult to compare weighted average cost of the different facilities.

I have accessed the NSW Auditor Generals reports back to 1997-98, and prior to 2003-04, these did not just compare Junee with the weighted average cost of all publicly-managed prisons but provided information about the average costs of the different categories of facility (maximum, medium and minimum security). Junee was then a mixture of minimum and medium security, so that (other things being equal) in

a comparison with minimum security prisons, Junee should have been significantly more expensive. (Of course, other things were not equal – Junee was a newer facility than most of the state’s other facilities.)

Table 1: New South Wales – Junee Correctional Centre and Department of Corrective Services Prisons, Comparison of Average Cost per Inmate Day, 1998-2004⁷

	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04
Department of Corrective Services							
Maximum	\$178.85	\$177.43	\$181.67	\$183.66	\$197.30	\$218.71	
Medium	\$167.84	\$161.35	\$163.66	\$159.60	\$155.72	\$169.35	
Minimum	\$120.66	\$129.09	\$139.33	\$144.11	\$152.11	\$172.77	
Weighted Average	\$148.28	\$151.69	\$157.79	\$160.15	\$167.85	\$187.45	\$187.80
Junee Correctional Centre	\$104.22	\$104.68	\$102.31	\$102.67	\$92.04	\$93.55	\$92.00
% difference between Junee and average cost of minimum security facilities	13.6%	18.9%	26.5%	28.8%	39.5%	45.9%	

This series of reports found that Junee was significantly less costly than minimum security facilities in the state. What was striking about the data was not so much the absolute magnitude of the gap, but the fact that it had significantly widened over this six-year period. There may have been changes to the prison population which contributed to the widening of this gap – unfortunately, there is no evidence that any research into such questions was ever undertaken.

In 2003-04, the Auditor-General ceased to publish comparative data with this level of granularity.

Contestability

There is another important source of information about the contribution of contestability to improved service delivery in NSW – the so-called ‘Way Forward’ prisons.

Under the 'Way Forward' initiative, introduced in 2003, the then Department of Corrective Services negotiated a 'memorandum of understanding' with local management and a separate 'island award' with the prison officers' vocational branch of the PSA for three proposed new facilities. These increased the authority and the accountability of local management and resulted in the introduction of new workplace practices designed to reduce sick leave and overtime. The Labor government which was then in office had made it clear that it did not want to outsource the management of these facilities, but they would do so if the union did not agree to substantially different terms and conditions.

In 2005, the NSW Public Accounts Committee studied the impact of this initiative on the first two 'Way Forward' prisons, Mid-North Coast Correctional Centre at Kempsey, and the Dillwynia Correction Centre at Windsor. Each of these facilities was benchmarked against a comparator, and the PAC concluded:

One of the expected benefits of workplace reform was a reduction in overtime costs and sick leave. This has been achieved through a new award, centralised rostering, updated sick leave policy and other initiatives. The table below compares overtime, sick leave and total employee expenses under the 'Way Forward' model to the traditional model.⁸

Table 2: New South Wales – Comparison of Overtime and Sick Leave at Two Traditional and Two 'Way Forward' Prisons

		Kempsey	Bathurst	Dillwynia	Mulawa
Overtime	% of total employee related expenses	1%	6%	2%	11%
	\$ per inmate per day	0.84	5.93	1.67	25.52
Sick leave	Average sick days per staff member	6.37	9.89	5.96	13.81
	\$ per inmate per day	65.55	103.99	101.33	230.00

The PAC also contrasted Mid-North Coast Correctional Centre (MNCC) with Junee prison, the only contract prison in the state at that time, and found that it was delivering broadly comparable results:

The department paid GEO \$22 million for management of the Junee Correctional Centre for 2004-05. This equates to \$82.59 per inmate per day based on the average number of inmates for the year. This includes the cost of health care that has been estimated to be nine dollars per inmate per day. As DCS is not providing health services out of its budget, these costs need to be eliminated to allow effective comparison with MNCC. Therefore, after

the health costs are excluded, the direct cost to DCS of outsourcing inmate management in 2004-05 was \$73.59 per inmate per day.

