

**ACCOUNTABILITY IN PRIVATE PRISONS?
A CASE STUDY OF THE EFFECTIVENESS OF DIALOGIC EVALUATION**

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ABSTRACT

Privatization of public services has been the subject of considerable debate during the last thirty years. Critics of privatization have focused on lack of accountability and questionable measures of cost savings and operating efficiency. This paper explores the issue of accountability in a general sense by focusing on the program evaluation aspects of accountability relationships. In developing its first privately managed prison, the state of Western Australia established an independent statutory body, the Office of the Inspector of Custodial Services (OICS), to provide external scrutiny, accountability and greater assurances regarding the achievement of correctional service objectives. This paper explores how the OICS interpreted its legislative mandate, articulated its inspection standards, and conducted its inspections. The paper argues that by adopting a dialogic approach to program evaluation (Guba and Lincoln, 2005), the OICS succeeded in ensuring that the Department of Custodial Services (DCS) and the privately managed prison (Acacia) would be held accountable to multiple stakeholders for prison quality. While the objective of using privatized prison operations to spearhead reforms in the public sector has not been fully achieved, the evidence indicates that Acacia Prison has produced costs savings, and that it is currently rated as one of two most effective prison facilities in Western Australia.

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1. Introduction

While governments in the United Kingdom, Australia and the United States have initiated or explored the possibility of privatizing some governmental services in order to reduce costs and increase efficiencies, many commentators have been critical of such efforts (see for example: Andrew (2007; 2009); Andrew and Cahill (2009); Cooper and Williams (2005). Privatization of prison operations has occurred in a number of American states, as well as in the United Kingdom and Australia. However, cost savings have often been secondary to non-financial benefits such as new management practices which may lead to reforms in the housing, management, treatment, education and rehabilitation of prisoners in the publicly managed sector (English and Baxter, 2009). The accounting literature has not previously addressed the role of privatized management as a means of introducing reforms in the public sector, and it has generally underestimated the possibility that privately managed prisons may not be significantly different from public sector prisons in terms of quality.

The paper examines conflicting propositions about privatization by focusing on the management of a prison in Western Australia (WA). Contrary to findings by Andrew (2007; 2009); Andrew and Cahill (2009); Cooper and Williams (2005), this paper finds: First, that the treatment of prisoners can range from exceeding expectations to unacceptable, irrespective of whether the prison is managed by private contractors or by the state (Liebling, 2004; Harding, 2000). Second, that those responsible for the management of prisoners can be held accountable to governmental and legislative officials for their actions. Third, a pro-active inspector with an appropriate legislative mandate can significantly influence the treatment of prisoners and raise awareness of their human dignity. Fourth, prisons are fragile and changing environments that can benefit from the constant presence of independent observers who have the standing to alert senior departmental managers to potential problems in prisons, and the authority to lead them to respond appropriately to avoid the emergence of more serious systemic failure. These findings challenge the argument that profit is always placed ahead of accountability in privatised governmental services (Andrew, 2007; 2009).

One key point which needs to be underlined is that it remains incumbent on the government of Western Australia pursuant to law, to ensure accountability for both public and privately managed prisons under the jurisdiction of the Department of Custodial Services (DCS) (OICS, 2003). To address the potential for lack of accountability in a privately managed prison, the WA government established the Office of the Inspector of Custodial Services (OICS) as an independent statutory body to provide external scrutiny of the management of both public and private prisons. This paper explores how the OICS interpreted its legislative mandate and used the principles of dialogic evaluation to ensure accountability. The operators of the private prison (Acacia) and the managers of public prisons were held accountable to the Western Australian Parliament, and to prisoners, for the quality of imprisonment in WA. In defining its legislative mandate, the OICS adopted several key principles to guide its inspection practices, resulting in

the inspectorate becoming a pro-active presence in the state's prisons in a manner not initially envisaged by the government.

WA has been chosen as a case study site because of the availability of documentary evidence about the operations and findings of the OICS and the performance of the publicly and privately managed prisons. The focus of the paper is on Acacia's performance over the period 2001-2009, thereby providing insights into the implementation of the principles of the reform agenda. Accordingly, the longitudinal evidence presented here is also relevant to the debate about privatisation of governmental services *per se*.

The remainder of the paper is organised as follows. Section 2 reviews the prior literature dealing with privatisation of governmental services, the concept of accountability, and the program evaluation literature, in order to establish an analytical framework within which to analyse the documentary evidence relied upon in the paper. Section 2 also explores the moral arguments against privatisation that underpin the prior literature, and concludes that although accountability has moral and political dimensions, the concept of accountability raises questions about who it is that should decide what should happen in a particular programmatic sense, and who is it who will determine what has happened (i.e program evaluation). The accountability literature does not explicitly explore the question of the most appropriate way to determine what happened (i.e. program evaluation). However, the performance auditing and evaluation literature provides some directions that are pursued in this paper. The literature review concludes that dialogic evaluation is an appropriate evaluative approach in the context of prisons. Section 3 presents the institutional and contextual background of prison privatization in WA and the establishment of the OICS. This section also sets forth the objectives of the DCS in establishing Acacia prison, outlines how the first Inspector interpreted his legislative mandate, and examines the methodological approach the OICS adopted to underpin its investigations and fulfil its accountability obligations. Section 4 presents evidence from various OICS reports and other documents regarding the Inspector's use of dialogic evaluation and provides some insights into the effectiveness of this method in improving the accountability of the DCS and the management and treatment of prisoners throughout the WA penal system. Section 5 provides concluding comments.

2. Literature Review

2.1 Prior Literature Dealing with Privatisation of Governmental Services

The prior literature dealing with privatisation of governmental services has been mixed, with some commentators taking a favourable position towards such efforts while others are critical. Among the articles that have been critical are Dixon et al. (1996); Puxty (1997); Broadbent et al. (1996); Shaoul (1997); English (2003); and Dillard and Ruchala (2005). In addition, there are studies that have specifically focused on criticising privatisation of prisons (Cooper and Williams, 2005; Andrew, 2007; 2009; Andrew and Cahill, 2009).

