

The Inspector's Overview

ACACIA: THE CHALLENGES OF TRANSITION AND OUTSOURCING

Context

This is the report of an announced inspection in November 2013 of Acacia Prison ('Acacia'). Situated off the Great Eastern Highway in Wooroloo, Acacia opened in May 2001 and until 18 months ago, it was Western Australia's only privately operated prison. In November 2012, the Wandoo Reintegration Facility ('Wandoo') for minimum-security males aged 18 to 24 became the state's second privately operated prison.ⁱ

Acacia has been the state's largest prison for most of the past decade, and currently holds just under 1,000 prisoners. However, Hakea Prison ('Hakea') has recently been holding very similar numbers due to an explosion in the number of remand prisoners. More than one in five people in prison is currently on remand, well up from around 16 per cent five years ago. Whilst not directly relevant to Acacia, which houses sentenced prisoners, these figures are alarming.

In the near future, a 387 bed expansion at Acacia will be completed. When this is fully operational, Acacia will have a capacity of around 1,400, making it the largest prison in Australia.

Serco Australia ('Serco') has held the contract for prison services at Acacia (the 'Prison Services Agreement') since May 2006 when it took over from Australasian Integration Management Services (AIMS). Although AIMS had met many of its key performance requirements during its five year contract term, the prison was not meeting its full potential.ⁱⁱ In 2005/2006, the then Labor government considered whether to bring the prison into public management or to re-test the market for a private sector provider. It chose the latter option and Serco was selected.

Although Acacia is privately operated, and the Serco corporate identity is very prominent on-site, the prison is a state asset, and needs to be developed and maintained as such. The maintenance contract is separate from the Prison Services Agreement and has a different contractor, Sodexo Australia Pty Ltd ('Sodexo'). This split has created some problems and although they have been somewhat alleviated since 2011, risks and responsibilities still need to be better aligned.ⁱⁱⁱ

The contract with Serco for prison services ran initially to May 2011. Our late 2010 inspection commended Acacia for its level of service and value for money. The Liberal/National government and the Department of Corrective Services ('the Department') were also very satisfied with Serco's performance and the contract with Serco was renewed for a further five years, to May 2016.

Since taking on the Acacia contract in 2006, Serco has also taken on other major state based contracts for security and custody services. These include the contract for Wandoo (2012) and the Court Security and Custodial Services contract (the 'CSCS Contract'). The CSCS

i The Wandoo Reintegration Facility, a small facility for young men aged 18 to 24, opened in November 2012 at the site of the old Rangeview Juvenile Remand Centre: see Office of the Inspector of Custodial Services (OICS), *Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, Report No. 85 (July 2013).

ii See OICS, *Report of an Announced Inspection of Acacia Prison*, Report No. 19 (March 2003); *Report of an Announced Inspection of Acacia Prison*, Report No. 32 (March 2006).

iii See [1.30]–[1.35] and Recommendation 2.

contract covers those aspects of prisoner transport that have been outsourced as well as custody and security services at most of the state's courts. The CSCS contract commenced in July 2000 and the initial providers were AIMS. The G4S group took over the contract in August 2007. After a re-tendering process, Serco was selected as the preferred provider and took over in June 2011.

General Performance

Every prison, like every social or business organisation, goes through periods when performance will be better than it is at other times. Acacia is no exception and sometimes our assessments of the prison have been positive and sometimes they have been more critical. Our 2010 inspection was very positive, concluding that Acacia had 'reached a very high base' and that its 'performance is at least equal to the best public sector prisons in the state and in many respects superior.'^{iv}

It is important to emphasise that Acacia has continued its record of never having an escape or a major loss of control. It has also continued to meet the vast majority of its contractual performance measures and to demonstrate innovation and good practice across many aspects of its operations. Notable innovations included the pioneering of Skype technology and the introduction of the Custodial Management System, an electric kiosk system that allows prisoner movements to be tracked and also allows prisoners to track their own appointments, commitments and money.^v