MNCC houses inmates of all classifications so the cost per inmate per day is expected to be higher than the management fee paid to GEO. The cost per inmate per day for MNCC in 2004-05 was \$87.76. The first year of operations includes start-up costs so further reductions should occur in the coming year. This result shows that the 'Way Forward' initiative is improving the cost effectiveness of correctional centres in NSW.⁹

The intention at the time was to introduce 'Way Forward' across all NSW prisons. Not only did this not happen, but the model was not extended to any new prisons, and in later years, the relative performance of these two facilities has also deteriorated, indicating that challenge and reform cannot be a once-for-all process.

Victoria

Victoria has traditionally relied almost exclusively on PPP prisons, with long service contracts. This provides less contestability than exists in other states, where governments tend to rely on publicly-owned but privately-managed facilities with shorter contract terms. Thus, the Victorian model of prison contracting is not particularly contestable, and it would be unsurprising if the results were not as good as in other states.

Cost Comparisons

Andrew et al claim: 'The level of privatization in Victoria does not appear to have translated into cost savings.' This is based on the somewhat questionable proposition that in spite of having a much higher proportion of its offenders in privately-managed prisons, Victoria has one of the highest average costs of incarceration in the country.

Since their paper was published, the Victorian Auditor General's Office (VAGO) has produced a report specifically dealing with two of the PPP prisons. This found:

G4S and GEO deliver cost-efficient services for the state that have largely met the contracts' service and performance requirements. Port Phillip and Fulham cost up to 20 per cent less to run than the average for publicly operated prisons of the same security rating.

CV demonstrates sound contract management and genuine engagement with the private operators of Port Phillip and Fulham. DJR successfully negotiated new contracts for the operation of these prisons that address key weaknesses in the initial contractual arrangements, at a cost consistent with government expectations. . .

The privately-operated prisons cost the state up to 20 per cent less to run than the average for publicly operated prisons of the same security rating. This is consistent with DJR's advice to government in recent years that the two privately operated prisons are cheaper to run than public prisons, largely due to more efficient staff shift patterns.¹⁰

As always, the key question is not just whether these facilities were cheaper, but whether they are delivering better value-for-money.

Auditor General

VAGO expressed some concern at the assault rates in these two facilities, although Fulham seemed to have been generally performing well against its specified performance standards.

Fulham's performance against its SDOs has been largely positive since 2010–11, apart from a decline in performance in 2012–13, partly related to a single incident involving several staff injuries.

Port Phillip has failed to meet a greater number of performance thresholds than Fulham relating to prisoner-on-prisoner assault, assaults against staff and positive random drug tests.¹¹

It should be noted that Port Phillip is a maximum-security facility, which brings with it much greater challenges.

However, VAGO was not able to compare the performance of these two prisons with other establishments managed by the public sector. It seems there was a great deal more transparency when it came to the contract prisons:

CV (Corrections Victoria) scrutinises private prison performance more than public prisons, including validating the operators' self-reported performance data. . .

CV collects a large amount of data on prison performance, however outdated information systems limit its ability to produce meaningful analysis. CV's limited public reporting on prison performance restricts the transparency and public scrutiny of the prison system.¹²

Queensland

Auditor General

In their paper, Andrew et al mentioned a forthcoming report by the Queensland Auditor-General into the contract prisons, which was not available to them at the time of publication.

Since the Auditor-General is an independent agency reporting to the parliament, and its staff did have access to the detailed financial and operational performance of these facilities, their conclusions are worthy of note. Their conclusion was that:

The private provision of public services in the state's prison system is realising significant cost savings while providing a level of service commensurate with publicly run prisons.