This prior literature presents its arguments from three different perspectives: first, a lack of accountability exists in privately-managed prisons, and prisoners are likely to be worse off than

they would be with publicly-managed prisons; second, privatisation is derived from a philosophy of neoliberalism, which has become pervasive in a globalised world, but which needs to be resisted if social democratic progress is to be maintained; third, privatisation is a form of class warfare in which the interests of global capital are in conflict with the public interest. While the first and second perspectives have been extensively addressed in the prior literature, the third perspective has been somewhat less discussed and we believe that it may not be pertinent to the case study under consideration here.

This first perspective, according to which there is a lack of accountability in privately-managed prison operations and that prisoners are likely to be worse off than they would be with publicly-managed prisons, is amenable to analysis through evidence and empirical data. The evidence has been mixed in this regard, revealing that there have been accountability problems with privately-managed prisons, which have led to the termination of contractual relationships between the government and the operators (VAGO, 1999). However, as the case of Acacia prison indicates, if effective accountability mechanisms are put into place, accountability can be improved (OICS, 2008a).

With respect to the second perspective, which rests on the argument that privatisation derives from neoliberalism; similar criticisms have been raised over a period of years with respect to privatization of governmental services in general (Puxty, 1997; Shaoul, 1997; Cooper and Williams, 2005; Andrew, 2009). These criticisms are based on the viewpoint that profit-making and provision of governmental services are incompatible and that government ownership and management is the most efficient and effective way to proceed for all types of public services. Prior research adopting this perspective has sought to challenge reports about privatization, arguing that governmental auditors and inspectors are not objective or that their evaluation methodologies are flawed (Andrew, 2007; Andrew and Cahill, 2009). In contrast, the focus of the current paper is on the potential lack of accountability in privately-managed prison operations, leading to prisoners being worse off than they would be with publicly-managed prisons. If it can be shown that prisoners are in fact better off in a privatised prison, then the argument that profit-making and provision of governmental services are incompatible becomes somewhat less sustainable. Thus the debate surrounding privatised prison operations centres on notions of accountability. The ethical and moral aspects of accountability have been subjected to a considerable amount of debate in the accounting literature over a period of many years. The following section summarizes some of these issues.

2.2 Concepts of Accountability

In its simplest sense, accountability entails a relationship in which a person is required to explain and take responsibility for his or her actions: “the giving and demanding of reasons for conduct” (Roberts and Scapens, 1985: 447). Thus, an accountability relationship can be formerly defined as a situation in which “A is accountable to B if A is obliged to inform B about A’s actions and decisions, to justify them, and to suffer punishment in the case of misconduct” (Oxford English Dictionary). Because of the implied mandatory nature of the reporting obligation, there are both legal and moral aspects to the idea of accountability. For example, Medawar (1976) addressed a recurring theme regarding accountability:

“We believe that corporate power should be exercised to the greatest possible extent with the consent and understanding of ordinary people. We believe that people should be encouraged and allowed to share responsibility in society, but that, at present, they are not and are imposed upon instead. This question of secrecy and *accountability* is fundamental here” (Medawar, 1976, p. 390).

This moral aspect of the idea of accountability has persisted in the literature (see for example: Schreuder and Ramanathan, 1984; Roberts, 1991; Sinclair, 1995; Shearer, 2002; Neu 2006; Cooper and Owen, 2007; Everett et al., 2007; Andrew 2007). It rests upon the presumption that certain parties (e.g. corporate managers or governmental authorities) must be held accountable for their actions, and that this is an obligation which transcends a mere reporting responsibility towards specifically related parties (e.g. shareholders or citizens). In this sense, the concept of accountability entails a responsibility to act in a moral way with respect to a social collectivity. Moreover, there is a persistent view that the obligation to act in a responsible way is one which must be imposed by legal means.

Certain authors have sought to expand upon this moral aspect of accountability. For example Roberts and Scapens (1985: 448) argued that:

“Systems of accountability embody a moral order: a complex system of reciprocal rights and obligations. The practice of accounting institutionalises the notion of accountability; it institutionalised the rights of some people to hold others to account for their actions. Viewed in this way, the practice of accounting can be seen to involve the communication of a set of values, of ideals of expected behaviour, of what is approved and disapproved. The practice of accounting involves communicating notions of what should happen, and it is only on the basis of these notions that sense is made of what has happened.”

In this quotation, Roberts and Scapens (1985) clearly join the idea of accountability to a moral obligation.

Likewise, Shearer (2002) maintained that accountability always entails intersubjectivity. To be held accountable is to establish one’s identity as “intrinsically interdependent with others” (Schweiker, 1993: 234). For this reason, accountability is a moral phenomenon. Giving an account is a means through which individuals are constituted as moral agents. Similarly, Arrington and Francis (1993) observed that accountability constitutes the subject as “answerable”, that is, as one who is obligated to demonstrate the reasonableness of his or her actions to a community of others, through the activity of giving accounts. For Arrington and Francis, as for Schweiker, the accountability of the answerable subject embeds a moral responsibility that renders the subject a “moral self”. Therefore, accountability involves providing reasons for character and conduct, thereby rendering life intelligible and meaningful. (Shearer, 2002: 545). In a similar way, Messner (2007) observed that:

“All social practices are practices of signification, legitimation and domination, i.e. they reproduce the structure of meaning and language, the structure of morality and structural power relations. Applying this perspective to accounting, one can analyse how accounting has an impact on particular structures of meaning, legitimation and

power, and as such, shapes organizational reality and individual identities. Of particular importance for an ethics of accounting would be the moral dimension, since ‘the practice of accounting can be seen to involve the communication of a set of values, of ideals of expected behaviour, of what is approved and disapproved. The practice of accounting involves communicating notions of what *should* happen, and it is only on the basis of these notions that sense is made of what has happened’ (Roberts & Scapens, 1985: 448). To acknowledge this powerful role of accounting opens up an ethical perspective which is not confined by the language of economics but which critically examines the creation of such a language and its reproduction in accounting practice.”