However, even without the expansion project, it was always going to be difficult for Acacia to maintain the levels of performance found in 2010 and we did find slippage. This certainly does not make it a 'failing prison'; it is still performing to a good standard in most areas, but it does mean that there is work to be done to lift performance again.^{vi}

Some of the slippage was occurring because the risks associated with the expansion project were stretching the management team and diverting their energy and time away from current prison operations. Relationships between management and staff had declined. So had the levels of positive prisoner/staff interaction that had previously contributed to strong dynamic security. And several areas had dropped from their very high 2011 levels. For example, health and re-entry services were struggling to meet demand, and some easily remedied problems, such as the need for more computers in the education area, had not been actioned.^{vii} Like almost every other prison, Acacia was also struggling to find sufficient meaningful and constructive activities for prisoners.^{viii} This was not helped by regular custodial staff shortages, some generated by the need to conduct external prisoner escorts. This resulted in staff being cross-deployed from areas such as the gym to cover other areas and to the closure of the gym and some other activities.

I raised these issues with Serco prior to, and during the inspection. They accepted our main concerns and acknowledged that they needed to add more management 'grunt' and

iv See OICS, *Report of an Announced Inspection of Acacia Prison*, Report No. 71 (March 2011) iv.

v See [6.1]–[6.6] and Recommendation 17 and [6.56]–[6.69] and Recommendation 19.

vi See Chapter 10 for a summary.

vii See Chapter 7 and [8.13]–[8.18].

viii See Chapter 9.

experience and to bring forward some of their transition planning for the move to 1,400. I am pleased to report they have already actioned this and we will continue to monitor progress.

Buying in Services and Managing Contracts

Politics

The ‘privatisation’ of custodial services remains controversial in Western Australia. In the last 18 months Serco has come under strong criticism, not only in relation to some events at Acacia itself but more particularly in relation to a number of escapes by prisoners being escorted under the CSCS contract. The Liberal/National government strongly supports a ‘mixed economy’ of public and private sector providers, and appears to be contemplating some additional and alternative contractual arrangements. Although previous Labor governments have not brought custodial service contracts into public management, the current Labor Party has committed to ending at least some of the existing contracts if it wins the next election. For its part, the WA Prison Officers Union (WAPOU) has labelled privatisation a failure and called for all custodial services to be brought under public management.

Our statutory responsibility is to undertake independent assessments of prisons and custodial services; to report to Parliament on issues of security, safety, decency and effectiveness; and to recommend improvements; and to monitor change. We undertake this role irrespective of whether the public or private sector provides the services and over the years we have been both critical and complimentary of Acacia and other prisons. However, although we will not buy in to the politics of privatisation, it is timely to reflect on the principles that underpin effective and mature models of private sector engagement.

Principles

The starting point is that Acacia and Wandoo are state-owned prisons. They are just the two parts of a total system, comprising 16 prisons, where the Department has elected to contract in services. This has several implications in terms of service delivery and total costs:

The Department is responsible for strategic planning across the system and for working out how any privately operated facilities meet the objectives of that system. Unfortunately in recent years there have been deficiencies in the quality of Departmental planning.^{ix}

When the state buys in services, it does not and cannot contract out of its fundamental obligations. The state, as well as the contractor, owes a duty of care to people in custody.^x

The *Prisons Act 1981* and the contract enshrine the principle that some matters cannot be ‘outsourced’ and remain the Department’s responsibility. These include issuing authorisations for contractor staff to work at the prisons, adjudicating in disciplinary charges against prisoners, and providing central direction and support in areas such as access to the Emergency Support Group (‘ESG’) and the accreditation of offender treatment programs.

ix See OICS, *Annual Report for 2012/13* and OICS, *Annual Report for 2011/12*.

x This point was brutally reinforced by the ‘terrible’ and ‘avoidable’ death in 2008 of Mr Ward in a prisoner transport vehicle: see 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).