With current policy settings limiting the number of privately run prisons to two, and at a time where the system is experiencing significant overcrowding, it is even more important that the state avail itself of the opportunity to garner

insights from its privately-run prisons and apply these across the entire prison portfolio.

A greater understanding by QCS [Queensland Corrective Services] of how their private sector service providers operate offers the prospect of establishing better practice process and quantitative benchmarks, particularly in relation to how they achieve their cost efficiencies.¹³

Independent Inspector of Prisons

The paper by Andrew et al summarised recent reports of the Prisons Inspectorate into the contract prisons, acknowledging (for example) that Arthur Gorrie was given a rating of two in 2012. They did not include the following statement from the report, which accompanied that rating:

. . . meaning that it was found to be performing well against the Healthy Prison Test. It has made significant improvements since its last inspection and performed strongly across a number of areas/outcomes.¹⁴

The authors did go on to express their concerns that some passages in the report were 'censored' (their term) and they catalogued the areas where the Inspectorate thought there was need for improvement. With respect, this is not a balanced treatment of the report – at any time, any prison, publicly- or privately-managed, will have areas where improvement is required.

In the case of Borallon prison, then the only other contract prison in Queensland, the authors noted that a 2009 inspection report had found room for improvement in a number of areas. This is not unusual under the 'Healthy Prisons' inspection regime, and the Inspectorate gave the facility a rating of 2, 'meaning that it was found to be performing reasonably well against the Healthy Prison Test'.¹⁵

Andrew et al also reported a 2010 follow-up report, noting only that areas of concern had been addressed, and that parts of the report had been redacted. They chose not to mention the following passages, which have a much more positive tone:

The Inspectors were impressed with the presentation of the Centre. They also found that the general atmosphere was positive and staff were openly prepared to be engaged about all aspects of the operation. . .

The Inspectors were pleased with the progress that has been made in relation to the implementation of control mechanisms placed around prisoner movement. . .

The Centre was able to demonstrate an overall improvement in the currency of staff accreditation. . .¹⁶

In the case of the South Queensland Correctional Centre (which replaced Borallon), Andrew et al acknowledged that the 2013 report was 'largely complementary', before going on to catalogue the areas where improvement could be made.¹⁷

It is clear that the Chief Inspector of Prisons has found that the contract prisons are performing to an acceptable standard, based on the 'Healthy Prison Test' used by the inspectorate. While there are areas for improvement, this is the case with all prisons, whether publicly- or privately-managed.

Comparative Cost

Andrew et al quoted a passage from the report of the Queensland Commission of Audit, which referred to a claim by Queensland Corrective Services that the cost of the privately-managed prisons was around 10% below the cost of operating public sector prisons. While the details have not been published, QCS had clearly done some analysis of the reasons for these differences:

Workforce management costs are a key point of difference between public and privately-operated prisons. Lower administrative costs and offender expenses also have contributed to the lower cost base in the private sector.¹⁸

The authors expressed their disappointment, echoed in other places throughout their paper, that the Commission of Audit did not publish the underlying data. Other academic researchers share this frustration – for reasons that are not difficult to understand, governments are reluctant to publish the evidence which demonstrates that their publicly-managed prisons are more costly than necessary.

It is to be noted that in its 2016 report (quoted above), the Queensland Auditor-General confirmed the conclusions of the Commission of Audit:

The private provision of public services in the state's prison system is realising significant cost savings while providing a level of service commensurate with publicly run prisons.

Frustrating though it may be not to have the underlying data, it seems reasonable to conclude from the reports of these various oversight agencies that the contract prisons in Queensland are delivering a level of service that is comparable to their publicly-managed counterparts, at a significantly lower cost.

Western Australia

Office of the Inspector of Custodial Services

Acacia – Quality of Service

There has been a succession of reports by the Inspector of Custodial Services into Acacia Prison, and overwhelmingly, these have been positive, with standards improving over time. Andrew et al acknowledged that the private operator had 'a strong record of contract compliance' from 2006 to 2013, but they added that the most recent report revealed a number of issues associated with low staffing levels.

