

Submission  
No 172

**INQUIRY INTO THE PRIVATISATION OF PRISONS AND  
PRISON-RELATED SERVICES**

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**Submission to the  
*Inquiry into the privatisation of prisons and prison-related services, NSW*  
Legislative Council General Purpose Standing Committee No. 3.**

**From**

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**Submission to the *Inquiry into the privatisation of prisons and prison-related services***

There are many reasons why we believe the NSW Government's proposal for prison privatisation is unsupportable. As academics who have examined the 2005 report into *Value for Money from NSW Correctional Centres*, we believe the government does not provide substantial and transparent evidence that there are cost savings and efficiency gains that stem from prison privatisation (Andrew and Cahill: forthcoming 2009). Based on our research, we conclude that the costing presented in the 2005 report is not sufficiently transparent to enable the claims made within the report that private prisons are significantly cheaper to operate. The failure to develop a comparable costing methodology means that this kind of assessment cannot be conclusive. Given that the government oversees a prison system that now operates under three models; the traditional public prison; the way forward model and the privatised prison at Junee, such cost comparisons have been made even more challenging.

In this submission we examine some technical details of the debate about prison privatisation with a particular focus upon aspects that we feel proponents of prison privatisation have not adequately addressed and that therefore undermine some of the arguments in favour of privatisation.

This submission makes comment on two aspects of the Terms of Reference, namely:

**Part 2.**

**The comparative economic costs of operating public and private facilities and the impact of privatisation on publicly managed prisons;**

**and;**

**Part 3.**

**Accountability mechanisms available in private prisons**

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## **The comparative economic costs of operating public and private facilities and the impact of privatisation on publicly managed prisons**

When considering privatisation it is crucial that policy makers have the ability to make accurate cost comparisons between the public and private provision of a service. Given the NSW Government has claimed that cost savings are the primary driver of the policy initiative,<sup>1</sup> such cost comparisons are pre-requisites for any credible argument for privatisation. Studies of prison privatisation have highlighted the difficulties faced by policy makers in deriving such comparisons (Perrone and Pratt :2003; Nink and Kilgus: 2000). These difficulties arise because of problems of commensurability and problems in determining the full costs to the public sector of the private provision of services. There are several issues to consider.

First, for cost comparisons to be meaningful, the same standard of measurement must be applied to both public and private sector providers. That is, the costs must be commensurable. In the case of prisons this means that the same methodology for the calculation of costs must be applied to both public and private prisons. Any overhead costs to the public sector incurred through the management of individual prisons or the prison sector itself that are included in the costs per inmate of public prisons must also be included in the cost calculations for any private provider. This includes, but is not limited to, departmental overheads, as well as the costs associated with contract compliance, and any costs associated with the buildings and grounds of the private sector prison that are borne by the government.

The practical problems of making cost comparisons between public and private prisons are highlighted by the New South Wales Parliament Public Accounts Committee's Report *Value for Money from NSW Correctional Centres*, released in September 2005. The report considered different approaches to correctional service delivery in New South Wales. In doing so it sought to make cost comparisons between public and private provision of prisons. In 2005, the Public Accounts Committee was aware of commensurability problems in making cost comparisons between public and private prisons. This was acknowledged several times by the report. The report also recommends that methods of cost comparison be improved in the future in order to enable more meaningful and accurate comparisons between public and private prisons. Despite the awareness of such problems the report constructed an indicative, yet crude, model for the basis of making cost comparisons. It is not clear how departmental overheads in the management of the Junee private prison were included in the cost comparisons.

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<sup>1</sup> "And, we need to balance, yes, the need to pay people appropriately, but it's also taxpayer money. And, privatised prisons, and the way we want to reform the prison system, it's cheaper for the taxpayer" (Nathan Rees, 20/2/2009, WS FM Breakfast). "It is proven with our experience with Junee that they can run a very efficient prison much cheaper than we can in the public system" (Mr Woodham, 23/02/2009, transcript from the Inquiry into the Privatisation of Prisons and Prison-Related Services).

The second issue is to ensure that costs of prisons of the same type are compared. If different types of prison (for example, as classified by levels of security or different medical requirements of prisoners) have different operating costs, then these must be accurately accounted for in any cost comparison between public and private. Our analysis of the cost comparisons provided in the 2005 report *Value for Money from NSW Correctional Centres* reveals the lack of a rigorous or transparent approach to such comparisons.

In order for decisions about privatisation to be made, the method for determining cost comparisons needs to be clear and transparent. While the lower operating costs of a private provider does not, in our view, constitute a sufficient condition to justify privatisation, it is a necessary condition for any credible privatisation proposal. Previous attempts by the NSW Parliament to make such comparisons have fallen well short of being comprehensive. In our view therefore, any comparisons based upon the 2005 methodology would be far from accurate and would not provide the basis for forming any view with respect to the relative costs of public or private provision.

Third, there has been little, if any, discussion of the risks associated with prison privatisation and the corresponding costs associated with such risk. We believe the government must demonstrate how it has considered these risks and what provisions it has made to insulate the public against risks that arise if the private prison companies decided to end their contracts with the state; or if these companies faced financial difficulties and had to close; or if the Government is forced to step in as a result of a breach of contract. Appropriate costing must factor in the risks associated with breaches of contract into the costs of running private prisons. The risks associated with prison management cannot be transferred in their entirety to the private sector as the government bears ultimate responsibility for a functioning prison.<sup>2</sup> The provision for this risk must also be considered in making an assessment of costs.

It is also worth noting that an appropriate comparison of public and private prison management and provision must go beyond the issue of economic cost. An important trend among liberal democratic states has been the adoption of the principle of 'value for money' in the provision of public services. While this is, at face value, a laudable goal, research suggests that the goal of 'value' is often simply evaluated with reference to cost. As Grimsey and Lewis (2005:375) argue 'the value for money test frequently comes down to a simple, single point comparison between two procurement options...the problem is that value for money is more often than not poorly understood and often equated with the lowest cost'.

Such a conflation was evident, we believe, in the aforementioned report, *Value for Money from NSW Correctional Centres*. While the report acknowledged that 'performance indicators reported include both qualitative and quantitative variables.

