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*Privatisation as an instrument of social welfare provision:*

*The case of prisons privatisation in Australia*

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## **Privatisation as an instrument of social welfare provision: the case of prisons privatisation in Victoria, Australia**

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### **Abstract**

Since the 1970s, many international jurisdictions have embraced private sector solutions to problems of social welfare provision. Prisons, once regarded as a core responsibility of the public sector, have not been quarantined from this process. In Australia, the state's monopoly of correctional services ended in 1990 with the opening of the first privately operated prison in the northern state of Queensland. Now, nearly three decades later, Australia has the highest proportion of prisoners in privately managed prisons in the world. This paper analyses the experience of one Australian state, Victoria, which has made the most extensive use of a range of privatisation mechanisms to finance, build and manage that state's prison system. Taking an historical perspective and drawing upon publicly available documents, the paper traces the evolution of prison management in Victoria from a traditional bureaucratic model in which the state had complete responsibility to one in which the private sector now has a major role. The paper explains how successive Victorian governments of differing ideological persuasions have utilised alternative models to deliver prison services in the expectation of producing more efficient, more effective and more accountable services. The paper explores the impact of private sector provision upon those aspects of prisoner experience associated with the social welfare function of prisons, especially those related to rehabilitation and social re-integration. In doing so, the paper seeks to evaluate the efficacy of privatisation as an instrument of social welfare provision in Australian prisons.

### **Keywords**

Prisons, privatisation, social welfare, performance measurement, transparency, accountability



## Introduction

Since the 1970s, there have been intense debates about the role of the public sector and the reform of the public sector in both developed and developing economies. One result has been that many jurisdictions have embraced private sector solutions as a key feature of their reform agendas. Prisons and their management, once regarded as core components of the public sector, have not been quarantined from this process. From the time of European settlement of Australia in the late eighteenth century, prisons were regarded as the exclusive responsibility of the state. After the federation of the Australian colonies to form the Commonwealth of Australia in 1901, prisons became the responsibility of the six new state governments. And when the Northern Territory and the Australian Capital Territory gained self-governing status in 1978 and 1988 respectively, they too assumed responsibility for prisons. In 1990, the first privately operated prison opened in the northern state of Queensland, where a second privately operated prison followed in 1992. The most populous state, New South Wales, opened its first private prison in 1993 (Harding, 1998; Moyle, 2000), with South Australia and Western Australia following suit in 1995 and 2000 respectively. However, the state that embraced the most comprehensive program of prisons privatisation was the southern state of Victoria, the second largest in terms of population.

The Victorian experience with privatising prisons and prison management commenced with the election of the Kennett Government in 1992. Over the next seven years a number of public prisons in Victoria were decommissioned and replaced with private prisons using the ‘design, construct, finance and manage’ (DCFM) model, (which transmogrified into ‘build, own, operate and transfer’ or BOOT). Subsequent governments in Victoria continued to finance, build and manage the state’s prison system, using the public-private partnership or PPP model. As a result, Victoria has the highest proportion of its prisoners in privately managed prisons in Australia (Andrew, Baker & Roberts, 2016), while Australia has the highest proportion of prisoners in private facilities of any national jurisdiction worldwide (Jacovetti, 2016). This startling state of affairs has been accompanied by another no less dramatic development. Since the prisons privatisation project began 25 years ago, Victoria’s prisoner population has tripled largely as a result of changes to laws governing bail, parole



and sentencing (Sands, O'Neill & Hodge, 2019). In the process, Victoria has gone from having a very low rate of incarceration by international standards, to a rate that is higher than most members of the European Union (Walmsley, 2018). The entrance of the private sector into prisons management and the rapid expansion of the prisoner population have significant implications for the social welfare objectives of prisons, especially those relating to the rehabilitation of prisoners and their subsequent reintegration into the community upon their release.

This paper will comprise five sections. The first outlines the role of prisons as instruments of social welfare provision. The second provides a brief historical overview of the management of prisons in Victoria from the attainment of self-government in 1851 up to the commencement of the prisons privatisation project in 1992. The third section explains how various models of privatisation of the prison system were implemented in Victoria from 1992 to the present day. The fourth examines the impact of Victoria's prisons privatisation project upon the social welfare function of prisons. The concluding section seeks to evaluate the efficacy of privatisation as an instrument of social welfare provision in Australian prisons.

### Prisons as instruments of social welfare provision

In the popular imagination prisons are most commonly associated with punishment and deterrence (Cunneen et al., 2013; Bushnell & Wild, 2016), but they have not always been the dominant tool for punishing members of society who transgress its norms and laws. Prior to the 11<sup>th</sup> century, sentencing generally involved some sort of physical punishment such as execution, mutilation, torture or branding, to which could be added banishment or solitary containment (Morris & Rothman, 1998). By the beginning of the 18<sup>th</sup> century, imprisonment was far more common, but was also harsh and capricious. An early proponent of prison reform was the English philanthropist, John Howard (1726-1790), who was an advocate for the humane treatment of prisoners. Howard's support for the concept of single celling, open air spaces for exercise, separation of male and female prisoners and the abolition of the practice known as 'garnishing' where new prisoners were forced to pay a fee for better conditions, and, if they could not afford it, faced abysmal treatment from fellow prisoners and even gaolers, focused attention upon the ruthless prison practices of the era (Morris & Rothman, 1998). Howard was largely responsible for a British parliamentary statute of 1779,



never effectively enforced, that authorised the building of two penitentiary houses in which, by means of solitary confinement, supervised labour, and religious instruction, the reform of prisoners might be attempted. His enlightened thinking influenced social philosopher and fellow reformer Jeremy Bentham (1748-1832) who devised the cost-effective panopticon system, a circular building where prisoners occupy solitary cells around the circumference and a guard monitors the area from a central observation point (McConville, 1981). The British National Prison built at Millbank in 1812 was modelled on Bentham's panopticon. Pentonville prison, built in 1832, was also influenced by the panopticon's radial design and served as the prototype for a further 54 new prisons in England, signifying the emergence of the prison as a key element within the criminal justice system. As Johnston (2013, p.24) observes:

The 'birth' of the prison was a significant shift in the way in which the modern world saw the treatment of those who committed crimes. It was a movement away from the barbarous infliction of physical pain in public, whether that be execution, flogging, stocks, or pillory, towards a system of punishment that reflected the supposed civilisation of the nation and Utilitarian ideas about proportionality in the law, sentencing and punishment.

Despite these developments, prisons continued to be bleak institutions characterised by severe and unforgiving architecture and mechanistic management styles. But within a century, prison practice and institutional arrangements shifted from an exclusive focus on retribution and loss of liberty, to include poverty alleviation, public order, social control, safe custody while awaiting sentence, reform, rehabilitation, and deterrence as aims for prisoners (Freiberg & Ross, 1999; McConville, 1981; Morris & Rothman, 1998; Shaw, 1966; Tabarook, 2003; Ward, 1958; Weidenhofer, 1973). By the mid-twentieth century, the term 'correctional centre' began to replace the use of the word 'prison' 'consistent with the increased tendency to support rehabilitation as the prison's primary goal' (Jacobs & Steele, 1959, p.349). Reflecting these changes, probation and parole started to emerge as alternatives to incarceration. As society began to expect prisons 'not only to punish wrongdoers and protect it from additional criminal activity, but to also deliver humane conditions, effective rehabilitation and accountable practices' (Sands, 2014, p.156), prisons

assumed a role within the fledgling social welfare system of the time. Within prisons, the function of the parole officer, often staffed by persons with some training or studies in social work, emerged with a strong focus on prisoner welfare. Hayes (1959, p.15) summarised the objectives of the parole officer's work in the following terms:

Reduction of the tension and anxiety through discussion; clarification of particular problems and a better perception of their reality; in those cases where a deeper relationship can be established to aid a better understanding by the prisoner of his attitude and feelings, particularly those associated with past offences and disrupted social ties; and finally, [...] to link the good achieved through imprisonment with plans for future and subsequent action prior to release [...]