The initial report in 2003 was not particularly positive, although it is not unusual for new establishments, public and private, to struggle in the set-up phase. Things had improved, but not enough when the 2006 report was published, and in the market-test undertaken at that time, the incumbent was replaced.

The next report, published in 2008, stated that the change of operator had been a positive move: 'In most areas, the level of service at Acacia is comparable to, or better than, most of the public sector prisons but Acacia's costs are substantially lower.'¹⁹ However, there was still room for improvement.

In a press release issued in July 2008, when the afore-mentioned inspectorate report was released, the then Inspector, Richard Harding, wrote:

In summary, the Inspector's view that privatisation of prisons and some other correctional and custodial services can be beneficial as long as they are made properly accountable, by independent inspection and otherwise, can now at this third inspection be seen to be fully vindicated. Acacia is now a good prison contributing positively to overall criminal justice policy and administration in Western Australia.²⁰

In their paper, Andrew et al described Professor Harding as 'an academic whose work focuses on the privatisation of prisons'. To be fair, they might have noted that he is an eminent Australian criminologist, who was Director of the Australian Institute of Criminology in the 1980s and has also published in the areas of corporate crime and gun control over the years. Harding's successor, Neil Morgan, who was a professor of law, has delivered much more positive reports on the management of Acacia under contract.

In 2011, for example, the Inspectorate reported:

. . . the key finding of this inspection is that at Acacia, corporate profits and savings to the state/taxpayer are not being achieved at the cost of service delivery. Whilst there are areas for improvement, and these are identified throughout this report, Acacia has reached a high base. It is very difficult to compare prisons because all of them are different but it is clear that Acacia's performance is at least equal to the best public sector prisons in the State and in many respects it is superior.

Acacia has a design capacity of 750 but now houses close to 1000 prisoners. Increases of this magnitude bring significant pressures to both staff and prisoners but this report describes many positive aspects of prison operations and many areas of improvement over the past three years. Staff attitudes are generally positive and there has been a marked and well-evidenced improvement in staff/management relations since the last inspection. Subject to a couple of pressure points, the prison has a good record in terms of security and safety. There is a strong and proactive case management system which is assisted by the pro-social culture in the prison, and this culture and engagement undoubtedly contributes to the fact that the prison has low levels of self-harm. We concluded that health service provision at Acacia is the best in the State and resettlement services continue to be a strong point.

There were also areas where Acacia could improve, which the Inspectorate pointed out. Acacia was by no means perfect, but in my submission, any summary of the

findings of independent inspection and monitoring agencies, particularly in relation to service quality, needs to provide the reader with a fair representation of the agencies' conclusions.²¹

In 2015, when the Acacia contract was coming up to be retendered, the Chief Inspector provided an 'exit debrief'. This stated, in part:

Acacia is well poised for its next era. Serco has worked well with [the Department of Corrective Services] to lay excellent foundations for a positive future, foundations that must now be built on. To Serco staff and management, it has been a difficult journey at times in the past three years: well done, be proud, and keep up the good work.²²

In its 2016 report, the Inspectorate noted that there had been significant change at the prison, with a renewal of the contractual arrangement, a considerable increase in the establishment, over-crowding and a \$126 million expansion:

Despite having been through so much change, staff were generally positive, professional, and resilient. As a result, most areas of the prison were functioning well, with opportunities for further improvement now that the new contract has given Serco some degree of certainty.²³

But once again, there were areas of concern, which the Inspector's report addressed.

Wandoo – Service Quality

The Inspector of Custodial Services delivered one report on the Wandoo Reintegration Facility during the period when it was managed under contract. Once again, this document was overwhelming positive in its assessment:

This report shows that Wandoo has been a success in its own right. But, more than that, it offers some positive lessons for the state's other prisons and the Banksia Hill Detention Centre for juveniles. The decision to target specific services at young men was a good one, and Serco has met or exceeded reasonable expectations. . .