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<sup>2</sup> In his statement to the inquiry (23/02/2009) Mr Woodham stated that "(w)e still have the responsibility"

It is important to consider both when making comparisons' (Public Accounts Committee 2005), the report focussed primarily upon the quantitative indicator of cost and made this the basis of its determinations about value for money in the provision of corrective services in NSW. In terms of non-financial issues, it would seem that the key question that needs to be addressed is, 'how well do private prisons meet the public goals of incarceration?' This is particularly pertinent given the documented problems of subjecting the operational details of private prisons to public scrutiny due to commercial in confidence considerations (Moyle, 1994, 1999, 2001).

### **Accountability mechanisms available in private prisons**

The broadest definition of accountability needs to be considered when assessing appropriate mechanisms for accountability within private prisons. In our view appropriate accountability mechanisms must be more than a series of technical processes that focus simply on contract compliance. Accountability mechanisms must include a capacity to assess performance in terms of the attainment of broader public policy objectives. We believe citizens have the right to hold governments accountable for their treatment of people incarcerated and the outcomes of that incarceration; governments are also accountable for the financial commitments they make on the public's behalf in regard to prison policies; government's are accountable to the people that work within the prison system; government's should be accountable to prisoners who are undergoing a process of rehabilitation; and governments must also be accountable for the outcomes of these commitments and the means through which they achieve them. For these reasons, accountability for prison services is incredibly complicated and cannot be reduced to a process that assesses contract compliance alone.

We also believe there is an inherent conflict between the broader goals of public accountability and the profit imperatives of the private sector provider. This arises, in part, because of the desire of the private provider to shield its operational details from public scrutiny and disclosure. Although we caution against the privatisation of the two proposed prisons, if the State Government's goal is to stimulate competition and promote innovations, the methods by which a private operator's efficiencies are achieved should be publicly available.<sup>3</sup> We argue, therefore, that private providers should not be protected by commercial in confidence considerations. This would help ensure that the private provider is subject to appropriate public scrutiny and also that any operational efficiencies achieved by the private provider are understood by interested parties. An assessment of prison performance can only be made if the information that relates to cost minimisation is made publicly available. If performance improvements are part of the broader public policy objectives of the government, then information must be made available for the public to scrutinise the success of these objectives.

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<sup>3</sup> In his statement to the inquiry (23/02/09) Mr Grant stated "concepts like innovation and competition have an impact in bringing down the cost of the public sector prisons" yet we have little information about the internal efficiencies of the private operator at Junee in NSW (Andrew and Cahill: forthcoming, 2009)

## General Statement

We are not moved by the cost arguments presented by the government in its drive to privatise Parklea and Cessnock in NSW.

Based on our research and our knowledge of cost accounting, the figures presented of the absorbed cost of an inmate per day in respective prisons are controversial. The allocation of overheads to any activity, even if the government has moved to an activity based costing methodology, requires decisions to be made that can influence the representation of costs. In order for us to feel confident in the governments costing and the "market testing" that has been undertaken by NSW Treasury,<sup>4</sup> we call on the government to make this information publicly available for analysis.

We note that Mr Woodham's statement about the projected savings associated with the privatisation has been removed from the inquiry's transcript (23/02/09) and we think the government should be compelled to disclose the details of this statement to the citizens of NSW. Not only does the public have the right to know the estimated savings, but it is also incumbent on the government to explain precisely how such savings are expected. A discussion of this nature, without this information, does not facilitate public accountability.

To support this submission we have attached some of our research into prison privatisation for your consideration.

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<sup>4</sup> This is referred to by The Hon. Trevor Khan, 23/02/09 in the transcript of the Inquiry into the Privatisation of Prisons and Prison-Related Services.

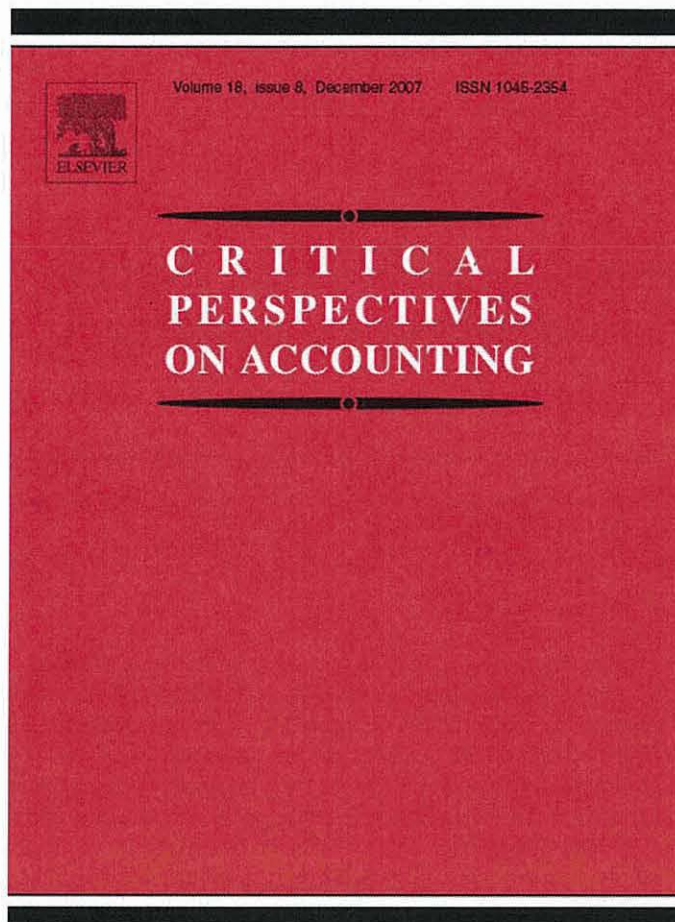
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## Prisons, the profit motive and other challenges to accountability

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### Abstract

It has been argued that “accountability is the linchpin of the correctional system” (Freiberg 1999, 120) and needs to be a central feature of any prison system. It is here that care needs to be taken. Accountability in its modern manifestation has become a largely technical and instrumental process, yet accountability for prison policies and practices has an undeniable moral component that needs to be addressed in order for public accountability to be meaningful within this domain. In Australia, accountability for private prisons has emphasised performance measures, contractual compliance and monitoring, and this has often led to poor outcomes for prisoners and the Australian community more broadly. The rise of the modern private prison brings new questions surrounding appropriate approaches to accountability, some of which will be explored in this paper. In order to consider the affect of private prisons on the Australian prison system, I have drawn on Chomsky’s work on neoliberalism.