Concurrent with these developments, sentencing legislation grappled with what Jacobs and Steele (1975, p. 348) refer to as 'the rational priority of correction'. The changing expectations of prisons led to rehabilitation being explicitly cited as a purpose of sentencing along with punishment, deterrence, condemnation of the offender conduct and protection of the community (*Sentencing Act 1991 (Vic) s.5*). This shift created some challenges for judges in giving weight to each of the purposes of punishment for sentencing purposes. To the frustration of judges who found themselves at odds with political and public opinion, a tension between punishment, retribution and deterrence on the one hand, and reform and rehabilitation on the other, inevitably arose. As a senior judge observed:

It is often taken for granted that if leniency for the purpose of rehabilitation is extended to a prisoner when a judge is passing sentence, that this leniency bestows a benefit on the individual alone. Nothing, in my opinion, is further from the truth. Reformation should be the primary objective of the criminal law. The greater the success that can be achieved in this direction, the greater the benefit to the community (Freiberg et al., 1996, p.240).

Despite the ongoing tensions between punishment and reform in the criminal justice system, rehabilitation has come to occupy a central role in criminal justice systems. If the central purpose of a criminal justice system is social control in order to protect 'life, order and socially approved property relationships' (Jacobs & Steele, 1975, p.349), prisons perform three critical functions to achieve this goal. First, they deprive the offender of



liberty and potentially defer others from similar offending. Second, they protect society from the criminality of the offender. And third, by rehabilitating an offender they reduce the probability of future crimes. In this regard, Jacobs & Steele argue, ‘rehabilitation is, therefore, also a law enforcement or social control technique’ (1975, p.349). The goal of rehabilitation, coupled with the goal of reintegrating offenders into the community, has created a situation where ‘[p]risons function as parts of both the criminal justice system and the social welfare system but without conceptual clarity as to their place in either system’ (Jacobs & Steele, 1975 p. 354).

### Prisons in Victoria: a brief historical overview

The area now associated with the State of Victoria was first settled by Europeans in 1836, with the first permanent ongoing gaol opening nine years later in Melbourne in 1845 (Freiberg, et al., 1996 p.10). After the attainment of self-government in 1851, (when Victoria ceased to be part of the colony of New South Wales and became a colony in its own right), prisons in Victoria became the responsibility of the Chief Secretary, the most senior post in the colonial administration at the time. Prisons remained the Chief Secretary’s responsibility for more than a century. After the six Australian colonies united to form the Commonwealth of Australia in 1901, prisons came under the constitutional remit of the state governments. From the time of federation onwards, Victoria’s prisons were characterised by comparatively low levels of incarceration by international and national standards (Freiberg et al 1996) and generally progressive prisoner management practices. The 1950s saw the implementation of a number of reform initiatives aimed at supporting rehabilitation and deflecting convicted persons from prisons where possible. The *Penal Reform Act 1956* provided for ‘the introduction of youth training centres, parole, remissions in their modern form and other changes’ (Freiberg et al., 1996, p.230). The Act set up a parole service to supervise prisoners released parole. Under this new approach, prisoners due for release had their cases reviewed by a Parole Board which was advised by parole officers who provided the Board with case histories, parole plans and reports based on ‘institutional conduct and industry’ (Mathews, 1959, p. 24). A further innovation was the establishment of the youth training centre order in 1965 which enabled courts to send persons convicted in adult courts to serve time in a youth training centre. The first of its kind in Australia, it arose from ‘the desire to promote

rehabilitative rather than punitive policies, particularly for young offenders’ (Freiberg et al., 1996, p.32). Within the Victorian machinery of government, other developments also signified changing attitudes to prisons and their functions. Prisons became the responsibility of the Social Welfare Branch within the Chief Secretary’s Department in 1960, before transferring to the newly created Social Welfare Department in 1970 (PRO, n.d.). However, despite these and other developments, the focus within Victoria’s generally antiquated prisons continued to be on punishment rather than rehabilitation. The highly unionised prison workforce was organised by the Victorian Public Service Association (VPSA),<sup>1</sup> which enjoyed a close relationship with the government of the day after disaffiliating from the labour movement in the 1950s. During this period, Victoria was led by long-serving Liberal Premier Henry Bolte,<sup>2</sup> whose retirement in August 1972 followed a prolonged period of unease about the state of prisons in Victoria amongst stakeholders – especially prison reform groups – which escalated after Australia’s last hanging in 1967 of Ronald Ryan (Finnane, 2008).

Bolte’s replacement by the more progressive Rupert Hamer signalled the beginning of a new approach to prisons management in Victoria. Only months before Bolte’s departure from political life, Hamer (who was Chief Secretary at the time) secured the appointment of Kenneth Jenkinson, QC to chair a Board of Inquiry, to ‘investigate allegations of brutality and ill-treatment of prisoners’ in Pentridge prison in the wake of riots at that prison (Freiberg et al., 1996, p.33). Jenkinson’s Inquiry (1973) was given many accounts of poor conditions in Victorian prisons, resulting in findings critical of prison discipline, warder conduct, and harsh treatment of prisoners especially in Pentridge’s high security H Division. The Jenkinson report, which recommended that urgent improvements be made to Victoria’s prisons, was delivered against the backdrop of a community seeking ‘alternatives to imprisonment on humanitarian, fiscal and utilitarian grounds’ (Freiberg et al., 1996, p. 33). One recommendation from the report was to constitute a Prisons Advisory Council (PAC) to advise on policy in relation to the custody, care, education, discipline, training and treatment

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<sup>1</sup> Since subsumed into the Community and Public Sector Union (CPSU)

<sup>2</sup> The Liberal Party of Australia is a centre-right party.



of prisoners, and to report on matters referred by the Minister (Social Welfare Department, 1974). Established in 1974 with Jenkinson as Chair, the PAC complemented the role of the recently created Victorian Ombudsman, whose responsibilities included the investigation of complaints relating to prisons. During this period low prison numbers enabled the closure of two prisons and capital punishment was abolished.

A change in government in 1982 with the election of the centre-left Cain Labor Government led to a major review of Victoria's prison system that concluded the prison system was long overdue for redevelopment. As a result, the Office of Corrections (OOC) was established in August 1983 with its Director General assuming the powers of a Chief Administrator (or permanent head). Responsibility for juvenile correctional services and institutions remained with the Department of Community Welfare Services (PRO, n.d.). The following year the *Corrections Master Plan* (OOC, 1983) made further calls to modernise the prison system and recommended the construction of new prisons to address the growth in prisoner numbers. An unprecedented period of prison building followed. Tarrengower Women's Prison opened in January 1988, followed by the Metropolitan Remand Prison in April 1989, the high-security Barwon prison in January 1990 and Loddon medium-security prison in August 1990. But by 1990 the parlous state of the Victoria's finances, which led to a double downgrading of the state's credit rating, increased the cost of borrowing (Hayward & Salvaris, 1994) and effectively put an end to the government's prison infrastructure program. The then Premier ruled out privatisation as an option (VACRO, 1989), even though many of the remaining prisons were extremely outdated and over-crowded. One of these, the panopticon-modelled Pentridge prison, built over 150 years earlier, was still in operation despite its inadequacy as a prison facility and archaic prisoner conditions.

Apart from the building of new prisons, reform within Victoria's prisons proceeded fitfully in the 1980s, hampered by an absence of political will to challenge the power of significant stakeholders and their industrial representatives (Lynn & Armstrong, 1996). One example of prison reform, the short-lived rehabilitation-focused 'Unit Management' program (OOC, 1990), challenged the entrenched prison officer culture which was fiercely resistant to change. The prison officers of the time 'saw the liberalisation of the prison routine and discipline as a



reduction of their authority and often took industrial action to retain such authority’ (Lynn & Armstrong, 1996, p.157).

