

The Inspector's Overview

QUALITY, ACCOUNTABILITY AND VALUE FOR MONEY
AT WESTERN AUSTRALIA'S PRIVATE PRISON

INTRODUCTION

This is the report of an announced inspection in November 2010 of Acacia Prison. The State's first, and currently its only privately operated prison, Acacia has now been operating for around ten years. From May 2001 to May 2006, the contractors were AIMS (Australasian Integration Management Services). Under AIMS, the prison met many of its key performance benchmarks but there were a number of performance and accountability issues.ⁱ As the prison was not meeting its potential, the then Labor government decided to re-tender the contractⁱⁱ and in May 2006, Serco took over the prison's operations. This is the second report by this Office on Acacia since Serco took over.

Given that Acacia is approaching its tenth anniversary and that the new 'Young Adults Facility' will be privately operated,ⁱⁱⁱ it is timely to reflect not just on Acacia's performance but also on some broader issues relating to prison privatisation.

PRIVATISATION: CONTRACTING 'IN' NOT 'OUT'

Controversy still surrounds decisions to privatise services which are traditionally the domain of the public sector, and nowhere is the controversy greater than in the context of prisons and other places of custody. This is exemplified by heated debates in New South Wales about the Labor government's decision to transfer Parklea prison from public to private sector operation in 2009.^{iv} And in this State, the 'terrible', 'preventable' and 'foreseeable' death^v of Aboriginal elder Mr Ward in a privately operated prisoner transport vehicle in 2008 brought calls for an end to the privatisation of prisons and other custodial services.^{vi}

However, the Coroner's findings in the case of Mr Ward and also in a number of other cases involving deaths in custody confirm that it would be dangerously misleading to reduce the issue to one of public versus private service provision. First, the Coroner found that Mr Ward's death resulted from a complex intersection of factors. Although he raised concerns about the contractor (then GSL, now G4S) and its staff, he also emphasised that many of the factors related to the actions and decisions of government departments which were outside the contractor's control. In particular, the vehicle fleet was the responsibility of the Department of Corrective Services. It was old, poorly maintained and in need of replacement but the Department's business case to replace the fleet had failed to convince those with control over the State's purse strings. Secondly, a number of other Coronial inquests into deaths in custody have raised concerns about duty of care in the public sector.^{vii}

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- i Office of the Inspector of Custodial Services ('OICS'), *Report of an Announced Inspection of Acacia Prison*, Report No. 19 (March 2003); OICS, *Report of an Announced Inspection of Acacia Prison*, Report No. 32 (March 2006).
- ii It was open to the government to bring the prison into the public sector but it chose not to do so.
- iii The Young Adult Facility will be for 18 to 24 year old males and will be located at the site of the current Rangeview Juvenile Remand Centre: Hon C Porter MLA, Attorney General and Minister for Corrective Services, *Public Private Partnerships for Prisons*: Media Statement (20 January 2010)
- iv The decision was one of the State's Labor government. 'GEO Group Australia' began operating Parklea on 1 November 2009. The government originally proposed also to turn Cessnock prison over to private operation but it has remained in the public sector.
- v Hope AN, Record of an Investigation into Death, Ref 9/09, Inquest into the death of Mr Ward, Coroner's Court of Western Australia (12 June 2009).
- vi The Deaths in Custody Watch Committee has strongly put this view strongly: www.deathsincustody.org.au/
- vii For a recent example, see Hope AN, Record of an Investigation into Death, Ref 33/10, Inquest into the death of Mr Green, Coroner's Court of Western Australia (20 December 2010).

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In terms of this inspection of Acacia Prison and the future expansion of private sector service provision, the most important single aspect of the Ward case was that it reinforced the fact that the State retains the ultimate duty of care even when it enters a contract for services. Put another way, the State can 'contract in' a service but cannot 'contract out' of its ultimate duty of care. For these reasons, it is in everyone's interests for there to be robust monitoring, transparency and accountability mechanisms, not only of the private sector but also of the public sector.