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Prisons mean business.

They are large organisations. They consist of many paid staff, bricks and mortar, beds, security devices, professional practitioners of ancillary services. They are expensive to build. They are expensive to operate.

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But they are easy to fill.  
(White, 1999, p. 243)

Dostoevsky argued that a society should be judged not by how it treats its outstanding citizens, but by how it treats its criminals. If Dostoevsky is right, and we are to judge society on this basis, information must be made publicly available in order to form a picture of our treatment of citizens we deem to be criminals.<sup>1</sup> This picture is essential to ensure that governments, acting on behalf of society, are held accountable for decisions regarding the treatment of criminals and responses to criminal behaviour. The exchange of information becomes even more important when that information pertains to the closed and isolated environment of the prison. However, information in and of itself is not enough. We need a context in which to place that information and a framework in which to understand and debate the issues surrounding a society's decision to imprison some of its members. In this paper I argue that public accountability is central to a democratic government's ability to exercise its powers of restraint and punishment. A technical or instrumental discharge of such a responsibility is not enough, as the vulnerability of those incarcerated and the invisibility of those who manage that incarceration, inscribe a moral dimension to the accountability relationships that result.

The rise of the private prison, has added to the public accountability issues within the prison sector. Although businesses have been involved in the administration of punishment throughout history, the shift to state administered punishment was heralded as a way to ensure equity, justice and humanity within the penal system (Morris and Rothman, 1995).<sup>2</sup> Over the last 20 years this has changed significantly with the emergence of a contemporary, private, 'for-profit' prison industry, providing diverse services, including catering, medical care, employment training, court escort services, security, and prisons for juveniles, people on remand, illegal immigrants and adult offenders. This contemporary transference of responsibility for prisons, from the public to the private sector, began in the United States 20 years ago and is now commonplace in Britain and Australia, with the latter holding about 17.8% of its incarcerated population in privately owned and/or operated prisons<sup>3</sup> (Australian Bureau of Statistics, 2004; Private Prison Report International, May 2003; Roth, 2004). This transformation has also signified changes in accountability relationships between the community, the government and the private prison operator that are only beginning to be investigated.

This paper will consider some of these issues, paying particular attention to the privatisation of prisons in Australia, but first it is important to consider what I mean by accountability within this work.

<sup>1</sup> Although it may appear that I accept the idea of the 'criminal' unproblematically, this is not the case. Criminality and its connection to race, socio-economic opportunity and gender are acknowledged, but cannot be explored in detail within this paper.

<sup>2</sup> There is considerable historical debate about the role of private contractors in the penal system, with the period between 1840 and 1960 providing many examples of private contractors involved in a variety of correctional activities (Garland, 1990). Although this is true, 'public sector' services dominated the period. It should also be noted that the shift to public management of prisons has not necessarily led to the outcomes mentioned here.

<sup>3</sup> This is the highest in the world on a percentage basis (Roth, 2004).

## **1. Accountability: its technical and moral dimensions**

Accountability is notoriously difficult to define (Cousins and Sikka, 1993; Sinclair, 1995). Although few would argue against the proposition that accountability involves the giving and/or receiving of an account of an event (Mulgan, 2000), there are many who argue that this is not all that it entails (Shearer, 2002; Sinclair, 1995). Even though many accounting researchers are recognising that accountability has broader, more nebulous implications and possibilities, the more commonplace expectations do play an important role. The giving and receiving of accounts of events for which we have an interest or a responsibility has a number of important features; the account must be offered to an external source; it enables debate as the giving or receiving of an account should allow for clarification, scrutiny and revision; and it reinforces the idea that a broader social group may have rights to an account of an event for which they are not directly in control (Mulgan, 2000).

One of the problems associated with this interpretation of accountability is that in order to discharge the requirement to be accountable, both the private and public sector have come to rely heavily on approaches that are technical, measurable and procedural—which may have the effect of limiting our expectations of what a public or private enterprise should be accountable for (Nelson, 1993; Shearer, 2002). Nelson (1993) has argued that the technical emphasis that has come to dominate our understanding of accountability, particularly within the public sector, configures it as procedural, rather than dynamic, denying its ethical influences and dimensions. These are evidenced by the increasing reliance on performance measures (Robinson, 2003), financial reports (Stanton, 1997), limited audit investigations (English, 2003) and political debate that centres on a statistical or numerical discussion of events (Rose, 1991). In regard to accounting, Arrington has argued that “accounting just assumes its sovereignty over the moral, assumes its right to hold all accountable to its ridiculous telos—money” (1999, p. 1). Dillard and Ruchala (2005) have taken this argument further, raising the idea that a technical or hierarchical approach to accountability has enabled “administrative evil” in which a social actor is disconnected from the moral community through technical processes. They claim that

(o)vercoming administrative evil can occur only as a reconnection of the instrumental and the moral is undertaken through a reintegration of socializing and hierarchical accountability systems.

(Dillard and Ruchala, 2005, p. 619)

So, although accountability has often been interpreted to be a largely procedural and technical exchange of information between interested parties that fulfils a broader social, political and economic need within societies that make claims to democracy—increasingly, accountability is being recognised as a discourse (Nelson, 1993; Sinclair, 1995). Discourses of accountability play a role in constituting our beliefs about who, what and how accounts of events are to be given and received (Roberts, 1991). It is constantly being renegotiated (often unequally) and it always encompasses the possibility of challenge (Roberts, 1991). The paper represents a contribution to the challenges that are already emerging within the accounting literature to the dominance of technical and procedural dimensions of accountability over its important moral and ethical implications (Broadbent et al., 1996; Dillard and

Ruchala, 2005; Funnell, 2003; Shearer, 2002). Shearer (2002), in particular, emphasises the need to redefine accountability beyond the narrow requirements of economic entities within market economies. She says that it is “moral responsibility that grounds the *accountability* of the entity with respect to this community” (p. 543) and she called for

(a) discourse of human identity that is irreducibly distinct from economic man, and it must be capable of infusing our self-understanding as economic subjects with a moral obligation that exceeds our own self-interest.