The moves to reform and modernise prisons in Victoria in the 1980s took place against the backdrop of the development of *Minimum Standard Guidelines for Australian Prisons* first published in 1978 (CSAC, 2018) These guidelines drew on the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN, 1955). Subsequent versions incorporated community corrections and the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The guidelines were rebranded as the *Guiding Principles for Corrections in Australia* in 2018 by which stage they had been informed by a range of internationally accepted rules, standards and practices including the ‘Mandela Rules.’ The *Principles* represent a national intent around which each Australian state and territory will develop its practices, policies and performance standards that are ‘fit for purpose in each environment’ (CSAC, 2018., p.27). However, the first iterations of the Guidelines were not comprehensive, nor were there any incentives for governments to implement them. There was little evidence of their implementation in Victoria pre-1990, but over time these standards came to play a critical role in subsequent administrations when it was necessary to specify in measurable terms prison services and facilities standards for the purposes of service agreements and contracts.

The developments in Victoria during the 1970s and 1980s reflected broad trends across Australia when a raft of legislation aimed at achieving improved prisoners’ rights and enhanced accountability of public institutions was enacted (Neave, 1998; Galligan, 1996). Despite some attempts at reform, the prison system continued to attract criticism – accountability was often deficient, performance indicators were absent, costs were high (Sands & Hodge, 2014), and conditions were questionable with mostly non-enforceable minimum service delivery standards (Sands et al., 2019).

## The Victorian prisons privatisation project

When the ‘radically conservative’ (Freiberg et al., 1996, p.1) Kennett Government<sup>3</sup> was elected in the Victorian state election in October 1992 its agenda was to return the state to its AAA credit rating, implement major industrial relations and workplace reforms, reduce the size and scope of the public sector, and make public services cheaper, better and more accountable (Alford & O’Neill, 1994). The incoming government’s control of both houses of the Victorian Parliament enabled it to implement a series of major reforms leading to a massive restructure of public sector. The new Premier’s enthusiasm for public sector reform reflected his unwavering faith in markets and the benefits of competition and contracts, consistent with neo-liberal economic theory. The Kennett Government was in part influenced and emboldened by reforms implemented in the United Kingdom (UK) and New Zealand (NZ). It was also significantly influenced by the view that the role of government in the provision of public services was to ‘steer’ and not to ‘row’, metaphors gleaned from the US bestseller *Reinventing Government* (Osborne & Gaebler, 1993).

Six days after its election the Kennett Government appointed a Commission of Audit, the first of its kind in Australia, with a broad charter to review the condition of the State’s public finances (Alford & O’Neill, 1994). Specifically, its role was to ‘recommend policies, management reforms and other measures to improve efficiency, effectiveness and the state’s financial position, and to recommend measures to safeguard against the future recurrence of policies and practices likely to have adverse effects’ (Officer, 1993, p.211). The Commission of Audit recommended that Government should focus on core functions such as developing policy, allocating resources, specifying services, setting standards and monitoring regulation, and that it should not deliver services (Officer, 1993).

The reform principles identified in the Commission of Audit were subsequently expressed in operational terms by the Management Improvement Initiative (MII) which identified the prerequisites of public sector reform as: (i) a focus on clear responsibility and accountability for results, (ii) empowering consumers, (iii) minimising bureaucracy, (iv) a preference for

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<sup>3</sup> The new government was a coalition of the right of centre Liberal Party and the right-wing National Party.



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market mechanisms, and (v) professional and business-like management of government agencies (Government of Victoria 1993). In combination, the Commission of Audit and the MII paved the way for the privatisation of many government services through outsourcing, as well as the sale of government assets. The result was across the board market testing and a comprehensive shift of services from the public sector to the private sector. The Commission of Audit and the MII were consistent with the National Competition Policy (NCP) in which the national and state governments worked together to improve the competitiveness of the Australian economy through a series of microeconomic reforms. These included the removal of government monopolies and the introduction of the principle of competitive neutrality between the public and private sectors (Hilmer, Rayner & Taperell, 1993).

The first stage of Victoria's prisons privatisation project began when the Kennett government introduced comprehensive market related reforms to the state's prison system. Prior to this development several correctional programs, including prisoner industries, medical, dental and welfare services, education, recreation and personal development programs, had already been outsourced to a range of for-profit and not-for-profit providers. The Kennett government accelerated this trend with the *Corrections Management Bill* in March 1993 which foreshadowed stronger outsourcing of correctional services and programs, including prisoner transport, court security and hospital services. Significantly, the Bill also made the distinction between the 'ownership' and 'management' of prison facilities, that is, between the bricks and mortar of the prisons and their services. In December 1993 expressions of interest were sought for three new prisons to be built as design, construct, finance and manage (or DCFM) projects to replace Pentridge Prison and Fairlea Women's Prison. Under the *Infrastructure Investment Policy for Victoria*, the 'full service' contracts for these new prisons would make private contractors responsible for both correctional and accommodation services, with monitoring the responsibility of Corrections Victoria. In October 1994, amendments to the *Corrections Act* allowed the minister responsible for prisons to enter into agreements for the construction of prisons by the private sector. To support the impending introduction of privately operated prisons in Victoria, the first prison management standards were developed and published in 1995 (women) and 1996 (men) (DOJ, 2014).

Victoria's first privately designed, financed, built and operated prison, the Deer Park Metropolitan Women's Correctional Centre (now the Dame Phyllis Frost Centre), opened in



August 1996. A second privately managed prison, and the first privately operated men's prison, Fulham Correctional Centre, opened in March 1997, and a third private prison, Port Phillip Prison, commenced operations in September 1997. With these new prisons, the proportion of prisoners housed and managed by the public sector in Victoria decreased from 100% to 55% in the space of three years (PC, 1999).

The election of the Bracks Labor government in late 1999 marked the commencement of a new stage in the privatisation of prisons in Victoria. The incoming government's intentions were outlined in *Partnerships Victoria*, announced in June 2000 in the aftermath of an Audit Review of Victorian government contracts (Russell, Waterman & Seddon, 2000) and a Coronial Inquiry into the deaths of five prisoners at the privately run Port Phillip prison. The introduction of *Partnerships Victoria* had major implications for prisons privatisation, emphasising: (1) value for money; (2) retaining government responsibility for delivery of core social functions; (3) acceptance of a range of partnership models; (4) rigorous procurement processes; and (5) protection of the public interest as assessed against a broad range of criteria. Under this policy, the Bracks government entered into Public Private Partnerships (PPPs) to build new prisons, including the Marngoneet Correctional Centre and the Melbourne Remand Centre at Ravenhall, both of which opened in 2006 and together accounted for approximately one third of the male prisoner population (Corrections Victoria, 2018). The contracts for these PPPs were for 15 years, with competitive re-tendering of service provision every seven years, and included the design, construction and financing of the facility, as well as the delivery of limited services such as maintenance and security of facilities (English & Baxter, 2010). Significantly, the contracts avoided the controversial private sector management of prisoners.

The Bracks government's more pragmatic approach to managing the prison system was also evident in its decision to take back control of the Deer Park Metropolitan Women's Correctional Centre (MWCC) from Corrections Corporation Australia (CCA) in October 2000. This followed a highly unfavourable report by the Victorian Corrections Commissioner on the management of the prison. Ownership and management of the prison was subsequently transferred to the public sector at a cost of \$20.2 million (Andrew, 2007).