The primary questions raised by these different definitions of accountability are: (1) who is to decide what should happen (i.e. the programmatic decision), and on the basis of that decision who is to determine what has happened (i.e. the evaluation decision). In the case of privately-managed prisons, there has been a continuing debate over who it is that should decide what should happen. While governments in various countries have decided that prisons in certain cases can be privately-managed, and while these governments have sought to engage operators who are able to perform management tasks in an efficient and ethical manner, there are many critics who are opposed to the idea privatisation. Thus, the basic notion of accountability is contested. Ultimately, the question of who it is who will decide what should happen is a matter for government and political discourse, and it lies outside the focus of our paper. Our primary focus is on examining the question of who it is who will decide what has happened once the decision regarding what should happen has been made.

2.3 Determining what has happened

Assuming that a legitimately established government has the authority to decide what should happen with respect to policies and programs, the question of who is to decide what has happened (i.e. program evaluation) remains. Program evaluation facilitates judgments about whether changes and reforms are having the desired effect and whether additional reforms are needed (O’Fiarcheallaigh, Wanna and Weller, 1999). Program evaluation underpins accountability because it provides information about how reforms are implemented and how policy reforms can be improved. The methodological approach to program evaluation is crucial to its effectiveness and the achievement of solutions that will have both moral and pragmatic dimensions.

Weiss (1987: 47) stresses that the objective of program evaluation is to assess the extent to which programmatic goals are realised through objective and systematic methods. However, in the evaluation literature, there is a lack of agreement on evaluation methodologies (Weiss, 1987; Guba and Lincoln, 2005). While there is general agreement that the identification of program objectives is a necessary first step, O’Fiarcheallaigh, Wanna and Weller (1999: 194–198) outline a number of difficulties associated with goal identification. First, even when goals are clearly and explicitly stated, outcomes may not correspond to the intentions of policy makers. Second, there is the question whether the program evaluator should accept program goals and objectives as the basis for evaluation if ‘official’ objectives differ from those of affected stakeholders. Third, there is the issue of which stakeholders should have their views incorporated into evaluation criteria,

and who should make that decision. If the views of multiple stakeholders are to be considered, how does the evaluator arrive at a balanced evaluation of a program? Finally, how does the evaluator proceed in relation to changes in public opinion? O'Faircheallaigh, Wanna and Weller (1999: 198) conclude:

“Ignoring or deprecating these [methodological] problems will not make them go away, and may result in poor evaluations and waste and misallocation of resources. It is preferable for evaluators to recognise the issues, and to indicate how they have been dealt with, even if the solution is regarded as imperfect.”

Debate regarding the validity of program evaluation has given rise to two distinct responses: first, the utilisation of quantitative measures; and second, qualitative approaches (O'Faircheallaigh, Wanna and Weller, 1999: 201). Qualitative approaches are organisation-oriented and client-focused and include the use of surveys and interviews to focus on causal relationships and the discussion of implementation effects with key stakeholders (O'Faircheallaigh, Wanna and Weller, 1999). Evaluation is inevitably “political”, in the sense that it is coloured by the institutional, contextual and personal views of those conducting the evaluation. The choice of approach and methodology is far from value free even if the evaluator is independent of the program under scrutiny (Browne and Wildavsky, 1987).

Guba and Lincoln (2005; 197) concur that evaluation is inherently subjective. They indicate that the recent evaluation literature recommends practices that incorporate an “interweaving of [paradigmatic] viewpoints”, “the incorporation of multiple perspectives, and borrowing, or *bricolage*, where borrowing seems useful, enhancing or theoretically helpful”. They contend that the validity of program evaluation is related to the quality and nature of the dialogic efforts of the researcher. This view connects with the ‘dialogic evaluation’ literature (see, for example, Broadbent, Gill and Laughlin, 2003). Maatta and Rantala (2007: 458) argue that there is a strong case for the evaluator to act as a “critical interpreter” who is a “sociological interventionist”. Maatta and Rantala (2007: 462) suggest that the potential weakness of dialogical evaluation may be that the evaluator will lose his critical edge and become a “friend and supporter” of the program under evaluation.

In summary, the prior literature suggests that independent dialogic evaluation is the methodological approach most likely to provide reliable evidence about what has happened, and therefore allow effective recommendations to be made on which to build continuous improvements in programs and policy implementation.

3. The Privatisation Experiment in West Australia

In Australia there have been several privately managed prisons instituted in the last two decades, with the first created in Queensland in 1990¹. Until 2000, prison privatisation was increasing, and approximately 15% of the total prison population was held in privately managed prisons. At that time, the WA Government passed the *Prisons Amendment Act 1999* allowing for prison privatisation in WA (Harding, 2000).

¹ Borallon, Queensland (currently managed by Serco)

In developing the Expression of Interest (EOI) for Acacia Prison, the WA government was clear that the new prison was to be a catalyst for system-wide reforms². The objectives were to change and improve the management culture of prisons; to improve recidivism outcomes through different approaches to offender programs and related matters; to contain costs; and to spread innovative private sector management practices to the publicly managed prison sector. Concurrently, the Department of Justice (currently the Department of Custodial Services or DCS) developed four cornerstones as a basis for the Acacia contract and the management of the prison system as a whole. The cornerstones emphasized prisoner care and wellbeing, rehabilitation and reparation. In addition, there was a requirement for the DCS to develop governance practices and reporting systems to support the implementation of global best-practices in custodial services in the public prisons as well as in Acacia (Harding, 2000). Although, planning for Acacia commenced in 1997, opposition to privatisation resulted in parliament insisting on the creation of a regulatory body to ensure operator accountability. The *Prison Act Amendment 1999 (WA)* reflected these influences. This act established the Office of the Inspector of Custodial Services (OICS) as an independent statutory office reporting directly to parliament³.