The Department must ensure that it actually receives the services for which it pays and must negotiate hard in areas of dispute. It is able to issue improvement notices to the prison and financial penalties can be imposed for non-performance or under-performance. This report found that the Department has developed intelligent, robust and well-structured contract management processes. Acacia is generally meeting its targets and the contract is being well-monitored.^{xi}

If the contractor is meeting the terms of the contract, but the contract falls short of the required services, the state must address the shortfall. It can do this in one of two ways: negotiate a fee and pay the contractor to do the additional work or cover the shortfall itself.

Intersecting contracts and contract shortfall

The Prison Services Agreement generally works well but services delivered under this contract can be affected by shortfalls in other services. The issue of hospital escorts caused me particular concern in terms of duty of care and contract coverage. It would appear that Serco is delivering the number of hospital escorts and ‘sits’ that it is required to deliver under the CSCS contract (and if it is not the Department has the power to act). However, the CSCS contract does not provide sufficient coverage. This means that prisons must cancel the appointments or cover them with their own staff. When public prisons such as Casuarina^{xii} conduct the escort themselves, they will either shut down parts of their operations to free up staff or will bring in staff on overtime which the Department will need to fund.

Acacia faces two additional problems to those found in public sector prisons. First, it does not have a secure vehicle in which to conduct escorts. Secondly, the Prison Services Agreement pre-dates the current CSCS contract and was drawn up at a time when hospital escorts were more fully covered. Consequently it does not factor in any extra payments to Acacia for such services. The Department suggested to us that Acacia could either cancel the appointments or undertake the escorts and invoice the Department. Acacia had not tested this latter option. In any event, without a secure vehicle its options are limited. The current situation is untenable and high risk in terms of breaching duty of care to patients and the risk of closing parts of the prison to free up staff for escorts. Fortunately the Department has supported our recommendation and promised action.^{xiii} This should benefit all prisons, not just Acacia.

Innovation and cross-fertilization

The aims of establishing a privately operated prison included promoting innovation, efficiencies and cross-fertilization of good practice. Acacia has demonstrated innovation over the years and, as noted earlier, has continued to do so. Over the years, there has been some cross-fertilization but there is still scope for more learning, both from the private to the public sector and from the public to the private sector.^{xiv}

xi See Chapter 1.

xii OICS, *Report of an Announced Inspection of Casuarina Prison*, Report No. 88 (January 2014).

xiii See [4.13]–[4.20] and Recommendation 11.

xiv See Recommendations 23 and 24.

‘Contestability’

Mature ‘mixed economy’ systems commonly adopt a model that can, rather simplistically, be called ‘contestability’ rather than privatisation. In other words, both the public sector and the private sector bid in competition for certain services. In England and Wales, the public sector has proved itself able to compete successfully, not infrequently outbidding the private sector in terms of quality of services and value for money. As a result, a number of prisons have moved between public and private management. This state now has around 14 years of experience in custodial service contracts and in my view, if the government is considering further outsourcing, it should consider a contestability model as a way to assess the best value for money option.^{xv}

It must be emphasised that ‘value for money’ in this context does not mean the ‘cheapest price’. We are talking about human services, not dishwashers, and contracts for human services will fail if cost becomes the sole driver. The choice of service provider should be based on setting service delivery expectations, ensuring the agreed fee will allow an efficient service provider to meet those expectations, and ensuring that the agreed services are delivered safely, securely and humanely.

However, true contestability does hinge on an ability to assess true costs. This is currently an area of weakness and the subject of significant recommendations in this report.

Costs

The cost of imprisonment (excluding capital expenditure) is usually stated as a cost per prisoner per day. It is a very costly business and in Western Australia the average cost per prisoner per day across the whole system is around \$320 (or \$116,000 per annum).^{xvi} It is obvious that costs will vary widely across facilities, reflecting location, size, age and complexity of functions. For example, the cost per prisoner per day at Acacia should be significantly less than at small regional prisons.