Wandoo provides a positive, purposeful, and safe regime, and has performed well across all key measures. It offers new ways of 'doing business' that are relevant to the management of both adult prisoners and juveniles at the troubled Banksia Hill Detention Centre.²⁴

Comparative Cost

Andrew et al refer to one source on the relative cost of contract prisons in Western Australia, the 2014 report of the Economic Regulatory Authority. The research undertaken by the ERA into the relative costs of publicly- and privately-managed prisons was robust, and included a response to a submission on methodology made by Jane Andrew, Max Baker and Philip Roberts (the authors of this paper). After a detailed discussion of methodology, the ERA concluded that Acacia had the lowest cost per prisoner per day, however, they added this qualification:

The low cost per prisoner per day for Acacia is likely driven by a mix of factors, including economies of scale as a result of the relatively large population, the fact the facility only houses medium-security, non-remand prisoners, and Acacia's metropolitan location. There are no public prisons in Western Australia that meet all three of these conditions, and so it is not possible to conclude that a similar public prison would be either more or less expensive on a cost per prisoner basis.²⁵

Acacia – Costs

Andrew et al did not mention several reports into Acacia prison by the Inspector of Custodial Services which have made similar findings. In 2003:

The Department's costing model is not yet sufficiently well developed to enable it accurately to estimate the proportion of the additional expenditure of \$121 per prisoner per day (\$255-\$134) to be incurred should Acacia be returned to public operation. In briefing this Office, senior Departmental personnel suggested that the additional cost would probably be about \$11.75 million per annum, but conceded that the present imprecision of the costing model meant that the figure could be as high as \$15 million. On the basis of our own calculations, we would consider that figure of \$15 million to be more realistic.¹²³ Either way, there would be major financial ramifications if the prison were returned to public sector management under current cost structures. It is important in the debate about privatisation that the size of this amount be thoroughly understood.²⁶

In 2008:

Our best estimate. . . is that Acacia's total costs – for both Serco and the Department – are probably no more than 55 percent of the public sector average.

In making comparison between Acacia and the public sector, it is important to recognise that Acacia does enjoy some advantages. These include economies of scale due to its size, its modern buildings and security arrangements, and its location. By comparison, some of the public sector's most expensive prisons are the smaller and older regional prisons. As previously noted, there is also room for debate about the most accurate way to calculate total costs.

However, none of these differences or arguments can detract from the conclusion that the cost of taking Acacia into the public sector would be very substantial. Conservative estimates, based on public sector costs being around one third more, would be \$12.5 million per year, but the real figure could be closer to \$20 million. This was, of course, one of the main reasons that the Labor Government chose to retest the market [in 2006] rather than 'nationalising' the prison.²⁷

And in 2011:

In recent evidence to the Community Development and Justice Standing Committee, the Department stated that its total cost per prisoner per day was

\$270 (or \$98,550 per annum). Serco is paid approximately \$137 per prisoner per day. However, this is not the total cost. The Department also incurs costs at Acacia, primarily through its monitoring and contract management services. The Department estimates these costs at 33 per cent or \$45 bringing Acacia's total cost per prisoner per day to \$182 (or \$66,430 per annum). According to these calculations, the cost of managing a prisoner at Acacia is 30 per cent less than at a public prison. Serco manages to achieve this while still collecting profits of around eight per cent.