The Office of the Inspector of Corrective Services

The OICS has responsibility for the accountability of prison management in both public and privately managed prisons in WA. The jurisdiction of the OICS includes prisons, as well as court security and custodial services (including prisoner transport services). The purpose is to provide independent external scrutiny of the standards and operational practices of all WA prisons (OICS, 2001). Established on 1 June 2000, pursuant to Section 35(a) of the *Public Sector Management Act 1994(WA)*, the OICS is the only Australian inspectorate to possess statutory autonomy. It has direct access to parliament, makes its reports publicly available, and, like auditors-general, has unfettered authority to conduct inspections. The WA model is designed to ensure that the Inspector's activities remain independent of government interference, and that the conduct of custodial operations in all WA prisons is transparent and fully accountable (OICS, 2000). The mission of the OICS is:

To provide the people of Western Australia with an independent and effective prison inspection and review service which is fair and just and evaluates the extent to which objectives of imprisonment are being achieved (OICS, 2001: 20).

In interpreting its legislative mandate, the OICS has adopted a self-reflective and proactive approach that eschews “box-ticking” exercises against a “predetermined matrix of contractual obligations, inspection standards and requirements contained in legislation and policies, because certain issues may not fall within the broad strokes of a pre-set standard” (OICS 2008a: 8). Instead, OICS strives to provide a mechanism for “promoting consistent qualitative evaluations against broad and transparent principles and benchmarks to ensure that prisons understand the

² Using privately-managed prisons to transform the housing, management, treatment, education and rehabilitation of prisoners throughout the publicly-managed prison system was also the primary purpose of three PPP prisons established in the Australian State of Victoria in the 1990s (English and Baxter, forthcoming)

³ At the same time the *Court Security and Custodial Services Act 1999 (WA)* was passed which extended to privatisation of court security and custodial services, including transport of prisoners.

main parameters of our inspections” (OICS 2008a: 8). The OICS evaluation methodology is based on legislative requirements, the DCS cornerstones, the United Nations (UN) Charter of Human Rights and international custodial best practices.

The OICS has published two codes of inspection standards. The first outlines the thrust of the OICS approach and mandates inspection standards for adult custodial services (OICS 2007). The second provides insights into unique circumstances relating to indigenous prisoners (OICS, 2008b) and elucidates the relationship between the 2007 and 2008 codes. The OICS approach to inspection is outlined in the Preface to the Code of Inspection Standards for Adult Custodial Services (OICS, 2007) (the Code), which is reproduced in Appendix 1. As indicated in the Preface, the Code was developed with reference to a wide range of national and international standards governing the role of modern prisons in society and the nature of custodial practices within them. The basic premise is that imprisonment itself is sufficient punishment and that punishment should not be further compounded by inhumane or abusive treatment towards prisoners. The Preface indicates that the role of inspection is to help ensure that the way prisons and prisoners are managed ensures that their human rights are respected.

The primary role of the OICS is to promote continuous improvement of custodial services. According to the Preface, the primary purpose of the Code is to inform those responsible for the custodial management of prisoners about the standards, and to prompt timely response to potential breaches of standards. According to OICS, the achievement of these objectives rests on four core principles: an independent OICS and independent inspection services; rehabilitative imprisonment that helps prisoners to lead a law-abiding and self-supporting life on release; the protection of prisoners’ human rights; and the prevention of abuse. Contrary to the thrust of much of the Public-Private Partnership (PPP) literature, the Preface indicates that ensuring cost-effective prison services in Acacia is a secondary matter for the OICS. In addition, the Preface and *The Inspection Standards for Aboriginal Prisoners* (OICS, 2008b) acknowledge that correctional services and concomitant inspection standards are context related, and subject to change as community standards advance. *The Inspection Standards for Aboriginal Prisoners* (OICS, 2008b) reinforces the need for prison managers and custodial staff to be sensitive to the cultural needs of indigenous prisoners and to eradicate structural racism (evidenced through the provision of facilities, conditions and services that would not be tolerated in non-Aboriginal prisons). A quote from the OICS inaugural Annual Report, (2001: 8) highlights the emphasis placed on human rights:

“The problem of measurement takes one close to the issue of prison accreditation.... The Guidelines for Australian Corrections 1996, in conjunction with the United Nations Standard Minimum Rules for the Treatment of Prisoners and various other international instruments have already identified core standards that prison regimes should meet.”

Furthermore, the OICS indicates that transparency and accountability obligations require investigations of the effectiveness of prison management functions (OICS, 2001). These various high-level themes have resulted in four principles underlying the OICS’ methodological approach to its inspection role:

1. Continuous review of inspection standards with a view to updating them as required.
2. Adoption of a methodological approach based on the principles of dialogic evaluation, including actively seeking feedback from stakeholders. To the initial consternation of the DCS, the views of prisoners and prison officers are routinely elicited by the OICS through voluntary anonymous questionnaires, focus groups and conversations with individuals. To overcome the English literacy problems of some Aboriginal prisoners, the OICS has used confidential group discussions to explore their experiences.
3. The benchmarking of the performance of individual prisons against the standards articulated by OICS. The OICS has recognised the central role played by the DCS in its management of the system and of the managers of all the state's prisons.
4. A regime of continuous inspection through regular prison visits (unannounced inspections) in addition to formal inspections. This is to enable the OICS to identify potential issues within individual prisons and to alert the DCS regarding critical incidents, enabling the DCS to make its own inquiries and to formulate solutions. The OICS requires the DCS to make the results of those inquiries available for evaluation (OICS, 2001).

By 2008, the OICS was evaluating the performance of individual prisons and the department's management of the correctional services sector against ten variables derived from its two inspection codes and the four cornerstones, seven of which relate directly to non-financial variables. These variables are: custody and security; care and wellbeing; health; rehabilitation; reparation; human rights; racism, Aboriginality and equity; administration and accountability; staffing issues; and, financial value for money in the delivery of custodial services (OICS, 2008c).