As part of this inspection we explored the issue of Acacia’s total costs with the Department.^{xvii} Unfortunately we are not able to confidently state an overall figure that takes all costs into account. What we do know, and what is on the public record, is what is paid to Serco. In 2012–2013, Serco received around \$48 million under the Prison Services Agreement, or \$132 per prisoner per day. What is far from clear is the amount that it costs the Department to provide its services. In all our previous reports, we have used a figure of 30 per cent of the fee paid to the contractor. This figure was based on advice provided by the Department in 2003. The Department reviews all our draft reports and at no point in the past has it sought to revisit this figure.

xv See also OICS, *Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, Report No. 85 (July 2013) [8.50]–[8.56] and Recommendations 31 and 32.

xvi Department of Corrective Services, *Annual Report 2012–13*.

xvii See [1.19]–[1.29] and Recommendation 1.

For this inspection we asked the Department to provide us with a robust estimate of its costs and details of its methodology for assessing those costs.^{xviii} This proved problematic. Figures were not readily available and varied. The latest figures provided by the Department stated its costs to be far less than previously accepted, only in the region of 13 per cent (or \$17.20 per prisoner per day). If this figure is correct, the total cost per prisoner per day at Acacia is around \$150. However, I am at a loss to explain the drop from the 30 per cent figure that the Department accepted just three years ago to 13 per cent today. Thirty per cent always seemed fairly high but 13 per cent appears rather low.

Overall, on the evidence available to us, there is nothing to suggest that the state is not receiving value for money. However, we will continue to seek further advice from the Department as to its methodology and costs. Importantly, the Department has also accepted our recommendation that it should in future report on its own costs in its annual public reports on the Acacia contract, presumably starting with its 2013-14 report.

The Department has not, however, accepted our recommendation that its annual report, which provides a figure for costs across the system as a whole, should contain information regarding the relative costs of different prisons. It says that annual reports are not the place to discuss 'detailed operations matters' and that 'accountability, compliance and detailed reviews are carried out internally and are subject to examination by the Office of the Auditor General.' I concede that the annual report may not be the right place for such information, but the lack of readily available information in an area as politicised as this leaves the door open to claims of cover-ups or under-estimates. The Auditor General's role is also fairly limited, and does not extend to issues such as value for money and relative costs.^{xix}

Expansion Project Risks

The size of the expansion project at Acacia has to be seen to be believed. Casuarina Prison opened just over twenty years ago with a design capacity of 397, and it was then regarded as a large prison. In those days, establishing prisons of that size meant building on a new site. However, at Acacia, in effect, a new prison is being added inside the perimeter fence of a very large operating prison which already houses many prisoners who pose security and management challenges.^{xx} In scale and complexity, there is certainly no parallel in this state, probably none in Australia.^{xxi}

xviii It would probably be unreasonable to expect an exact dollar and cents figure but it would be reasonable to expect, after 13 years of the Acacia contract, that it would have at its fingertips, a robust methodology and estimate.

xix Advice received from the Office of the Auditor General.

xx Although Acacia is a medium and not a maximum-security prison, fewer than 15 per cent of the state's prisoners are rated maximum-security and around 58 per cent are rated medium security. This means that the medium security category embraces some prisoners who are close to maximum-security as well as some who are close to minimum-security. Acacia's prisoner population is also a complex mix with diverse needs. It includes a large number of 'protection prisoners' who, for safety and security reasons, must be managed separately from the mainstream' population as well as a large contingent of Aboriginal prisoners, many of whom are 'out of country' and come from remote parts of the centre of the state.

xxi See Figure 2 at [2.3].

By mid-2013, prior to the inspection, I was becoming increasingly concerned at risks posed by the expansion project. They included a number of physical and procedural security issues relating to the building site,^{xxii} a lack of alignment between risks and responsibilities, and a less than harmonious relationship between key parties.^{xxiii} The crux of the problem was achieving the right balance between security and project timeliness. By the time of the inspection in November 2013 there were some signs of improvement, and immediately after the inspection I provided advice to the Minister and the Commissioner on the risks. A better balance has subsequently been struck.