(Shearer, 2002, p. 569)

Shearer’s (2002) call for a deeper appreciation of who we are as ethical (as well as economic) beings is indicative of a growing interest in an expanded understanding of what constitutes accountability. It also suggests ways that we can avoid being trapped by an already present discourse that emphasises accountability in limited, often economic, terms and is supported by Lehman’s (2005, p. 976) call for a framework that “contextualised accountability within a substantive moral framework”. This is particularly important within the context of public accountability for privately operated prisons, as ethics and morality should not be divorced from debates about incarceration and the management of such facilities.

The discussion that follows seeks to expose how the Australian government has come to define public accountability for private prisons in limited terms, focusing largely on cost-effectiveness rather than service quality. This approach has also emphasised specific performance requirements; it has disengaged debate from the purpose and intent of incarceration; and broader issues of accountability that link a community of citizens to its responses to criminal behaviour have all but disappeared. This is the real purpose of public accountability and the provision of information that narrows this scope to such things as the number of drug tests, or the number of violent incidents within a prison distracts us from examining the deeper issues that arise from a social choice to incarcerate criminals—particularly within the confines of privately operated, profit oriented, prisons. Within the current political climate, the discharge of this responsibility has emphasised the technical and procedural dimensions of accountability. However, even this has been hard to achieve. As will be shown, this effaces the significant moral and ethical aspects of the accountability relationships between the private operator and the government; the government and citizens and ultimately, our society and how it treats people we deem to be ‘criminal’.

## 2. Pushing prison privatisation

In state capitalist democracies, the public arena has been extended and enriched by long and bitter popular struggle. Meanwhile concentrated private power has labored to restrict it. The conflicts form a good part of modern history. The most effective way to restrict democracy is to transfer decision making from the public arena to unaccountable institutions: kings and princes, priestly castes, military juntas, party dictatorships, or modern corporations.

(Chomsky, 1999, p. 132)

Generally, it has been argued that outsourcing and privatisation have benefits that include the ability for the government to shop around for vendors in order to choose the quality and quantity of services required. It has also been suggested that outsourcing will invite competition, giving the government choices between innovative, lean, less expensive service providers (Dixon et al., 1996; Shaoul, 1997; Taylor and Warrack, 1998). There are a number of corresponding concerns, including the fact that competition may not be easily stimulated or may not suit the industry in question (for example, defence industry contractors are highly specialised and secretive, two qualities that do not suit a competitive market; and in Australia there had been three companies bidding for private prison contracts in the early stages of privatisation); there have also been many examples of bad contracts (Funnell, 2001)<sup>4</sup>; there is a danger of excessive dependence on a particular service provider; and perhaps most importantly, the full costs of the process are rarely calculated (for example, the cost to the community of eroding job security; the retraction of state obligations to its citizens; and the cost of reversing the decision if it turns out to be a bad one) (Gormley, 1991; Butler, 1991). Although couched in neoliberal terms, the case for private prison cost-effectiveness remains ambiguous and evidence from innumerable studies have revealed contradictory outcomes (Cooper and Williams, 2005; Kirby et al, 2000; Logan, 1990; McDonald, 1990). Most recently NSW Parliament's inquiry into the 'Value for Money for NSW Correctional Centres' (2005) found that no definitive conclusion could be drawn on the cost-effectiveness of private prisons because the uniqueness of each prison (such as size, mixture of prisoners, responsibility, programs, building design, services) does not enable a meaningful comparison.

The lack of definitive information about outsourcing decisions would suggest that it cannot be separated from ideological, political, economic or ethical influences (Chomsky, 1999; Ryan and Ward, 1989). Cooper and Williams (2005) argued financial representations of cost savings used to initiate discussions about prison privatisation, are in and of themselves hypothetical. This hypothetical data has been used as though it is 'real' in order to legitimise the privatisation agenda and when the assumptions that underpinned the data were explored it became obvious that many alternative conclusions could be drawn. For instance, they point out that the Scottish Executive's proposal to 'cost' prison services treated the current Scottish incarceration trends as "inexorable and failed to consider alternatives to custody" (Cooper and Williams, 2005, p. 499).

Incarceration has a variety of different public policy objectives and justifications (such as deterrence, reform, incapacitation and/or classification) and imprisonment also has unintended consequences and effects a person in more ways than those anticipated by the State. Amongst other things, it means that a member of society is restrained and loses their freedom; their life path is interrupted; their family and social relations become difficult to maintain; there is a reduction in civil liberties such as privacy; they are held in places that are frequently charged with an atmosphere of distrust and violence; they are often surrounded by drugs and drug deals; and their lives often become lonely, idle and unstimulated. In this vein Davis argued that the "prison industrial system materially and morally impoverishes its inhabitants and devours the social wealth needed to address the very problems that have

<sup>4</sup> Funnell (2001) outlines an example in the United States where attempts to specify the requirements of a loaf of bread led to the production of a 20-page document.

led to spiralling numbers of prisoners" (1998). This places an inescapable moral responsibility on society to ensure that there are clear objectives associated with incarceration; that imprisonment meets these broader social objectives; and that prisons operate in a socially acceptable manner. Fundamentally, a society holds a 'criminal' accountable for their actions and that person has a corresponding right to an accountable execution of the objectives of their sentence. This is predicated on the assumption that all of these can be negotiated meaningfully and democratically. It is also complicated by the fact that some private entities can now profit from incarceration and that these entities have a vested interest in the maintenance, if not the expansion of incarceration as a response to criminal behaviour. It has led some to ask whether there are "services that are "inherently governmental" and should thus be quarantined from the process [of contracting out]?" (Schoombee, 1997, p. 141). This has raised discussion about how to reconfigure accountability within this context (Dillard and Ruchala, 2005; Funnell, 2003).