When making comparisons between Acacia and the public sector, it is important to recognise that Acacia does enjoy some advantages. These include economies of scale due to its size, its modern buildings and security arrangements, and its location. By comparison, some of the public sector's most expensive prisons are the smaller and older regional prisons. Similarly, Acacia benefits from only receiving medium or minimum security prisoners, and is not required to undertake initial assessment and classification of prisoners. As previously noted, there is also room for debate about the most accurate way to calculate total costs. Despite this, it is clear that the private operation of Acacia Prison delivers a substantial financial saving to the state.²⁸

A significant part of the problem in establishing the true cost of Acacia prison lies in the department's inability to agree on an appropriate methodology for the allocation of overheads. The Office of the Inspector commented in a recent report on Wandoo:

Despite numerous requests and recommendations from our office to provide costings for its private contracts, the Department has been unable to deliver. For 15 years, we have been asking the Department to provide a robust estimate of its indirect costs for Acacia Prison, the state's other privately-run prison. From 2003 to 2010 we were told the indirect costs for Acacia were 30 per cent of the contractors' fee. In 2013–2014, the Department's new leadership slashed its estimate to 15 per cent, and then revised it down again to 13 per cent. This seemed too low and involved a worrying discrepancy of \$7-8 million dollars a year from previous estimates. In 2014–2015, the Department provided yet another estimate to the Economic Regulation Authority of around 11 per cent. The February 2016 contract renewal announcement suggested that indirect costs are now estimated as 19.5 per cent.²⁹

Wandoo – Costs

In a report published last year, the Office of the Inspector of Custodial Services stated that Wandoo was among the most expensive, however, the ERA reported:

The high cost per prisoner per day for the Wandoo facility relates largely to the fact that the prison has historically operated well below its total capacity of 77 prisoners, with a daily average population of 17 in 2012-13, and 48 in 2013-14. The ERA estimates that, if Wandoo had been operating close to full capacity in those years, its cost per prisoner per day would have been considerably lower,

due to the fixed costs incurred in operating the facility. For example, depreciation costs were around \$800,000 in each year. Further, the Department has committed to pay Serco a minimum amount under the Wandoo contract regardless of the number of prisoners accommodated, although payments under the contract are tiered depending on projected population.³⁰

They were, however, unable to establish the relative efficiency of Wandoo:

The Department still does not have a good understanding of the total costs and benefits of the Wandoo contract and therefore whether it is achieving value for money. We know the total Wandoo contract costs, however, we do not know the Department's indirect costs in relation to Wandoo. These indirect costs are the costs of additional services provided specifically for Wandoo, such as the costs of the Department's contract management team and monitors. It would also include a proportion of shared costs for services, such as the cost of the Department's doctor who provides services for half a day per week at Wandoo, or the cost of the Department's Special Operations Group who are on call to attend Wandoo in case of emergency.

Despite numerous requests and recommendations from our office to provide costings for its private contracts, the Department has been unable to deliver. .

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Conclusion

In responding to Andrew et al, it has not been my purpose to suggest that public service contracting is a panacea, or to deny that, in some circumstances, competition and contracting have been poorly managed or, in some cases, misused. Indeed, I authored a major report on public service contracting, published in London in early 2017, in which I catalogued a series of failures and warned the UK government of the probable consequences of such misuse.³²

But it would also be wrong to ignore the evidence, published by a number of independent authorities across the Australian states, indicating that contestability and contracting for prisons have generally be done well in this country, resulting in lower costs, and in some cases, in better services.

I agree with the authors of this paper that governments should publish more of the information on relative performance which they have collected over the years, and that they should do more to sponsor independent academic research. But Australian policymakers have available to them a significant amount of evidence, of a reasonable quality, that contestability and contracting for prisons in this country have worked well enough and generally delivered better value-for-money.

¹ Gary L. Sturgess et al, 'Competitive Edge: Does Contestability Work?', London: Serco Institute, 2007.

² Office of the Inspector of Custodial Services, '2016 Inspection of Wandoo Reintegration Facility', Report No.109, Perth, January 2017, p.9.

³ Douglas McDonald and Carl Patten, Jr, 'Governments' Management of Private Prisons', Cambridge, MA: Abt Associates, Inc, 15 September 2003.