Overall, Serco deserves credit for the way it has managed the risks of such a massive project. It also deserves credit for seeing the expansion as an opportunity to improve prisoner rehabilitation, not as a threat. However, as previously noted, the project had also been a serious distraction.

Acacia's Roles in a System that Needs to be Better Aligned

The Department has a key role to play in setting Acacia's future direction. All of the state's prisons are different in character and all perform somewhat different functions but every one of them should be part of a total system. To be effective and efficient, that system must also target 'needs' not just 'bed numbers'.

I have been critical of the Department's performance in regard to planning for need over recent years. The biggest failings relate to women's imprisonment. Sadly, observing the positive opportunities presented by the Acacia expansion drove home the unpalatable contrast between the investment in male prisons over the past five years and the neglect and lack of opportunity in the female prison system, a matter on which I will be reporting shortly.^{xxiv} Other critical areas include remand prisoners, mental health, and young people.

Running through all of these are two common threads. First the state has the highest rate of Aboriginal over-representation in the country (and numbers are rising). Secondly, prison capacity does not align with prisoner security ratings: we have around 2,500 maximum-security beds for around 500 maximum-security prisoners.

At the other prisons where additional accommodation units have been added (primarily Casuarina, Hakea and Albany), they have simply become additional beds. The Acacia expansion offers the opportunity to use the new areas for specific purposes. Ideally this

xxii Around the time of the inspection, there was considerable focus on the fact that a fence had been 'cut'. This was certainly a serious matter but it was discovered quickly. Contrary to the impression created in some reports, the cut was to an internal fence not the perimeter fence. Security improvements followed and security awareness and responsiveness were certainly much sharper than they had been during the redevelopment of the Banksia Hill juvenile detention centre. Serco had also carefully analysed and learned lessons from the two official reports relating to risk management and project management at Banksia Hill (see OICS, *Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, Report No. 85 (July 2013)); Office of the Auditor General Western Australia, *The Banksia Hill Detention Centre Redevelopment Project*, Report No. 12 (August 2013).

xxiii Part of the problem came from the number of different parties involved, including the Department of Treasury, different sections of the Department of Corrective Services (who did not speak with a single voice), Serco, Sodexo, the builder (Doric), and an array of contractors: see [2.8]–[2.14], [3.1]–[3.5] and Recommendation 4.

xxiv A draft report on women's imprisonment and on the role of Greenough as a prison for women has been sent to the Department for comment. A draft report on Bandyup Women's Prison, the most problematic prison in the state, is currently being finalised and will be sent to the Department in June.

would have been decided before the build because the form of a build should reflect its functions. Acacia does not provide the answer to the state's most pressing issue, women's imprisonment, but the new facilities will allow a focus on some key needs areas, such as mental health, drug and alcohol programs and young people aged 18 to their mid-twenties. Serco is keen to pursue such options and has been asking the Department for direction. It is vital that this happens. The Department has accepted our recommendations in this regard, including establishing performance expectations.

Summary

Acacia plays a critical role in our prison system, accommodating around one in five prisoners. The prison has a good track record and although performance had dropped somewhat from the very high levels found in 2010 it is still functioning to a decent standard and is certainly not the prison that most concerns me.

Whist debates about the merits of public and private sector service provision will continue, the 13 year history of Acacia shows that the private sector, like the public sector is quite capable of operating very good prisons.

Our legislation requires us to report on every prison at least once every three years. However, we are likely to conduct another inspection in late 2015 rather than 2016. This will allow us to assess the new expansion, which will be in operation by then. A late 2015 inspection is also more timely in that it should help to inform decisions by government at the expiry of the current contract in mid-2016.

Neil Morgan

23 May 2014