Not only are the public policy objectives diverse, but also the level of privatisation varies considerably. As many peripheral services that are integral to the operation of a public prison are now purchased from private contactors, including employment advice/training, garbage collection, energy and water/sewerage services, boundaries between the public and the private sector are blurred. This complicates accountability arrangements and makes it more difficult to justify the place of the public sector within such an environment, a situation that has been capitalised on by private operators who argue they are just providing cheaper services, whilst distancing themselves from the significance of those services to the community. This is a point presented by many scholars in the field, such as Harding who has argued that

(t)he key point, whatever degree or model of privatisation is adopted, is that the allocation of punishment should remain with the state apparatus, whilst the day to day administration of that punishment is devolved to the contract managers (1992, p. 2).

Harding's (1992) point of view would suggest that a clear distinction between sentencing and the administration of that sentence could be drawn. Such a distinction is not necessarily as easy or as desirable as this suggests. As the State has the power to deprive a person of their liberty, it is critical the administration of that sentence is subject to an appropriate standard of care, that human rights are observed and the actions of those vested with the control over the detainees should be closely scrutinised and monitored. The further this task moves away from the State the more difficult it is to monitor and the State has more opportunity to retreat from its responsibility to ensure such conditions. Moyle has argued "(i)t should be emphasised that prison regimes, and the powers exercised by those who manage them, involve a continuation of sovereign power" (1999, p. 154) and that there is a need to identify the "the powers that may not be delegatable within a democracy" (1999, p. 155).

The delegation of these powers may well be strategic, providing benefits to both the state and the private sector. Chomsky (1996, 1999) has argued that the current capitalist order undermines democracy, and within this context public debate has diminished. This is a view that is supported by Munck (2005, p. 65) when he wrote that it "is government intervention in economic life that threatens freedom, according to the neoliberal theorists". As corporations gain control of more and more of the institutions and services traditionally maintained by

government (such as prisons), private power has been enhanced. As such, formal electoral democracy helps to maintain the illusion of democracy, and that the “population has been diverted from the information and public forums necessary for meaningful participation in decision making” (McChesney, 1998, p. 9). As McChesney wrote

(n)eoliberalism<sup>5</sup> is the defining political economic paradigm of our time—it refers to the policies and processes whereby a relative handful of private interests are permitted to control as much as possible of social life in order to maximise their personal profit. (McChesney, 1998, p. 7)

This has often been characterised as a logical and appropriate response to governments who have been painted as “incompetent, bureaucratic and parasitic” (McChesney, 1998, p. 7). On the other hand the free market is assumed to “encourage private enterprise and consumer choice, reward personal responsibility and entrepreneurial initiative” (McChesney, 1998, p. 7) even though there is little empirical evidence to support this claim. Contrary to the rhetoric of neoliberalism, Chomsky (1999) points out that governments have not reduced in size, and there is little evidence to suggest that privatised public assets have increased in efficiency and/or quality. The ideology that underpins neoliberalism has contributed to the rise of private prisons, and with this privatisation a number of questions need to be raised about the nature, appropriateness and maintenance of public accountability within a prison system that is increasingly profit oriented.

Investigations such as this one, need to be placed within the context of neoliberalism, in order to shed light on the ways that we organise our societies and to problematise the privatisation of prisons on both technical and moral grounds (see Russell, 1997). This argument hinges on the idea that ‘neoliberal’ governments serve the interests of capital and its impulse to continually accumulate, whilst enabling a retreat from any substantive public accountability. As Puxty (1997) has argued, when capitalism is in crisis, capital needs to expand into new areas, which may lead to a changed role of the state as it releases areas it has traditionally controlled to the private sector and “capitalism tries to turn all relationships into a commercial exchange” (Hutton and Giddens, 2001, p. 17). In this vein, private prisons serve both the interests of government and private enterprise. Private prisons may help disguise the impact of global capitalism on people (through job losses, failure to provide productive work and ‘imprisoning’ the products of political and economic alienation), it appears to shift the responsibility for prisons to the private sector and it enables private interests to profit in a new way. As a result it diminishes the public sphere, and changes the nature of public accountability (Chomsky, 1999; Funnell, 2003). In support of this Chomsky wrote that

(d)emocracy is under attack worldwide, including the leading industrial countries; at least, democracy in a meaningful sense of the term, involving opportunities for people to manage their own collective and individual affairs. Something similar is true of markets. The assaults on democracy and markets are furthermore related. Their roots lie in the power of corporate entities that are increasingly interlinked and reliant on powerful states, and largely unaccountable to the public (1999, p. 92).

<sup>5</sup> However, according to Chomsky (1999) it is “not new” and it is “not liberal”.



The changing relationships between the private and the public sector referred to by Chomsky (1999) have impacted significantly on discourses of accountability. The current arrangements for incarceration in Australia testify to this. It is now possible that a private, for profit, company to be accountable to the government for the delivery of prison services and facilities and the government is then accountable to the public (including prisoners) for the delivery of these services—in so doing, distance is placed between the service provider and the community in a way that would present significant challenges to fulfilling any technical, let alone moral, accountability function. In an attempt to address this, or further reinforce it, private prison operators present largely technical accounts of events and are accountable for the delivery of certain services at a certain quality against performance indicators (Robinson, 2003); the government is able to report on these in a relatively objective manner and also distance themselves from direct responsibility; and at the same time, questions about the ethical and moral responsibility of government and society to these citizens is almost entirely eradicated from debate.

Before proceeding, it is important to note that there is a problem with framing the debate within the private/public sector dichotomy, and considering accountability issues within this framework, as it can often fail to investigate the 'subject' that is being debated (Cooper and Williams, 2005). This is in itself an emasculated view of accountability, because it does not consider critically what to do in circumstances in which both the private and the public sector have failed to provide a solution to the crisis of the current prison system. This delineates the debate within the parameters of who should provide the prison, rather than whether the prison is a solution to the social issues that our societies face. This may make it easier to ignore and silence debate about the definitions and causes of criminal behaviour, such as social alienation, economic inequity and institutionalised discrimination. As accountability plays an important role in our ability to make decisions, the nature of the information is vital. It should not be limited to information that allows us to compare the public to the private sector on the basis of cost, but rather it should enable an investigation into the purpose and possibilities of addressing the social issues that lead to crime and not just what we do with 'the criminal' afterwards.