Examination of the documents produced by OICS during the period 2001-2009 indicate that the Inspector has adopted the dialogic approach of the critical interpreter. Indeed, as illustrated in the following section, the Inspector's interpretation of his mandate has resulted in his evaluation methodology extending the accepted components of evaluation, namely: identification of objectives; observation of implementation effects; an evidence-based judgment as to whether, and to what extent, the effects observed represent progress towards specified goals; and an explanation as to why goals were or were not achieved (O'Fiarcheallaigh, Wanna and Weller, 1999) to include reflections and directions on the improvement of custodial services and DCS management of the system.

Acacia Prison

Acacia Prison is located about 50 km east of Perth, Australia. It is a 750-bed, medium-security prison for males. The DCS, which owns the prison, entered into a contract for private operation of Acacia in 2001. For the first five years the operator was US-based, Australian Industry Management Services (AIMS) (initially known as Corrections Corporation of Australia or CCA). The contract contained four 5 year renewal options, to a maximum of 20 years. The contract was not renewed after the initial 5 year term, and a new contract was entered into with a second external service provider, Serco, a UK based conglomerate, in March 2006 (Acacia Prison Services Agreement, 2006a; 2006b). Serco's contract runs until May 2011. The contract

includes three 5 year renewal options, to a maximum of 15 years. Although this contract is structurally similar to the CCA/AIMS contract, the DCS took the opportunity to recast some of the performance measures.

A key feature of these contracts is the Performance Linked Fee (PLF), which ties payments to service requirements, and applies financial penalties for serious performance failures. These arrangements are designed to ensure high levels of accountability and transparency (English and Baxter, forthcoming). Serco's prison services agreement⁴ is a detailed contract of 116 pages with an additional 280 pages of schedules covering matters such as contract fees, Serco's operational philosophy, the operational service requirements and performance measures (Harding, 2000). As well as complying with contractual provisions, Serco must:

“[C]omply with the Prisons Act, other pieces of legislation and all subsidiary legislation (especially the Prisons Regulations) passed by Parliament. It must also comply with the Department of Corrective Services Operational Guidelines and Policy Directives. In addition, it must develop its own prison operating manuals and submit these to the Department for approval” (OICS, 2008a).

Schedule 4 of the contract (Acacia Prison Service Agreement Schedules and Annexes, 2006) contains Serco's operational philosophy which centres on the 'responsible prisoner' model:

“Our vision for every prisoner at Acacia is that he will work actively with the help of the prison to address his offending, develop his abilities, and rejoin the community as a full and law-abiding citizen.... The vision translates into service through a prison where the individual is the catalyst and driver for change, the prison is there to support but not supplant, where needs are identified and met, and where the endgame is a successful return to the community.”

The OICS has conducted three formal inspections of Acacia prison (OICS 2003a; 2006 and 2008a). These reports indicate that although AIMS and Serco have both attempted to provide quality services, it required a change in operator and considerable time for Acacia to become one of the state's two top performing prisons (OICS, 2008c). The inspection reports assign responsibility for inadequate performance at Acacia and in the public prisons generally to the DCS (in its contract/system management functions) and the managers of the private and public prisons. OICS finds that in some cases prison managers have had to respond to factors beyond their control, which may have occurred as a result of sub-optimal decisions by the DCS or unforeseen events. These findings are consistent with findings in the prior literature that have taken a longitudinal approach in examining the effects of neoliberal reforms in the context of prison privatisation (Liebling, 2004; English and Baxter, forthcoming).

⁴ This contract is publicly available at the OICS website. There are several omissions for security reasons.

4. The Use of Dialogic Evaluation in Improving Accountability and the Treatment of Prisoners

The importance of program evaluation using dialogic evaluation is essential to the achievement of accountability. The OICS established as its primary objective ensuring accountability for implementing corrections policy on the part of the managers of each of WA's public and private prisons. This accountability would extend to stakeholders, including prisoners, corrections staff, parliament and the community (OICS, 2001). As noted earlier, the OICS has continuously articulated and refined its inspection standards and approach (OICS, 2001; 2007; 2008b). This section provides insights into the processes and outcomes of ongoing OICS evaluation of Acacia during the period 2001-2009, and of the relative performance of Acacia over that period. Following its creation in 2001, the OICS (2001: 8) specified the extent and nature of the fundamental problems which existed in the publicly-managed prisons:

“At least two WA prisons fall so far short of meeting those [acceptable] standards that, if an accreditation system were in place (as with nursing homes for example), they would be closed down. An alternative perspective is that, if they were being managed by the private sector under contract, the Department would be entitled to terminate the contract forthwith.”

The OICS insistence on evaluating the performance of Acacia in the context of the DCS management of the Acacia contract and, more broadly, its management of the system as a whole, is unique in the publicly available evaluation reports of Australian public private partnership (PPP) prison performance (English, 2007)⁵. As the quotations below illustrate, the OICS (OICS, 2003) focus resulted, initially at least, in some harsh criticisms of the DCS in terms of its understanding of its accountability obligations in relation to its management of the publicly-managed prisons and of the Acacia contract:

“[The Department] does not seem to have a sharp understanding of reporting obligations to Parliament. There was also no sign of suitable structures and protocols at the highest executive levels for discussions on failing performance or financial accountability” (OICS, 2003: 9.6).

The construction of non-financial value variables: reforming the delivery of correctional services

Although Acacia delivered financial value for money to the state (OICS, 2008a), the OICS judged that the DCS continued was not able to implement the practices shown to be successful at Acacia to the other publicly managed prisons. For example in its inspection report of Acacia in 2003, the OICS reported that:

⁵ The exception is the Victorian Auditor General's 1999 report (VAGO, 1999) into the privatisation of three prisons in Victoria. Refer to previous relevant footnote on this issue.

“The establishment of a new private prison was intended not merely to provide more beds but also to promote efficiency, flexibility and innovation in service delivery. The ultimate goal was system-wide improvement” (OICS, 2003).