The third stage of prisons privatisation in Victoria followed the adoption of the National Public Private Partnership Guidelines whose objectives were 'to maximise the efficiency of

infrastructure procurement, reduce public and private sector PPP procurement costs and remove disincentives to participation in the infrastructure market’ (DIRD, 2008, p.v). The guidelines had the ancillary aim of consolidating the PPP guidance material of individual Australian jurisdictions to provide a unified national framework (DIRD, 2008). The Ravenhall Correctional Centre, which opened in 2017, was delivered under these guidelines.

#### Case Study – Ravenhall Correctional Centre

The privately managed Ravenhall Correctional Centre (operating capacity 1,000 prisoners) is the first privately managed prison to open in Victoria in 20 years when it opened in October 2017. Designated as a full service public private partnership (PPP), GEO Consortium was contracted to design, construct, finance, maintain and operate the facility for 25 years. The prison, which features a campus-style layout with a mix of single and double-storey structures, has the express purpose of creating ‘innovative’ programs and interventions that have an overarching goal of ‘successful and lasting reintegration and reducing re-offending’ for each prisoner (GEO, 2017, p. 2). Prison services are organised around a ‘Continuum of Care’ (GEO, 2017, p.2) that begins with reception and proceeds through induction and orientation, assessment, intervention, and release preparation to post-release support, with the objective of supporting prisoners to break free from the cycle of re-offending.

The prison has seven stated areas of focus:

1. Relevant services to youth
2. Understanding and targeting causation
3. Understanding and integration
4. Utilising strength of Aboriginal culture
5. Re-imagining how reintegration works
6. Continuum of care
7. Maximising the rehabilitative potential of the sentence

Six external organisations partner with GEO as the prison’s managing authority. The YMCA responds to the complexities of younger prisoners. Forensicare, (the Victorian Institute of Forensic Mental Health), provides recovery-oriented specialist mental health care and treatment. The Gathering Place, an indigenous not-for-profit which provides support services



and programs to the Aboriginal and Torres Strait Islander community in the Western Melbourne Region, addresses the specific needs of Aboriginal prisoners. Melbourne City Mission provides pre- and post-release integration services. The Kangan Institute, a government funded technical and further education provider, delivers modularised education and training programs, and Correct Care, a private health services provider specialising in correctional environments, provides healthcare for prisoners (GEO, 2017).

A preview of the prison prior to its opening highlighted the prison's facilities, drawing attention to 'a special firepit where traditional ceremonies can be held for the prison's Aboriginal population', basketball courts, gym equipment and table tennis tables to provide 'some relief from boredom', and facilities for prisoners to gain skills in baking and screen printing (Cowie, 2017).

### Assessing the impact of privatisation upon the social welfare function of prisons

In this paper we are seeking to assess the impact of privatisation as an instrument of social welfare provision, using the case of prisons privatisation in Victoria, Australia. Our focus therefore is not on some of the broader debates usually associated with privatisation, such as costs or performance in terms of contractual obligations. This has been reported previously (see, for example, Andrew et al., 2016 and Sands et al., 2019). Instead, we are concerned with the effect of privatisation upon the social welfare function of prisons within the context of Victoria's hybrid prison system. However, the very nature of privatisation – in which organisations within the private sector assume roles formerly undertaken by government – presents considerable challenges to any such assessment. These relate firstly to the objectives of privatisation, and secondly to provisions within the contracts between government and third parties. The objectives of privatisation are generally summarised as improvements to efficiency (lower costs), effectiveness (better services) and accountability (Sands et al., 2019). One of the objectives of Victoria's prisons privatisation project was to strengthen the vertical accountability of prison managers to government (i.e. ministers) (Daly 1997). The government's objective was not to improve accountability to other stakeholders such as prisoners, their families or the public more generally. This emphasis on upward accountability



had implications for the capacity of those outside government to access information relating to the operations of the privately managed prisons. Commercial in confidence clauses in the contracts between the Victorian Government and the private firms responsible for the three private prisons have exacerbated this state of affairs. These clauses effectively mean that much of the data relating to outcomes against performance targets for Victorian prisons cannot be accessed by the public, thus compromising accountability. The same provisions have also been applied to redact the contents of the contracts that have been made publicly available to protect matters considered to be confidential (Andrew et al., 2016, p.40). As a consequence, many aspects of the operations of the prisons concerned cannot be properly assessed.

With these constraints in mind, we have elected that our assessment of the impact of privatisation upon the social welfare functions of Victorian prisons should be informed by the Productivity Commission's (PC) annual *Report on Government Services* (ROGS) first published in 1995. The Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. ROGS provides comprehensive information on the equity, effectiveness and efficiency of government services across the national, state and territory governments in Australia. Our appraisal is constructed from ROGS performance data for six quality indicators which serve as proxies for evaluating services relating to, or that reflect upon, the social welfare functions of prisons – assaults in prison, hours out-of-cell per day, vocational education and training, employment, unnatural deaths in custody and escapes from prison. In addition, we use ROGS data on the rate of return to prison within two years (or recidivism) within the Victorian prison system.

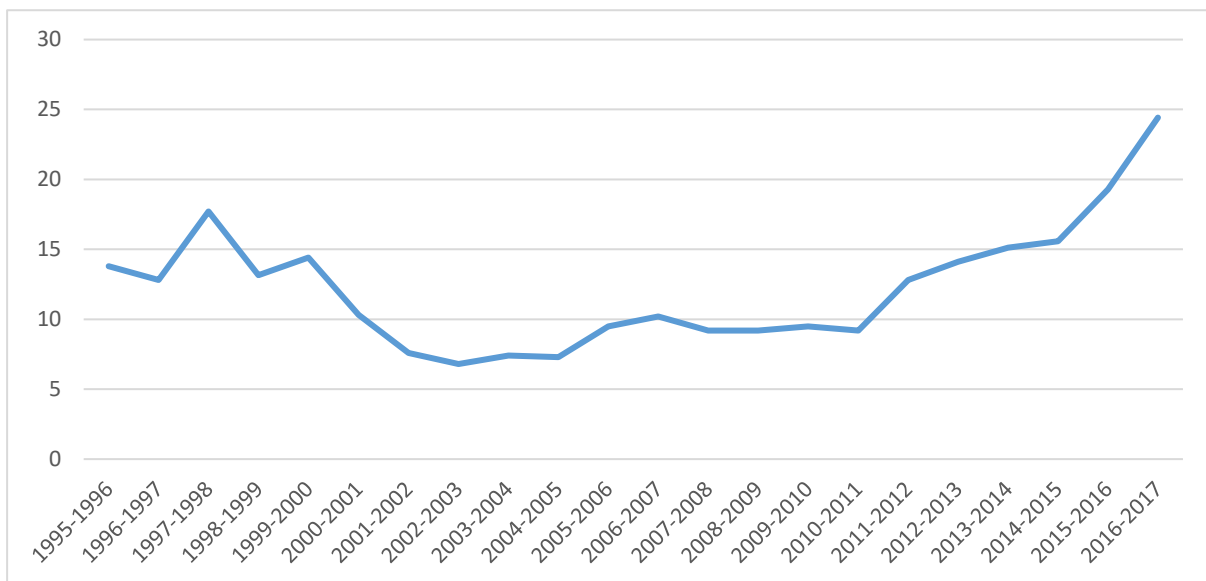
We accept that other indicators of service quality might have been chosen. As Solomon (2004) argues, it may not be possible to identify the most appropriate performance indicators for a service as complex as prisons, since there may not be agreement on the most important goals or measures, and there may be several ways of measuring performance against a goal.

Further, although ROGS is the authoritative source of national performance data for prison services, we acknowledge that there are limitations to the data. First, and most critically, the data collected is aggregated across the entire prison system in each state and territory, meaning in the case of Victoria that it is not possible to distinguish between the data relating to privately

managed prisons and data relating to publicly managed prisons for five of the six quality indicators,<sup>4</sup> as well as the data relating to re-offending. Second, there are gaps (some of them significant) in the data collected. These have been identified in the Figures below. And third, the data relating to re-offending may underestimate the proportion of offenders who have repeat contact with the criminal justice system as it only reflects those people whose re-offending has come to the attention of authorities and is defined by restricted time frames for measuring re-offending (one year for police proceedings and two years for return to corrective services). The data for the seven proxies for evaluating services relating to the social welfare functions of prisons are now discussed.