### **3. Private prisons in Australia**

(A) private corporation is not in the business of being humanitarian. It's in the business of increasing profit and market share. Doing that typically is extremely harmful to the general population. It may make some number look good.

(Chomsky, 1996, p. 122)

Since 1988, the private sector has played an expanding role in the operation of Australia's correctional facilities. This was sparked by the Kennedy Report (1988) for the Queensland Corrective Services Commission into correctional reform recommended that a private operator under contract to the Commission should develop one prison. This was based on its findings that problems within the existing system could be solved through privatisation, including staffing difficulties, creating a market for corrective institutions, increased flexibility in correctional arrangements, and developing competition in order to have something to test performance and costs against. This argument had been presented in

other countries previously, and it is widely accepted within the literature on private prisons that the fundamental motivations of prison privatisation have been the belief that private prisons will reduce operating costs (largely through reduced labour costs), provide faster and cheaper prison capacity (limited barriers to financing and construction) and that they should improve the quality of the service (through innovation) (Calabrese, 1993; Logan, 1990; Shichor, 1995). Although these arguments have been presented as neutral representations of the issues, the arguments are not sterile or politically neutral. Ideological assumptions underpinned the Kennedy Report, including the appeal to 'the market' to solve persistent failures within the prison sector; the representation of the unionised workforce as 'difficult' and 'problematic', in part because of their refusal to accept further compromised work conditions; the appeal to 'flexibility' as though this will have no affect on quality or performance and that this flexibility does not come at a cost (such as people's jobs or job security, working hours and so on); and the presumption that competition will enable performance to be measured more accurately on the basis of cost, which may have scaled back attempts to develop other ways of critiquing and improving punishment and prison services (Chan, 1994; Moyle, 1999).

This would suggest that the decision to privatise prisons was not one based purely on technical information; rather, it was a highly politicised move surrounding a need to disassociate the government from the prevailing problems within prisons. Although these motivations were raised within the media and there was some public debate over the government's approach, the report was accepted. This led the Commission to call for tenders to manage and operate Borallon Correctional Centre, which was a 240-bed medium security prison near Brisbane. Corrections Corporation Australia (CCA) was awarded this contract in 1989, and under this 3-year contract, the first private prison in Australia was opened in 1991 at a cost of \$22 million to build, and a contract fee of \$9.7 million for the 1991 financial year (Harding, 1992). This contract was awarded partly as a result of the lobbying efforts of Senior Executives from CCA who travelled around Australia in 1989 'informing' State governments of the benefits of private prisons (Gow and Williamson, 1998).

Subsequently contracts have been awarded to private prison operators throughout the country and today Australia has seven privately operated adult prisons operating in five states. These are run by three companies, all of which are foreign owned—Australian Integrated Management Services (a wholly owned subsidiary of the US company Sodexo Alliance), GEO Group (previously known as Australian Correctional Management), Management and Training Corporation (whose corporate headquarters are in Utah) and GSL Custodial Services (formerly Group 4 Falck). Information about each of these prisons is presented in Table 1.

From the Kennedy Report onwards, the possibility that private companies could play a role in the provision of correctional institutions throughout Australia was firmly entrenched. Running a prison brings with it significant responsibilities. The foremost of these responsibilities is prisoner health, safety and dignity, all of which are prioritised under the *Standard Guidelines for Corrections in Australia 1996* and the *UN Standard Minimum Rules for Treatment of Prisoners*. Public prisons are notoriously bad at providing safe and dignified conditions for their inmates, which has meant that arguments suggesting that public prisons are more able to meet these qualitative outcomes than private prisons have been difficult to

Table 1  
Private prisons in Australia, 2003

State	Name	Security level	Size	Private operator
Western Australia	Acacia	Medium (male)	750	AIMS
Queensland	Arthur Gorrie	Max/med/min (reception and remand)	710	ACM
Queensland	Borallon	Max/med	492	MTC
Victoria	Fulham	Med/min	777	ACM (GEO Group Australia)
Victoria	Port Phillip	Max	710	Group 4 (GSL Custodial Services)
NSW	Junee	Med/min	600	ACM
South Australia	Mt Gambier	Med/min	110	Group 4
Victoria	Metro Women's	Max/med/min	125	CCA (1996–2000)

Data provided by the Australian Institute for Criminology.

mount. However, there is significant evidence that suggests the pursuit of profit has exaggerated the erosion of the quality of services and conditions being provided to prisoners and the community as a whole. A study conducted by Biles and Dalton found that

Port Phillip prison, Deer Park and Arthur Gorrie all have higher rates for all deaths and suicides than the Australian average (1999, p. 4).

Although some of the findings of Biles and Dalton (1999) are alarming, the reports significance does not just lie in what it reveals about the performance of these prisons. Its significance also lies in what it reveals about the inability for a community to affect change, express outrage, demand greater scrutiny and ensure better outcomes for their community and the prison system as a whole. As prison institutions have struggled to maintain legitimacy as a form of punishment that has positive outcomes for the 'punished' and society in general, the introduction of the profit motive into this arena raises further concern (Cavise, 1998). Cavise has argued that

(w)ith private control, there is a danger that prisoners, traditionally among society's most neglected members, will suffer abuse and exploitation for profit (1998, p. 22).

It certainly makes the relationship between the community and the service provider one that is dependent on the community's ability to monitor and access information about prisons. In the words of Harding:

The question of effective accountability thus becomes central.  
(Harding, 1992, p. 2)

Much of the literature concerning the debate over the contracting out of government services suggests that accountability can be ensured through a carefully constructed contract and appropriate monitoring arrangements (Harding, 1992; McDonald, 1994; Steane and Walker, 2000). This presents a very technical face of accountability, which is not unusual within the context of societies that privilege technical approaches to social negotiations and is closely linked to a neoliberal framework (Bryan, 2000). Although there is a technical dimension to accountability this is often given a disproportionate representation within

the literature and may have the affect of constructing rather than representing, notions of accountability “by rendering selectively visible, relations of accountability” (Power, 1991, p. 38). Steane and Walker have argued that the dominant discourses in which this view of accountability is placed, “concerns the application of economic logic to issues previously within the domain of political scientists and public policy theorists” (2000, p. 248; Chomsky, 1999). This is indicative of the systemic divorce of economic and social policy, as though one can be justified through the other, rather than equally important components of social organisation.