KEY ISSUES

Against this backdrop, four critical questions underpinned this inspection of Acacia:

- **What is the quality of service that is being provided?** This involves numerous questions, including the security of the facility, the safety and wellbeing of staff, the decent treatment of prisoners, and the public interest in reducing rates of recidivism.
- **Is the State receiving 'value for money'?** In an area of human services such as this, 'value for money' should never be equated with 'getting the cheapest price' or 'driving the price down' to bargain basement levels. It should mean establishing strong and clear service delivery expectations; ensuring that the fee that is agreed will allow an efficient service provider to meet those expectations; and establishing mechanisms to ensure that good quality services are in fact received. Questions of value for money inevitably involve some comparison with service quality and costs in the public sector.
- **Is the service provider transparent and accountable?**
- **Are the opportunities for system-wide learning being maximised?** One of the main aims of establishing a privately operated prison was to bring innovation to the Western Australian prison system and to promote system-wide improvement through 'cross-fertilization' between the private and public sectors. After almost ten years at Acacia this is a particularly important theme not only for this Office but also for the government and Parliament.

QUALITY OF SERVICE AND VALUE FOR MONEY

Critics of privatisation commonly claim that the private sector puts profit above responsibilities to prisoners and staff, that it is less concerned with service quality and duty of care than the public sector, and that the State only privatises prison services in order to save money. It is true that Serco makes a profit at Acacia. It is also true that the State – and therefore the taxpayer – reap financial benefits from the current arrangements.^{viii}

However, 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.

viii See paragraphs 2.12 to 2.15.

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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.

In terms of areas for improvement, there are three main issues. First, there have been far too many instances of prisoners climbing onto roofs. The issue is raised in this report but has become even more pressing as incidents have continued over recent months. There have been seven such incidents at different locations in the prison from February 2010 to the time of writing. To date, all the incidents have been resolved without injury but they pose potential risks to prisoners and staff and also disrupt prison routines. Across much of the site, roof access is relatively easy and there is a risk that the number of roof incursions will increase unless 'target hardening' measures are taken. Although not the subject of a formal recommendation, it is incumbent on the Department and Serco to come to a solution.

A second area of weakness, and a long-standing concern, is that there are risks in the maintenance contract being separate from the prison services contract. Fortunately, this is currently the subject of constructive discussions and there is some optimism that the matter will be resolved later this year.

The third main area of concern is that Acacia has difficulty meeting its commitment to providing employment and constructive activities to prisoners. It should be emphasised that this problem is not unique to Acacia and also that the situation has improved since 2008. However, as Serco recognise, there is room for improvement and to that end a new 'core day' structure has been developed.

ACCOUNTABILITY AND TRANSPARENCY

It is no coincidence that the best private prisons are found where there is transparency and where strong external accountability mechanisms are in place. In Western Australia and nationally Acacia sets a benchmark:

- The contract for services is publicly available. It sets clear requirements (including penalties for non-performance) with respect to issues such as security, safety, and the delivery of education, employment opportunities, health services, treatment programs and training. It also provides that part of the fee is only payable if the contractor meets various performance measures.
- The Department of Corrective Services is responsible for monitoring Acacia's compliance with the contract and provides Parliament with annual performance reports against these measures. Over the years the Department has built up, refined and improved its contract monitoring systems and this experience will be invaluable when the new Young Adults Facility comes on line.

- This Office has conducted four formal inspections of Acacia. These inspections examine both the prison's performance (independently of the Department) and the Department's own engagement in the prison. These reports are all publicly available. These formal inspections are supplemented by regular visits to the prison.

It can safely be said that the expectations of the State's public sector prisons are less detailed, less transparent, less clear and less robustly monitored than those of Acacia. And, unlike the private sector, there is no room in the context of a public sector prison to re-tender and to change the operator if performance falls short.

Ideally, mechanisms for external oversight should complement and not replace internal mechanisms. Importantly, we found that Serco itself has some well-developed processes for assessing performance and for promoting continuous improvement. We were also impressed with Serco's ability to provide detailed and prompt evidence to substantiate statements about their costs, achievements and challenges.

INNOVATION AND CROSS-FERTILIZATION

After almost ten years of operation, and with Acacia performing to a high standard across most areas, we had hoped to find evidence of both innovation and cross-fertilization. We did find many examples of innovation on the part of the contractor but concluded that the Department could do more to recognise and encourage innovation and to promote system-wide learning.