*Assaults in prison*

**Figure 1: Assaults in Victorian prisons per 100 prisoners 1996-2017\***



Source: Productivity Commission. 1997-2018. *Report on Government Services*.

\*Data not available before 1995/96

That assaults in prisons should occur is not unexpected, since prisons are ‘complex and high-risk environments with constant threats to safety and security’ (VAGO, 2018, p.45). The rate

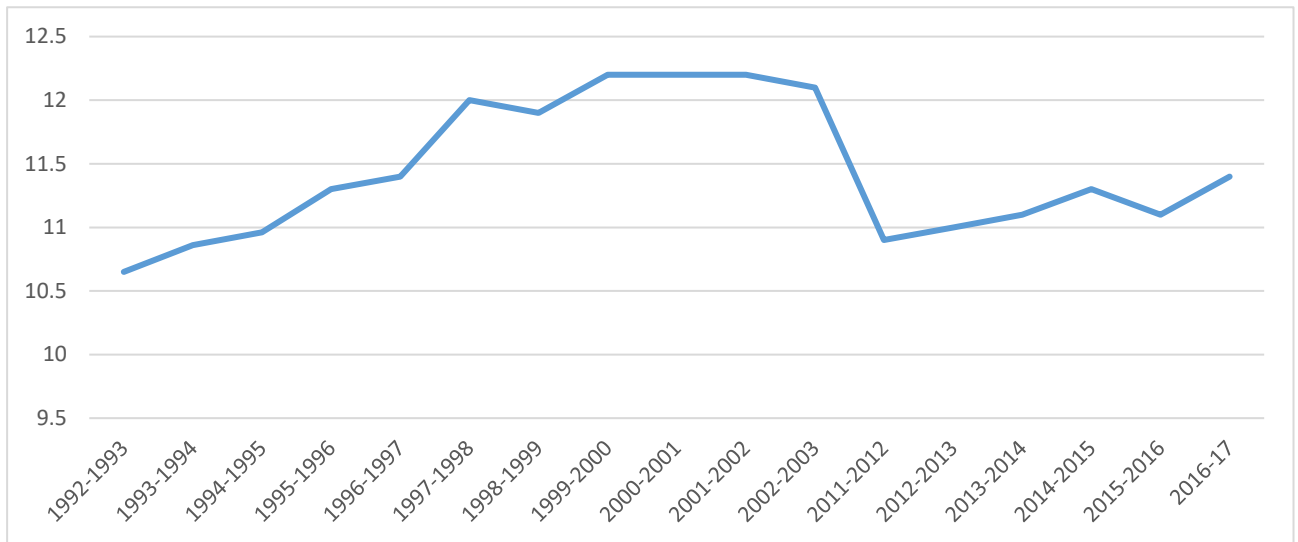
<sup>4</sup> The data for the sixth quality indicator, escapes from prison, is not disaggregated by ROGS but the responsible Victorian government agency, the Department of Justice and Regulation, identifies the prisons from which escapes have been made (DJR, 2018).



of assaults in prisons ‘is an indicator of governments’ objective of providing a safe, secure and humane custodial environment’ (PC, 2019, 8.19) and thus clearly links to the social welfare function of prisons. The *Guiding Principles for Corrections in Australia* (CSAC, 2018) identify the safety and security of prisoners and offenders as a key outcome for correctional systems. Victoria’s *Correctional Management Standards for Men’s Prisons in Victoria* (Corrections Victoria, 2014) identify the number of assaults on prisoners by staff, the number of assaults on staff or other persons by a prisoner, and the number of alleged assaults on prisoners by staff as performance indicators. Interestingly, the *Standards* do not include prisoner on prisoner assault as a performance measure, even though this is reported upon by the Department of Justice and Regulation (DJR) in its annual report (DJR, 2018). As Figure 1 illustrates, apart from a spike in 1997/98, there was a general downward trend in assaults (prisoner-on-prisoner, prisoner-on-officer, and serious and other assaults) in the Victorian prison system until 2002/03. From this point, an upward trend is evident and the greatest rise has been since 2010/11, where the assault rate more than doubled from 9.2 assaults per 100 prisoners in 2010/11, to 24.2 assaults per 100 prisoners in 2016/17. The growth in Victoria’s prison population during the period under review, with average numbers rising from 2,271 in 1992/93 to 6,853 in 2016/17, (PC, 1995, 2018) may help to explain this sharp increase. At the same time, Victoria’s prison population has become more and more characterised by mental health conditions, drug and alcohol issues, and chronic illnesses, while ‘young prisoners, prisoners with disabilities and prisoners of Aboriginal and Torres Strait Islander background are over-represented’ (VAGO, 2018:7). While the incidence of assaults has risen since the introduction of private prisons, it is likely that both the exponential increase in prison numbers and the increasingly complex nature of the prisoner population contributed to the mounting incidence of assaults recorded since 2010/11. Hours out-of-cell per day (see Figure 2 below) may also have been a factor.

*Time per day out-of-cell*

**Figure 2: Average hours per day out-of-cells in Victorian prisons 1992/93 to 2016/17\***



Source: Productivity Commission. 1995-2018. *Report on Government Services*.

\* Data missing from the period between 2003/04 and 2010/11

The amount of time a prisoner spends out of his or her cell each day is an indicator of how well the social welfare function within a prison is operating. The periods during which prisoners are not confined to their cells or units provide them with the opportunity to participate in a range of activities that may include work, education and training, wellbeing, recreation and treatment programs, the opportunity to receive visits, and interacting with other prisoners and staff (PC, 2019, 8.13). The significance of time per day out-of-cell is particularly important from a prisoner’s perspective. Being locked in a cell, especially an overcrowded one with possibly 2-3 other prisoners for 13-14 hours per day, contributes to frustration and aggression within the prison environment and takes away opportunities for rehabilitation. However, as Figure 2 reveals, privatisation does not appear to be associated with a sustained increase in time spent out-of-cells in Victorian prisons, even though contracts such as that for the Men’s Metropolitan Prison specified that:

- (d) [p]risoners have a schedule which each day provides a minimum of twelve hours out of their cells, six hours work (five days a week) for sentenced Prisoners and

participation in a range of programs and activities including a minimum of 4 hours accredited education; (Blake Dawson Waldron 1996: Section 5.2)

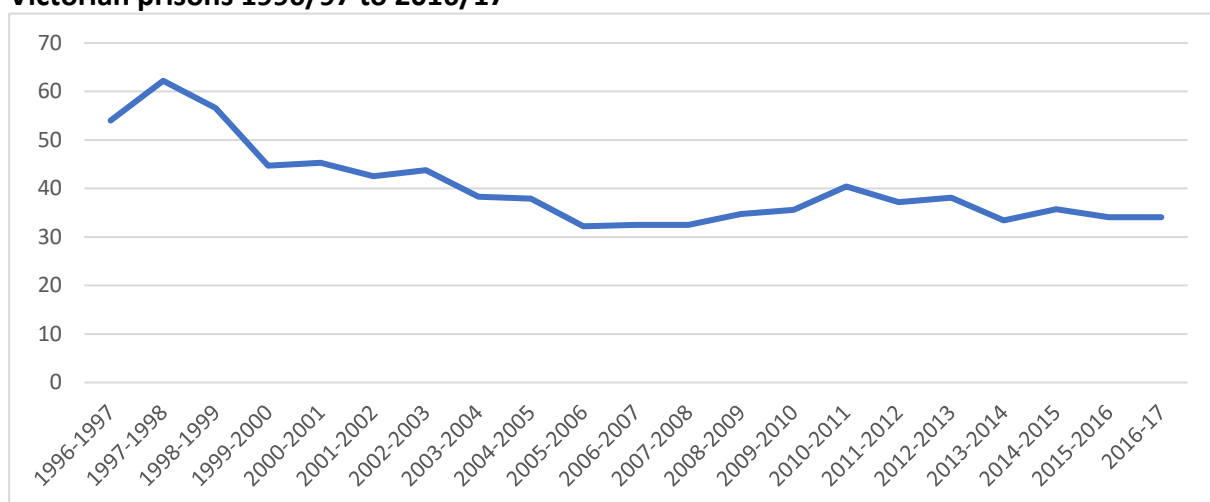
In contrast to the contract for the Metropolitan Men’s Prison, the *Correctional Management Standards for Men’s Prisons in Victoria* require only that prison management ensure that prisoners have a schedule that provides:

1) the maximum number of out of cell hours which is consistent with the routine of the prison/unit in which they are housed, as well as the prisoner’s individual regime. The minimum number of out of cell hours must be at least one hour per day and should be 12 hours per day except where special regimes are specifically authorised by the Commissioner, or where short-term circumstances render the provision of 12 hours out of cell time impracticable. (Corrections Victoria, 2014, p.33).

Between 1997/98 and 2002/03, concurrent with the implementation of the mixed public-private prison system in Victoria, the target of 12 hours out-of-cells was mostly met. It is unclear how many hours out-of-cells prisoners were granted between the years 2003/04 and 2010/11 as Victoria did not report data for this period. Since 2011/12, when Victoria began reporting this feature again, out-of-cell time has consistently been under the 12 hours stipulated in the contracts for private prisons, with 10.9 hours in 2011/12 increasing to 11.4 hours in 2016/17.

### *Education and training*

**Figure 3: Percentage of eligible prisoners undertaking vocational education and training in Victorian prisons 1996/97 to 2016/17\***



Source: Productivity Commission. 1999-2018. *Report on Government Services*.



\* Data missing before 1996

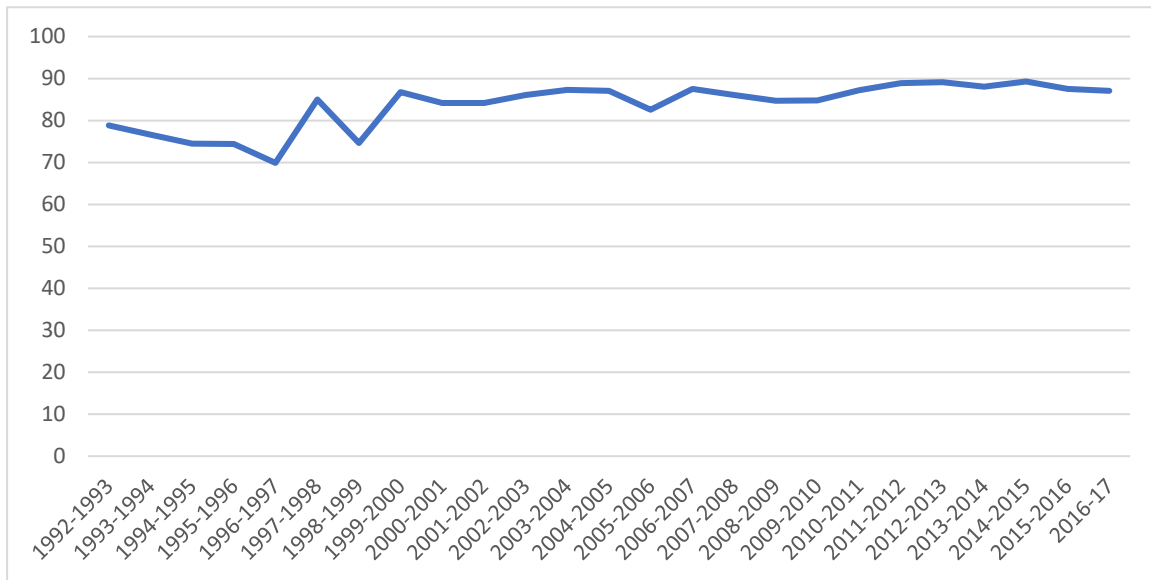
Education and training are acknowledged keys to prisoner rehabilitation and successful reintegration into the community. As ROGS states, they are indicators of ‘governments’ objective of providing programs and services that address the causes of offending, maximise the chances of successful reintegration into the community, and encourage offenders to adopt a law abiding way of life’ (PC, 2019, 8.10). High or increasing education and training participation rates of prisoners are thus desirable (PC, 2019). The original contractual arrangements between the government and the private prison operators stipulated that:

[t]he Contractor must ensure that all Prisoners are given opportunities to develop skills necessary for effective participation in the labour market after their release. The Contractor must provide accredited education and training programs which: (a) provide not less than an average of 4 student contact hours of accredited education and training per Prisoner per week (Blake Dawson Waldron, 1996, p.255).

The *Correctional Management Standards for Men’s Prisons in Victoria* do not specify how many hours of vocational education and training a prisoner should have each week. Instead, that require that ‘prisoners to be constructively engaged for a total of 30 hours per week in a range of industries, prison services, community work, offending behaviour and drug and alcohol programs, reintegration programs, vocational education and training programs and /or structured orientation programs which have been approved by the Commissioner’ (Corrections Victoria 2014, p.33). Figure 3 indicates that the percentage of eligible prisoners in Victoria undertaking vocational education and training has fallen significantly since the introduction of privatised prisons. During the period between 1996/97 to 1999/00 the rate was between 45% and 62%. Since 2003/04 the rate has remained at or below 40%. There is no clear explanation for the decline in this rehabilitative activity, although it may also be related to the much increased prisoner numbers experienced over this time.

*Employment*

**Figure 4: Percentage of prisoners employed in Victorian prisons 1992/93-2016/17\***



Source: Productivity Commission. 1995-2018. Report on Government Services.

As the Productivity Commission observes, ‘High or increasing percentages of prisoners in employment are desirable, as addressing the limited vocational skills and poor employment history of some prisoners has been identified as a key contributor to decreasing the risk of re-offending’ (PC, 2019, 8.13). Employment within a prison thus has a clear rehabilitative purpose. It can also:

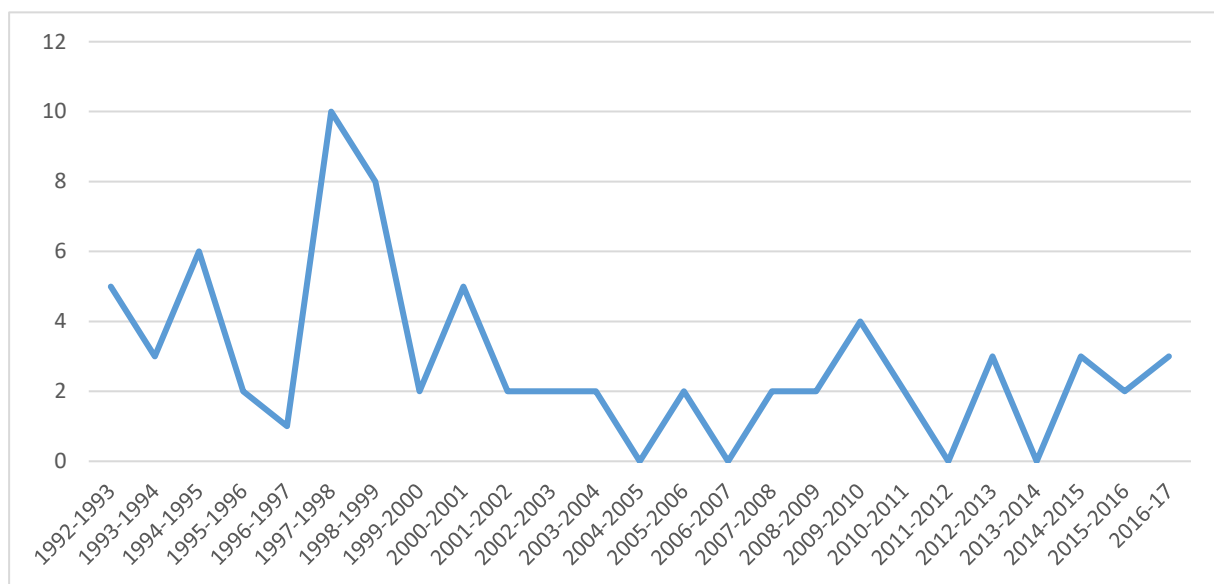
... facilitate reparation to the community through work which provides benefits to the community and is performed in prison as well as providing Prisoners with work habits and work skills which will assist them in finding employment upon release (Blake Dawson Waldron, 1996, p.26).