In the 2006 inspection report, the OICS stated that:

“Privatisation, to be successful, requires that both sides to the bargain actually understand their roles thoroughly. From the point of view of the Department, this means having the skills and judgment to decide when to supervise or guide or discipline or partner the operational agency. Acacia is still not the standard bearer or pacesetter for the remainder of the prison system that it was intended to be. There is much yet to be achieved if it is, one day, to fulfil that role (OICS, 2006: vi).

“It is fundamental that the Department recognise the importance of the contract management branch in achieving success in this high-risk venture with the private sector. To this end, the commitment of adequate resources to the branch, including staff numbers, training and expertise is pivotal in all areas from onsite monitoring up to the manager of the branch. Of course such improvements will be at a financial cost to the Department, but this must be balanced against the significant existing saving of taxpayer dollars that the privatisation of the service has brought and the potential future savings that could be achieved should Acacia achieve its ultimate objective of bringing best practice to the Western Australian prison system” (OICS, 2006: 8.22).

In addition, the OICS identified that the DCS had continuing problems in relation to its ability to administer the Acacia contract effectively:

“The [Department’s] contract management system does not seem to have effectively integrated on-site monitoring and off-site administration activities.... [S]ome service deficiencies have not been pursued [by the Department] in a purposeful and business-like manner. Instead, the overall approach has been rather bureaucratic and diffident” (OICS, 2003).

After the appointment of Serco as the manager of the Acacia prison in 2006, the third OICS inspection report (2008a) noted that the DCS management of the new contract continued to negatively affect Serco’s operations. Also, the OICS remained critical of the inability of the DCS to achieve the systems-wide benefits from privatisation envisaged in 1999 (OICS, 2008a: 8.11):

“[The] challenge concerns the place of Acacia in the total prison system. At present, the Department’s attitude to Acacia seems to be one of rather passive ‘acceptance’ rather than positive engagement. The Department appears to see the prison essentially as providing to the Department the services it dictates. This may explain why Acacia appears to be sidelined in departmental planning and decision making - even in areas that directly affect its operations - and why it does not feature much in Departmental literature. In some areas, such as offender programs, there is a serious risk that the current focus on ‘compliance’ and on Acacia ‘mirroring’ the

Department's practices is stifling innovation and improvement. The aim should be for a more collaborative approach and ensuring that Acacia's services are *compatible, complementary and progressive*. This is not inconsistent with firm contract management [emphasis in the original]."

In the 2003 inspection report, the Inspector noted the long-term challenges and the intricate intermingling of responsibilities presented by privatisation. Confirming the findings of the Victorian Auditor General (VAGO, 1999), the OICS found that some of the problems facing Acacia's management team were outside of its control.

"Acacia has been a particularly challenging prison to inspect and upon which to report. Operationally it is a complex amalgam of what are virtually three prisons in one (self-care, protection and the Aboriginal-dominated 'rest'). In addition to its operational complexities, Acacia presents some intricate and sometimes technical problems of financial accountability and contract management. ... This report has revealed a wide range of problems and issues, some of which require immediate attention and others that require longer-term solutions. It has also become clear that some issues are Acacia-based and some are systemic; some are the responsibility of AIMS, some are the responsibility of the Department and others are a joint responsibility" (OICS, 2003: 83).

The construction of financial value

Although the OICS was not overly concerned about the achievement of cost savings (OICS, 2007; Appendix 1), it noted in its 2003 inspection report, that Acacia, despite the problems alluded to above, was providing cost-effective services relative to publicly-managed prisons:

"The Department's figures, recently provided, bring into sharp focus the differences between public and private sector costs. It is evident that there would be major financial costs to the State in transferring Acacia to the public sector under current cost structures (probably about \$15 million per annum). These costs would seem clearly to outweigh any possible benefits" (OICS, 2003: 9.10).

The 2008 inspection report of Acacia (OICS, 2008a) outlines the tension between service quality and profit:

"The 'experiment' of privatising a prison in Western Australia has already reaped the State substantial benefits in terms of value for money. 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. In our view, the State is saving a minimum of \$12.5 million per annum, and probably more" (OICS, 2008a: 8.1).

By 2008, the OICS was able to report the following:

“Our first Report on Acacia dealt in some detail with the relative costs of Acacia compared with the State’s public sector prisons. It is surprisingly difficult to make precise calculations about the true costs of imprisonment. The easiest part of the equation is the private provider’s costs, because these can be determined by reference to the fees that were paid under the contract. However, this is not the total cost. The Department of Corrective Services also incurs costs at Acacia, primarily through its monitoring and contract management services” (OICS, 2008a: 1.32).

“When calculating the costs of public sector prisons, it is possible to get a rough overall costing by reference to the Department’s annual funding requests that are made to the Public Expenditure Committee of the State Parliament. However, it is very difficult to calculate the precise costs of any particular prison and to untangle the extent to which costs are incurred ‘onsite’ or by way of general services (such as corporate services and prisoner programs) that emanate from ‘head office’” (OICS, 2008a: 1.33).

“The Department’s costs must be added to Serco’s costs to provide the total figure. In 2003, the costs incurred by the then Department of Justice at Acacia were calculated to be around \$34 per prisoner per day. If we assume that in 2007, Department of Corrective Services costs have grown to \$40 (just under one third of the contractor’s costs) Acacia’s total cost per prisoner per day will be in the region of \$163. This translates to an annual cost per prisoner of around \$59,500 (of which around \$44,900 goes to Serco and \$14,600 to the Department)” (OICS, 2008a: 1.36).

“Provided that Acacia is delivering a proper quality of service, these costs compare very favourably with public sector prisons. In 2003, the average total cost in the public sector was around \$255 per prisoner per day (or around \$95,000 per year). That figure now exceeds \$100,000 per year. Our best estimate, therefore, is that Acacia’s total costs - for both Serco and the Department - are probably no more than 55 percent of the public sector average” (OICS, 2008a: 1.37).

“In 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. As previously noted, there is also room for debate about the most accurate way to calculate total costs” (OICS, 2008a: 1.38).