At the least, the accountability process should reveal whether the contracted private operator is fulfilling its contract and providing the service that has been agreed upon, but according to Bates

(a)fter 15 years of privatization, officials still have almost no reliable data to assess whether for profit prisons are doing their job—or living up to their promise to save taxpayers money (1999, p. 22).

In order to unravel some of the issues surrounding the public accountability of private prisons, the remainder of this paper will look at both its procedural and ethical manifestations discussed in an earlier section, illustrating how inadequate the current arrangements have been in achieving either. It should be noted that any attempt to deal with the procedural and the ethical dimensions of accountability separately presents problems. The failings of technical accountability enable discussion of the importance the ethical dimensions of accountability. Inevitably, these discussions are intertwined.

#### **4. Procedural accountability and prison profits**

The term ‘accountability’ is used in this context to mean more a ‘technical’ than a ‘moral’ responsibility and it is considered to be an objective and measurable concept rather than a subjective one.

(Shichor, 1998, p. 90)

Although it is increasingly accepted that accountability has a moral and ethical dimension (Burritt and Lehman, 1995; English, 2003; Hill et al., 2001; Shearer, 2002; Shichor, 1998; Sinclair, 1995), even its technical components are difficult to ensure. When applied to private prisons, ensuring even the most basic, commonplace forms of accountability has been problematic. There have been difficulties ensuring access to quality information; it has been hard to ensure financial accountability because of the ways that contract fees have been structured; it has been difficult to monitor contract performance; and the processes of contract awarding, renewal and termination have presented difficulties that undermine the ability of the community to ensure public accountability.

##### *4.1. Access to quality information*

If accountability is central to the concept of responsible government and knowledge of the activities of government is central to the exercise of a citizen’s control over

government then it is clear that the doctrine of commercial confidentiality can operate as a barrier to the availability of information.

(Freiberg, 1999, p. 121)

For the procedural functions of accountability to be satisfied there must be access to information that facilitates necessary scrutiny. This is essential in order to ensure that social institutions are constantly under review and challenged to improve the quality of their services. Along with the important dimension of access is the need for quality information that gives detailed, accurate, comparable data—a mission that most accountants are fully aware of. Unfortunately, in the case of prison privatisation this access has been hindered by a number of things, namely the government's ability to deem certain information 'commercial in confidence'; the information has often been technical and has not necessarily provided significant insight; often the information has not been reported in a timely manner; and some sources of information (such as prisoners) have been harder to access under privatisation.

In Australia, many core documents relating to prison privatisation have been held back from public scrutiny under the guise of 'commercial confidentiality', stalling many attempts to scrutinise the operations of both state and private prisons because of a "lack of access to what seemed to be key documentation" (Funnell, 2003; Harding, 1998, p. 5). This is a position supported by Gow and Williamson (1998) in their analysis of Australia's historical development from a penal colony to what they describe as a 'corporate colony' in which public access to information is secondary to a corporation's desire for secrecy. Although some information about private prisons has been made available through Freedom of Information<sup>6</sup> claims, this is costly, time consuming and often vital information is censored before release. The other main source of public information on privately managed prisons has been provided through audit reports of the prisons, and official investigations into prison operations such as the State Government of Victoria's Audit Review of Government Contracts (2000); the annual Productivity Commissions Report on Government Services; and specially commissioned reports such as the Victorian Correctional Service's Report on the Metropolitan Women's Correctional Centre's Compliance with Contractual Obligations and Prison Services Agreement (Armytage, 2000) and the Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons (Kirby et al., 2000). Although these have value, they are limited and constrained by the framework in which they operate and often reinforce the current arrangements. The scopes of these investigations are often limited and most have focused on efficiency improvements, financial expenditures and performance against set measures. Appraisals that adopt a broader evaluative stance are not commonplace and are more likely the result of investigative journalism than any officially sanctioned system of accountability.

A second issue that inhibits the ability to ensure effective accountability in this environment relates to the quality of that information. Information about the quality of the services has often been limited to that which is easily counted, such as the number of escape attempts, positive drug tests or 'incidents'. Audit reports and special reports commissioned by State

<sup>6</sup> Under the Freedom of Information Act, you may be denied right of access to information where, there is a legitimate need for confidentiality or where another person's privacy may be invaded. Under the legislation the business affairs of another person or business are often exempt from claims under the Act.

Government's into the activities of private prisons, like those mentioned previously, have also focused on these issues. These have considerable problems because of the ability to manipulate the data. It is also questionable whether this data can shed light on the quality of the service being provided, and whether it provides enough information on which to evaluate and review approaches to justice and punishment. Unfortunately, a strict liberal framework may "perpetuate the status quo by simply providing additional information to stakeholders without critically investigating" (Lehman, 1999, p. 218) the issues that are in question. It is here that this technical mutation of accountability becomes problematic because it is

potentially constructing, by virtue of rendering selectively visible, relationship of accountability; an inversion of the traditional view of the sources of accountability.  
(Power, 1991, p. 39)

The problems associated with access to information were highlighted in the Correctional Services Commissioner's Report on the Metropolitan Women's Correctional Centre's (MWCC) (Armytage, 2000) compliance with its contractual obligations and prison services agreement. A lot of the issues raised here were not visible in the reports required under the contract and were only made apparent through detailed investigations and not through the standard accountability arrangements. By way of a specific example, the contract requires that the prison operator report drug related incidents to the Commissioner.