Prisoner employment was encompassed in the *Correctional Management Standards for Men’s Prisons in Victoria* which stated that prisoners should be engaged for a total of 30 hours per week in a range of activities that included industries and prison services (Corrections Victoria, 2014). Typically, prisoner employment is associated with maintaining prisons, and includes cooking, cleaning and providing services for the daily running of the prison. As noted in Figure 4, the employment rate in Victorian prisons has been consistently

above 70% in the period under review. Since 1999/2000 it has been above 80%, suggesting that this is one area of performance relating to the social welfare function that has improved, albeit modestly, with the introduction of privately managed prisons.

*Apparent unnatural deaths*

**Figure 5: Deaths from apparent unnatural causes in Victorian prisons 1992/93-2016/17**



Source: Productivity Commission. 1995-2018. *Report on Government Services*.

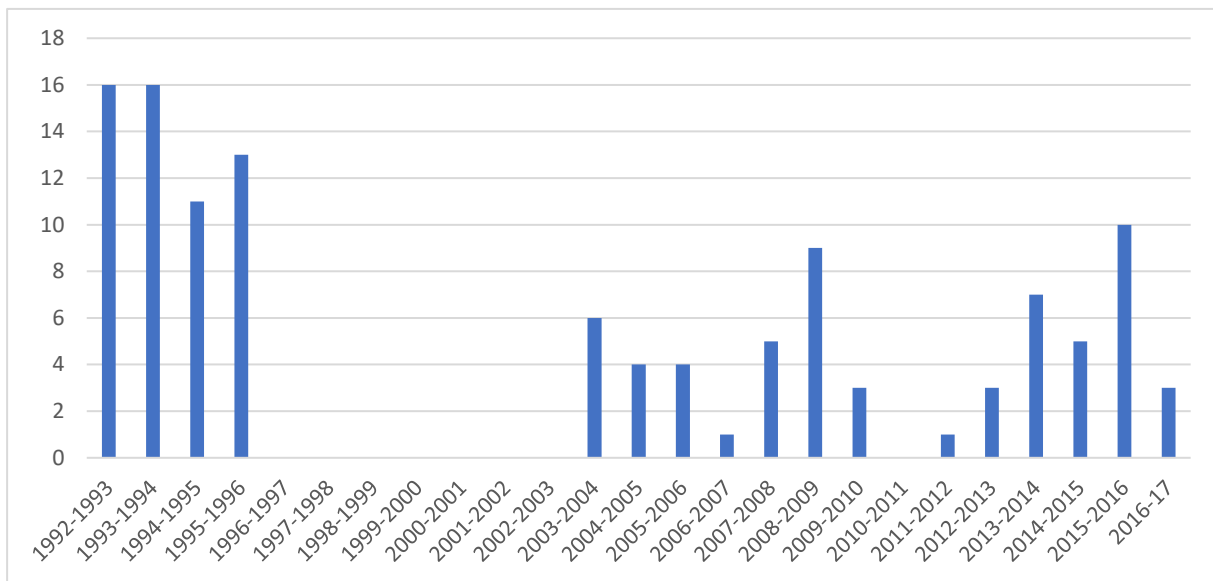
The incidence of ‘apparent unnatural deaths’ is an indicator of governments’ performance against the objective of providing a safe, secure and humane custodial environment (PC, 2019, 8.16). The *Correctional Management Standards for Men’s Prisons in Victoria* stated that an overall service outcome or condition that had to be achieved and maintained was that systems, as far as possible, prevent prisoner deaths due to unnatural causes (Corrections Victoria, 2014). Figure 5 refers to deaths attributed to violence, drugs, and suicide, but not deaths from natural causes. The spike in the apparent unnatural number of deaths in 1997/98 and 1998/99 may be attributed to the opening of both Fulham and Port Phillip prisons with five deaths at the latter alone.<sup>5</sup> Over time, the figures for this performance measure have

<sup>5</sup> The deaths were the subject of a Coronial Inquiry which in turn led to the Independent Investigation into the Management and Operation of Victoria’s Private Prisons (Kirby et al., 2000).

mostly returned to pre-privatisation levels. Given that prison numbers have nearly tripled in the period under review, the data suggest that this is an area where the performance of the prison system has improved since the prisons privatisation project began.

*Escapes from prison*

**Figure 6: Escapes from Victorian prisons, 1992/93-1995/96 and 2003/04-2016/17\***



Source: Productivity Commission. 1995-2018. *Report on Government Services*.

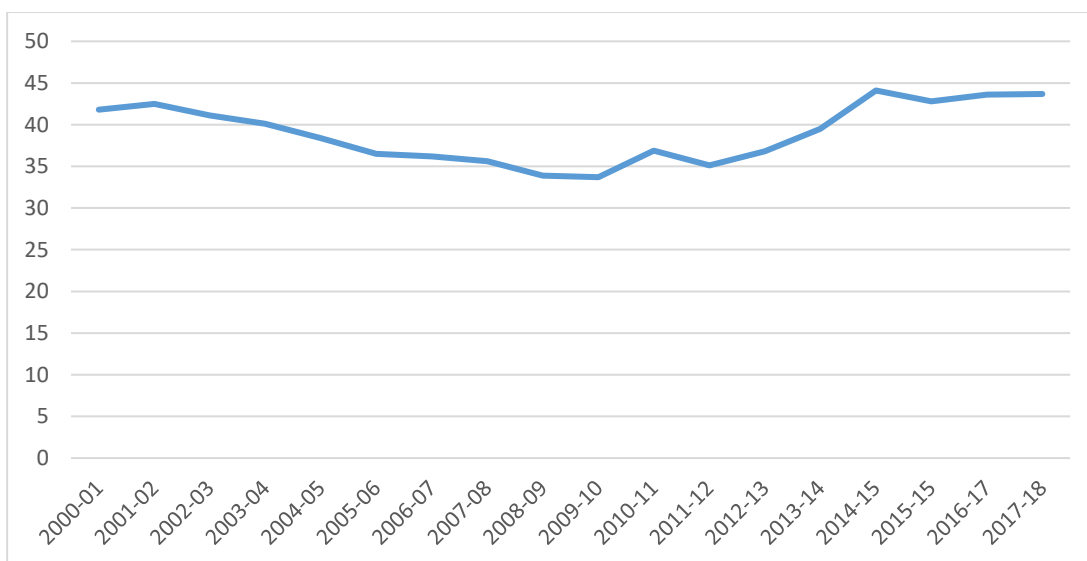
\* Data missing during the period between 1996/97 and 2002/03