Systems failure or a failure of privatisation?

The previous two sections indicate that in 2003 the OICS identified problems with the management of Acacia. These problems had not been eliminated by 2006 when the re-tendering process was undertaken. The 2008 inspection report indicated that Serco had taken positive steps

to improve the management of Acacia. A correspondence between the DCS the Inspector (OICS, 2008c; 2009) indicates that there was significant improvement in the management of the prison. These results are at odds with conclusions drawn in the previous literature concerning prison privatisation. The 2008 inspection report of Acacia prison (OICS, 2008a) reflects on commonly held assumptions and conclusions about the effectiveness of privately managed prisons; and on the time it takes to get the environment in prisons 'right', irrespective of public or private management (OICS, 2008a):

“Critics of prison privatisation have tended to raise three types of complaint. First, that it is wrong in principle for the State to privatise prison services because they remain a State responsibility. Secondly, that service delivery will inevitably suffer as the contractor will strive for profit above service. Thirdly, that there is a lack of transparency and public accountability” (OICS, 2008a: 1.48).

“The first criticism based on a political philosophy and different people may reasonably hold different views. However, the debate is essentially irrelevant to our task inasmuch as we have a private prison and it is here to stay for the foreseeable future. It is also misdirected, at least in Western Australia, where it is clear that the State retains ultimate legal as well as moral responsibility. The best way to express it is that the State has not ‘contracted out’ of its responsibilities but has simply ‘contracted in’ certain services” (OICS, 2008a: 1.49).

“Research demonstrates that the second criticism – that the quality of service will inevitably suffer under private prisons - does not withstand scrutiny. Worldwide, the experience has been that the private sector is just like the public sector in the sense that it is capable of running good prisons, bad prisons and anything in between. Internationally, the best private prisons are undoubtedly offering a cost effective, high quality service. As we have seen, Acacia certainly does well in terms of costs. The rest of this report is largely devoted to assessing the quality of service” (OICS, 2008a: 1.50).

“This chapter has already served, implicitly, to dispel the view that privatisation leads to a lack of accountability. It is no coincidence that the best private prisons are usually found where strong accountability measures are in place. In Western Australia, Acacia undoubtedly sets the benchmark for transparency and accountability, and has leveraged better accountability throughout the prison system. Six aspects of this should be noted:

- Acacia (unlike other prisons) is subject to clearly set and monitored contractual requirements (including penalties for non-performance) on issues such as security, safety and the delivery of treatment programs, education and training.
- The contract, including these requirements, is publicly available.
- This office has conducted three formal inspections in the six and a half years of Acacia’s existence, as well as keeping a strong eye on the prison through liaison visits and other activities.

- The Department of Corrective Services holds Acacia to account through its monitoring and contract management processes and through its annual reports to Parliament (other prisons are not subject to this level of scrutiny).
- Ultimately, AIMS were held to account in the strongest possible way when their contract was not renewed following the re-tendering process.
- This office, having been established against the background of privatisation, has brought greater scrutiny to the whole prison system” (OICS, 2008a: 1.51).

“It can safely be said that the expectations of the public sector prisons are less clear and less robustly monitored than Acacia’s. Indeed, some of those prisons would almost certainly have been put out for re-tendering if they had been privately operated” (OICS, 2008a: 1.52).

Furthermore, the OICS noted in 2003 (OICS, 2003: 9.8-9.9):

“When a privately operated prison faces difficulties, or fails to deliver services to the expected standard, some commentators inevitably call for the prison to be taken into public sector management - though the inverse argument is rarely used where a public sector prison is found wanting. Calls to take a prison back into public sector management are understandable but simplistic, and it would be wrong to assume that the public sector would necessarily provide better service delivery. Unfortunately, our earlier reports have revealed a very patchy public sector system in the State. Some prisons (including Wooroloo, Karnet, Bunbury, Greenough and Albany) are generally operating well, but others (notably Bandyup Women’s Prison, Eastern Goldfields, Hakea and Roebourne) fail to come close to best practice. Acacia has failed to meet our ultimate aspirations and expectations and is not meeting acceptable standards in a number of areas. However, staffing attitudes [at Acacia] are much more positive than at some public prisons, and we found no sign of the more scandalous problems that we discovered at Eastern Goldfields (lack of hygiene and threadbare blankets), Bandyup (women shackled during childbirth) and Roebourne (lack of hygiene and prisoners eating from the floor). Acacia’s programs may be deficient but they are not virtually non-existent (as they have been at some public prisons).”

“In terms of standards and service delivery, therefore, we do not consider that it would be desirable, at the present time, to contemplate Acacia being taken over by the public sector; like AIMS, the public sector has a good deal to do in order to meet best practice on a consistent basis. Furthermore, international experience demonstrates that private prisons can improve their performance significantly even after a difficult start. We have, therefore, concluded that the better option is for the Department and AIMS to engage in honest and forthright discussions as to the best way forward and for a further formal inspection to be conducted by this Office within the next two years, in advance of the expiration of the Prison Services Agreement in May 2006.”

By 2008, the OICS documented positive changes in the management of Acacia (OICS, 2008a). The OICS judged that Acacia was becoming a very good prison. It concluded that the management of the prison was in some respects fragile precisely because Serco was trying to make significant changes before management processes and resource infrastructure were robust enough to support them. At the time, the creation of a new prison regime was still a work in progress, but the Inspector indicated that Acacia's performance was undergoing marked change and improvement. OICS concluded the appointment of the new operator met the public interest criterion that the autonomous inspection function was designed to achieve.

Acacia's strengths at the time of the 2008 inspection were in prisoner facilities, programs and services, and Serco's financial standing and corporate structure. There were no deaths while in custody, low levels of self harm, and no escapes or serious incidents (OICS, 2008a: 8.4). However, the prison's weaknesses (some of which were the same ones that marred AIMS performance during its contract) were maintenance deficits, poor communication between management and staff, lack of clear rules and procedures concerning many areas of prison operation, including the repeated and regular closure of industries due to failing cross-deployment strategies, structural racism in terms of policies and strategies for aboriginal prisoners, a lack of provision of video-link visits, poor education services, computer facilities and course availability, inadequate peer support services, and a need to improve policies and training in emergency management (OICS, 2008a: 8.5).