There are a number of aspects to this. First, some areas of innovative practice are rewarded through the provision for an 'innovation bonus' which is written into the service agreement. In essence, the contractor makes submissions for this bonus and the Department assesses those submissions. However, we found that very few of the initiatives which formed an innovation bonus submission have been rolled out across the system as a whole.

Secondly, when asked to identify areas of innovation and cross fertilization, the Department simply listed examples from Acacia's innovation bonus submissions. In fact, there are many other areas of innovation and good practice at Acacia which deserve consideration across the system, including the pro-social environment and the approach to case management. Many of these practices do not lend themselves to an innovation bonus submission because they simply reflect the way in which Acacia goes about its business. However, they do present opportunities for system-wide thinking and learning.

Thirdly, system wide reviews and strategic policy development are the prerogative and responsibility of the Department but it is regrettable that Acacia's experience seems often to be put to one side. The most striking and concerning recent example is the Department's 2010 review of health service provision.^{ix} For a number of years, Acacia has operated its health services independently of the Department's health services directorate and has managed to build them up to the stage where, in our view, they are the best in the State. However, the Department limited its review to health services provided through its own

ix M Stevens, *Assessment of Clinical Service Provision of Health Services of the Western Australian Department of Corrective Services*: http://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/hs-assessment-report.pdf. This review was prompted by this Office issuing a 'Risk Notice' in 2009 with respect to health care services across the public prison system and at Hakea Prison in particular.

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health services directorate. This did not preclude reference to Queensland (which was visited) and consultations with staff from the ACT and New South Wales. But there was little or no consultation with Acacia and the report makes no reference to its service delivery models. This is indefensible and an opportunity lost.

Finally, there are times when innovation does not seem to be encouraged. For example, in terms of offender treatment programs, Acacia must offer the suite of programs dictated by the Department (whilst also sourcing a number of additional 'voluntary' programs). Serco is keen to examine alternative programs but the Department's view is that the costs it would incur in terms of clinical governance outweigh the potential benefits. We remain to be convinced of this argument and encourage the Department and Serco to find a way to allow innovation in program delivery.

In summary, there is scope for better system wide learning, both from the private to the public sector and from the public to the private sector.^x

CONCLUSION

Victoria commenced prison privatisation some years before Western Australia but in late 2010, that State's Auditor General reached two stark conclusions. He said that the Victorian Department of Justice was unable to demonstrate (i) that it was receiving value for money from its private prisons and (ii) that the prison infrastructure was being properly maintained.^{xi}

The more robust, ongoing accountability framework that has been established here means that Western Australians can be confident on the first of these points. Acacia Prison is providing value for money: in terms of service standards, it is without doubt one of the best performing prisons in Western Australia, if not the best and it is also providing a financial saving to the State. However, to be confident that the State's asset is being properly preserved, the longstanding maintenance contract issues need to be resolved.

On 15 March 2011, the *Extension and Variation of Acacia Prison Services Agreement* was tabled in State Parliament.^{xii} This confirms what had long been anticipated, namely, that Serco has been granted a five year contract extension, running to May 2016. Over that period, the main challenge for Serco will be to achieve further improvement. Fortunately, the signs are positive and there are few signs of complacency. The areas of current concern to this Office, most notably the issues of roof access by prisoners and of improved access to employment opportunities, should be capable of resolution with positive ongoing collaboration between the contractor and the Department. From the point of view of the Department, there are real opportunities to build on the Acacia experience by encouraging more system-wide learning and by developing stronger performance measures for the public sector prisons.

Neil Morgan
21 March 2011

x There are signs of a rather some more positive engagement since these concerns were raised at the Inspector's Exit Debrief at Acacia on 12 November 2010. Acacia's input is now being sought in some areas of policy development, and the prison is about to receive a visit from a number of public sector superintendents with a view to sharing good practice.

xi Victorian Auditor-General's Office, *Management of Prison Accommodation Using Public Private Partnerships* (September 2010).

xii <http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Parliamentary+Business+-+Tabled+Papers>