For government, prison escapes are possibly the most publicly sensitive measure of prison performance. The *Correctional Management Standards for Men’s Prisons in Victoria* state that each prison security system should ensure the protection of the community by minimising the risk of prisoner escape and list the number of prisoner escapes as the performance indicator for this standard. The Department of Justice and Regulation designates escapes from prison as an ‘objective indicator’ to monitor the department’s progress in achieving its objectives (DJR, 2018). During the periods recorded in Figure 6, there were 106 escapes from low security-open prisons and 14 escapes from high security prisons. At first blush, escapes from prison may not seem to be strongly related to the social welfare functions of prisons. However, the proportion of high security prison beds and high security prisons, from which escape is far more difficult, has risen since the building of new prison infrastructure began in

the mid-1990s, and this may provide a partial explanation for the reduction in escapes after 2003/04. Prisoners are now far more likely to serve time in a large high or medium security prison, rather than a smaller low security prison in which the general environment may be more conducive to rehabilitation and successful reintegration into the community. Regardless of the reasons, the number of escapes from Victorian prisons has clearly reduced dramatically over a period when the prison population has grown considerably. Sixteen prisoners out of 2,271 prisoners escaped in 1992/93, whereas only 3 prisoners out 6,853 prisoners escaped in 2016/17. In 2017/18, not shown on Figure 6 below, the only escapes were from low security prisons. The extent of this reduction signifies that this aspect of the prison system has improved with the introduction of private prisons.

*Rate of prisoner return to prison within two years*

**Figure 7 Percentage of prisoners released who returned to prison under sentence within two years 2000/01 - 2017/18\***



Source: Productivity Commission. 2000-2018. *Report on Government Services*.

\* Figures not provided prior to 2000/01 as calculation of data collected prior to 2000/01 not consistent with calculation of data collected from 2000/01 onwards.

The rate of prisoners returning to prison is an indicator of how the social welfare functions, and especially the rehabilitative-related functions, of a prison system are working. The *Correctional Management Standards for Men's Prisons* do not explicitly identify re-

offending (or recidivism) as a performance measure, possibly because such a measure is influenced by ‘the broader operation of the criminal justice system’ (DJR, 2018, p.33). Nonetheless, the *Standards* identify activities associated with reducing re-offending, such as opportunities to develop literacy, numeracy, vocational skills and work skills, as performance indicators. The Department of Justice and Regulation, however, nominates ‘rates of prisoner return to prison within two years’ as one of only four ‘objective indicators’ for the key objective of ‘effective management of prisoners and offenders and provision of opportunities for rehabilitation and reparation.’ (DJR, 2018, p.28). As the data submitted to ROGS by the Department have changed since data collection for this performance measure began in 1997, Figure 7 only shows data from 2000/01 onwards as all data since this year have been calculated using the same method and are thus comparable. Figure 7 indicates that a decline in re-offending in the first decade of this century has not been sustained. From a base of 42% in 2000/01, the rate of re-offending dipped to a low of 35% in 2011/12, before climbing to 44% in 2014/15 and remaining above 42% until 2018, which is the last year we have examined. The Department of Justice and Regulation has suggested that the increasing number of prisoners being remanded prior to sentencing has impacted on this measure in the last two years (DJR, 2018).

## Evaluating privatisation as an instrument of social welfare provision in Australian prisons

The experience of prisons privatisation in Victoria over nearly three decades suggests that any attempt to evaluate privatisation as an instrument of social welfare provision within prisons faces considerable challenges. Located at the interface of the criminal justice system and the social welfare system (Jacobs & Steele, 1975), prisons are challenging and complex institutions. In Victoria, an assessment of the prison system is made even more difficult by the lack of transparency that shrouds the operation of the system. As we have noted, when the Victorian government commenced its prisons privatisation project, one of its priorities was to make the prison system and its managers more accountable to government. While vertical accountability has been enhanced through a web of contracts, performance measures and putative sanctions, horizontal or outward accountability to other stakeholders has suffered.



Compounding this situation are the commercial in confidence provisions that thwart public scrutiny of operational performance by private service providers. But this accountability deficit is not confined to the activities of private service providers. Overall reporting within the system is limited and, in some respects, perfunctory. Reporting of prison performance is restricted to the annual *Report on Government Services* and the annual report of the Department of Justice and Regulation, with the latter focusing upon a small selection of ‘objective indicators.’ The data reported by ROGS and the Department are for the most part aggregated across the system, making it impossible to distinguish between the performance of privately and publicly managed prisons. A recent report by the Victorian Auditor-General addressed this issue directly, recommending that the Department of Justice and Regulation ‘improve the transparency of the prison system by reporting on the performance of individual prisons and the system as a whole, against applicable service delivery outcomes and key performance indicators’ (VAGO 2018:12).

An even more significant constraint upon scrutiny of Victoria’s part public/part private prison system is the absence of a transparent and independent body responsible for the monitoring and oversight of the system. Unlike other jurisdictions, who have appointed an independent inspector or regulator of prisons reporting directly to Parliament, (such as HM Chief Inspector of Prisons in the UK and the Inspector of Custodial Services in Western Australia), Victoria has persisted with an in-house monitoring and review process which lacks transparency and accountability to stakeholders outside the corrective services bureaucracy. The Victorian Ombudsman, has drawn attention to accountability issues within the Victorian prison system in a series of inquiries, citing ‘the conflicted role of the Secretary of the Department of Justice having both legal custody of prisoners and being responsible for monitoring the performance of correctional services in Victoria’ (Ombudsman. 2014,129).

Despite these constraints, we reviewed data for seven proxies linked to the social welfare functions of prisons. We accept that other indicators of service quality might have been chosen. As Solomon (2004) argues, it may not be possible to identify the most appropriate performance indicators for a service as complex as prisons, since there may not be agreement on the most important goals or measures, and there may be several ways of measuring performance against a goal. Despite these concerns, we chose to focus upon those aspects of

prisoner experience which link most clearly to the social welfare function of prisons. Of the seven proxies we used to measure performance, the data for four (assaults in prisons, hours out of prison cells, vocational education and training opportunities, and prisoner return to prison within two years) did not indicate that performance has improved since prisons privatisation began in the 1990s. Data for the other three proxies, (unnatural deaths, employment in prison and escapes from prisons), suggested that improvements had been achieved within Victoria's hybrid prison system. There are two interpretations of this result. Advocates for the changes to the prison system would argue that conditions in all cases have improved or are no worse. Critics would conclude that in the majority of criteria there has been no improvement.

Just as important, however, is that the data for nearly all proxies were incomplete, inhibiting a comprehensive assessment of how the system has performed. In every case, though, it is impossible to assign responsibility for the changes observed to privatisation alone, or to quarantine the changes from other factors such as Victoria's population growth and changes to bail, parole and sentencing laws aimed at keeping offenders in prison (VAGO, 2018). The combined effect of population growth and changes to law affecting offenders has seen Victoria's increasingly complex prisoner population surge, with the 2019/20 State Budget allocating an additional AU\$1.8 billion to increase prison capacity and build the state's largest prison (Carroll, 2019).

So what can we conclude in relation to privatisation as an instrument of social welfare provision? Privatisation is not new to Victoria's prison system. Victorian prisons were using private (that is to say, for-profit and not-for-profit) service providers for services that included welfare, education, employment, recreation and personal development, well before the prisons privatisation project began in the 1990s. What changed in Victoria was the introduction of privately managed prisons and the contracts that underpinned them. Commercial in confidence provisions in these contracts created significant limitations and restrictions upon access to data that preclude an objective assessment of their performance, or the performance of the system of a whole. The social welfare services provided to prisoners under these contracts may well be 'world class' as one private provider claims, (GEO 2017), but it is impossible to verify such claims in the absence of full access to the relevant performance data. While the current data



access arrangements prevail in Victoria, a more informed assessment of how prisons privatisation has performed as an instrument of social welfare provision will have to wait.

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