5. Conclusion

Privatization of public services has been the subject of considerable debate. Critics of privatisation have focused on the lack of public accountability and they have questioned positive reports of increased effectiveness and cost reductions. This paper has explored the question of accountability by focusing on program evaluation. In developing the Acacia prison, the Western Australia government created an independent statutory body, the Office of the Inspector of Custodial Services (OICS), to provide external scrutiny, accountability and greater levels of assurance regarding the achievement of correctional service objectives. This paper has explored how the OICS interpreted its legislative mandate, articulated its inspection standards, and conducted its inspections. The paper has argued that in adopting a dialogic approach to evaluation (Guba and Lincoln, 2005), the OICS succeeded in ensuring that the operators of the privately managed prison would be held accountable to multiple stakeholders for prison quality. While the objective of using privatised prison operations to spearhead reforms in the public prison sector was not fully achieved, the evidence indicates that Acacia Prison has produced cost savings and that it is among the best ranked prisons in the state of Western Australia. The costs of imprisonment at Acacia are less than in a comparable public prison, and it is rated as one of two highest performing prison facilities in Western Australia. Thus, effective program evaluation and inspection can lead to greater levels of accountability in privatisation of public services.

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Appendix 1

Preface: Western Australian Code of Inspection Standards (OICS, 2007)

The publication of the Western Australian Code of Inspection Standards (the Code) represents an important contribution to consistency and transparency of prison inspection in Western Australia. The Code has been derived from earlier model standards including the full range of relevant international treaties, covenants, and the Standard Guidelines for Corrections in Australia. It has also drawn upon the UK Prison Service's 'Decency Agenda', the UK Inspector of Prisons' Expectations, The Western Australia Ministry of Justice Inspections Manual,¹ the national correctional reporting framework, observed practice, community standards and relevant research into the performance of custodial services². But perhaps most influential has been the experience gained in inspections conducted and reported upon by the Inspector since 2001.

The publication of the Code forewarns custodial management of the operational standards expected, and it is hoped this knowledge will encourage rigorous self-assessment. In this way, the Code aims to promote the continuous improvement of custodial services in Western Australia.

The basis of the Code lies in the principles of independent inspection,³ purposeful and rehabilitative imprisonment, and the protection of human rights. International human rights instruments call for the regular inspection of prisons and detention centres by 'a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.'⁴ Prisons are by nature closed institutions often far from the public eye where one group of people has considerable power over another group, and the potential for abuse is always present. Consequently, there is an elevated need for accountability and transparency in the way that prisons and prisoners are managed to ensure human rights and the prevention of abuse - this is the primary function of independent custodial inspection, although inspections must also be interested in correctional cost-effectiveness.

The observance of human rights is integral to good prison management and the most effective and safest way of managing prisons.⁵ Human rights are a universal, inalienable and indivisible birthright of all members of the human family. A prisoner's fundamental human rights are not forfeited because of their imprisonment and are in fact limited only in so far as is demonstrably necessitated by the fact of imprisonment. Modern prisons are institutions of the civil society and prisoners do not cease to be its members, regardless of the seriousness of the crime they may have committed. Consequently, prisoners must always 'be treated with humanity and with respect for the inherent dignity of the human person'.⁶

Imprisonment is a last resort mechanism for protecting society from crime. In part this is achieved through keeping offenders away from society for the duration of their sentence.

However, as most prisoners will be released back to the community, the longer-term protection of society requires a focus on prisoner rehabilitation and preparation for release to ensure, so far as practicable, that released prisoners are both able and motivated to lead a law abiding and self supporting life.⁷

The notion of rehabilitative imprisonment is firmly based in the belief that people can change. Imprisonment must consequently provide opportunities and support for change through reflection, learning, and skill improvement. Prisons must also ensure that adequate transition support is made available to prisoners upon release to better prepare them for their return to the community. The first 3 to 6 months is the most critical period for ensuring a sustainable reintegration with the community.

People are sentenced to custody as punishment not for punishment, but this does not mean that prisoners should not work or be given the opportunity to make reparation for the harm done by their offending. Indeed, keeping prisoners idle is both destructive to the spirit and increases the risk of misbehaviour and unrest. Imprisonment should therefore seek to provide a wide range of constructive activity for prisoners that will keep them meaningfully occupied.

The Western Australian Department of Corrective Services has been consulted during the development of the Code. However, the Code remains the Inspector's Code. It is the view of the Inspector that to develop joint standards, so that prisons could be both managed and inspected against mutually agreed standards would be to reduce inspections to an audit function and would negate the value of an independent inspection. Standards must change and develop as societies change, and an autonomous inspectorate is best placed to achieve this if it is not tied to the day-to-day operational expectations of the administering department.

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Inspector of Custodial Services

April 2007

1. Ministry of Justice, Inspection Manual – Custodial Inspections Project, June 1999 – February 2000
2. Regard has been paid to the work of Alison Liebling and her 'appreciative inquiry' approaches to understanding prisoners' experience of imprisonment. For further information regarding this concept see Liebling, A. (2004) Prisons and Their Moral Performance – A Study of Values, Quality, Oxford: Oxford University Press
3. Experience strongly supports the view that inspection is best carried out by an autonomous inspectorate such as the European Committee for the Prevention of Torture, the UK Chief Inspector of Prisons or the WA Inspector of Custodial Services
4. The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 29
5. Coyle, A Human Rights Approach to Prison Management, p11
6. International Covenant on Civil and Political Rights Article 10
7. Standard Minimum Rules for the Treatment of Prisoners, Rule 58

CODE OF INSPECTION STANDARDS FOR ADULT CUSTODIAL SERVICES

Office of the Inspector of Custodial Services

Version One 19 April 2007