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- ⁴ Coopers and Lybrand, 'Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons', London: HM Prison Service, June 1996; Isabelle Park, 'Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons, 1998-99', Home Office Statistical Bulletin, Issue 6/00, London: Home Office, 23 March 2000.
- ⁵ Carla Andrewes, 'Contracted Prisons: Cost and Staffing Comparisons 1996-97', Home Office, March 1999, not publicly released; MCG Consulting, 'Privately Managed Custodial Services, September 2006, research undertaken for the Office of Manpower Economics on behalf of the Prison Service Pay Review Body; NOMS, 'NOMS (HM Prison Service) Submission to the Prison Service Pay Review Body for 2011/12', London: Ministry of Justice, 2011, p.41.
- ⁶ Patrick Bayer and David E Pozen, 'The Effectiveness of Juvenile Correctional Facilities: Public versus Private Management', *Journal of Law and Economics*, 48, 2005, pp.549-589.
- ⁷ NSW Auditor-General's Reports to Parliament.
- ⁸ Public Accounts Committee, 'Value for Money from NSW Correctional Centres', Sydney: NSW Legislative Assembly, Report No.13/53 (No.156), September 2005, pp. 21-22.
- ⁹ Ibid, p.25.
- ¹⁰ Victorian Auditor General's Office, 'Safety and Cost Effectiveness of Private Prisons', Independent Assurance Report to the Parliament, 2017-18:15, Melbourne, March 2018, pp.8 & 10.
- ¹¹ Ibid, p.9.
- ¹² Ibid., pp.9 & 31.
- ¹³ Queensland Audit Office, 'Management of Privately Operated Prisons', Report 11: 2015-16, Brisbane, February 2016, p.1.
- ¹⁴ Office of the Chief Inspector, 'Full Announced Inspection of Arthur Gorrie Correctional Centre', Brisbane: Queensland Corrective Services, April 2012, p.viii.
- ¹⁵ Office of the Chief Inspector, 'Full Announced Inspection of Borallon Correctional Centre', Brisbane: Queensland Corrective Services, June 2009, pp.ix-x.
- ¹⁶ Office of the Chief Inspector, 'Follow-Up Inspector Report, Borallon Correctional Centre', Brisbane: Queensland Corrective Services, August 2010, pp.2-3.
- ¹⁷ Office of the Chief Inspector, 'Full Announced Inspection of Southern Queensland Correctional Centre', Brisbane: Queensland Corrective Services, May 2013, pp.8-9
- ¹⁸ Queensland Commission of Audit, 'Final Report', Brisbane: Queensland Commission of Audit, 2013, Volume 3, p.249.
- ¹⁹ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.53, Perth, June 2008, p.67.
- ²⁰ Richard W. Harding, Inspector of Custodial Services, 'Privatisation Comes Full Circle in Western Australia: Improved Performance at Acacia', 30 July 2008.
- ²¹ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.71, Perth, March 2011, p.v.
- ²² Quoted at Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.71, Perth, March 2011, p.v.
- ²³ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.104, Perth, June 2016, p.vii.
- ²⁴ Office of the Inspector of Custodial Services, '2016 Inspection of Wandoo Reintegration Facility', Report No.109, Perth, January 2017, p.iii.
- ²⁵ Economic Regulation Authority of Western Australia, 'Inquiry into the Efficiency and Performance of Western Australian Prisons', Final Report, 8 October 2015, p.,57.
- ²⁶ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.19, Perth, March 2003, p.58.
- ²⁷ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.53, Perth, June 2008, p.7.
- ²⁸ Office of the Inspector of Custodial Services, 'Report of an Announced Inspection of Acacia Prison', Report No.71, Perth, March 2011, p.9.
- ²⁹ Office of the Inspector of Custodial Services, '2016 Inspection of Wandoo Reintegration Facility', Report No.109, Perth, January 2017, p.9.
- ³⁰ Ibid.
- ³¹ Ibid.

³² Gary L. Sturgess, 'Just Another Paperclip? Rethinking the Market for Complex Public Services, London: Business Services Association, 31 March 2017.