The contract also required that no more than 8.26% of prisoners test positive for non-prescribed drug use, as a result of random testing (Contract for the Management of Metropolitan Women's Correctional Centre, 1995, p. 171). This accounted for 20% of the Corrections Corporation Australia's (CCA) performance related fee (Armytage, 2000). Should this target be breached then the fee would be reduced by the proportion established within the contract. Ideally, the emphasis placed on these kinds of performance outcomes should improve the performance of the service. However, the emphasis can also mean that steps are taken to ensure that the outcomes are met 'technically' without actually improving performance. For instance, the Commissioner's investigation into the MWCC found that

for the last 3 months, prisoner 'E' has been tested on 13 occasions between 4.00 am and 5.20 am. The MWCC Manager Health Services has advised OCSC there is no medical reason as to why prisoner 'E' has to be tested at these times. The testing of prisoner 'E' at these times is of significant concern as the predictability of testing enables the prisoner to use drugs with a decreased likelihood of being detected.

(Armytage, 2000, p. 16)

This is an example of how the measurement criteria can be manipulated in order to meet contractual requirements. Such distortions of 'success' are inevitable when the criteria for measurement are as limited as the number of positive drug tests, and that these criteria are contingent on the continuity of the contract and the financial viability of the private contractor. Many of the issues that led to default notices being issued to the contractor related to the management decision not to report required information in a timely manner. As any meaningful system of accountability requires the exchange of information, these breaches undermine the ability of the government to ensure the private contractor is held accountable and also undermines the ability of the public to hold the government accountable

for its actions. The Auditor General of Victoria's Report on Ministerial Portfolio's (2001) identified a number of key issues that related to Victoria's private prisons operators failing to report information. They found that significant incidents were not "immediately reported" (2001, s.3.4.39) and many incidents were "not declared at the earliest opportunity" (2001, s.3.4.40), undermining the most basic dimension of accountability.

Although some audit reports and special investigations into private prisons have provided insight into the management of the private prisons, this has been limited by a number of factors that are unique to the new private arrangements. For instance, traditionally, prisoners have been a good source of information about what is actually occurring within a prison and their access to people outside the prison has played an important accountability function (Maguire et al., 1985). According to Gow and Williamson (1998), in Victoria private prison regulation has ensured the censoring and silencing of prisoners, wherein prisoners have to pre-record eight phone numbers, calling the media is banned and all phone calls are recorded. This has meant that there has been a decrease in the amount of information about what happens inside prisons from the point of view of the actual prisoners. The report into MWCC (Armytage, 2000) found similar problems, with inadequate staffing leading to long lockdown periods, which make it impossible for prisoners to access telephones or meet with family and friends. This draws into question the argument that more flexible staffing arrangements made possible through private prison operators are actually lead to more successful prisons.

In order for basic accountability this to be satisfied access to information needs to be ensured, and in a profit-oriented environment, this may be even harder to guarantee. Rather than ensuring that private contractors perform well, these examples suggest that there is a large incentive to ensure that the private contractor *appears* to be performing well. As Shichor has argued, evaluating private prison performance is hard because "of the paucity of benchmark data to forecast future developments", the "problems of access to the records of private companies" and the difficulty of providing an evaluation of private operators when "there is already an assumption that they are doing a better job than state run prisons" (1998, p. 89). There is significant evidence to suggest that private prison operators are not providing the government with even the most basic, contractually required information within the defined time frames. As such, access to quality information that enables scrutiny of private prisons by the government becomes very difficult and just as importantly, the lack of publicly available information makes it almost impossible for member of the broader community to scrutinise the activities of the prison operators. A corresponding problem arises, in that the energies of the interested parties become focused narrowly on achieving basic information exchanges, and questions about what constitutes that information, and who has a right to it become marginalised by the pressing need to ensure the basic requirements (as defined by the contract) are met. In light of this, even this procedural element of the accountability arrangements between the prison contractor and the government has been hard to ensure.

#### 4.2. *Contractual fees: how to make a profit, prison style*

What has happened is the privatisation of profit and the socialisation of risk.  
(Scott, 1996, p. 101)

As a result of the commercial confidentiality powers of governments, very little contract information has been released. By mid 2004, contracts for private prisons in Victoria and Western Australian were publicly available, however, all other states have not released the contracts to the public. Importantly, the financial information within these contracts has not been made publicly available, so public scrutiny of the financial arrangements has only been possible through secondary sources.

Fees awarded for private prison management contracts differ from state to state and prison to prison. There are obvious reasons for the differences in payment, including the different mix of inmates in the prison, the different level of services provided, or the agreed differences in efficiency, running costs and profit margins for the operators. When analysing these costs, the Auditor General (1999) could not release the benchmarks for government operating costs, but could say that all contracts were less than the government's benchmarks and that even so, he was unsure about the cost savings because of the inability to factor in things like long-term social costs, societal risks and monitoring cost 'realities'. In terms of accountability, the contracts provide little information about how much the fee will be reduced in the case of breaches, which is essential in order to understand how the firm is encouraged financially to comply with the contract. There is also little information about how the corporation can make a profit and what actions they can take in order to pursue this aim.

Generally the fees associated with a prison contract have been divided into three parts. There is an accommodation service charge, which is for the provision of physical facilities; a correctional services fee, which is for the day-to-day operations of the prison; and a performance-linked fee, representing the investment reward or profit. It is the latter that distinguishes the private operator from the government. It is a fee that should encourage quality service delivery because it enables the operator to make a profit. However, this fee has often led to an erosion of reporting quality rather than an increase in service. The following section will offer some examples of how this fee structure has not enhanced the accountability framework, financially or in terms of service quality.

Firstly, the accommodation service charge appears to be a simple fee for service payment, but has proven to be quite controversial. For example, the Australian Broadcasting Commission (Mares, 2000) reported that charities may have inadvertently contributed to ACM's bottom line. ACM's contract requires it to ensure that there is adequate clothing for the detainees and prisoners, but it puts no limits on how they can source and finance these needs. According to the Australian Broadcasting Corporation's report, ACM initially sourced clothes from St Vincent de Paul, who agreed to provide them at \$5 kg (their normal rate was \$8). Eventually it was discovered that ACM managed to source the clothes from another section of St Vincent de Paul for free. When ACM was confronted by St Vincent de Paul, they ended up paying \$2100 for 2000 kg of clothes for which they originally had negotiated a rate of \$5 kg. When this information came to light, the commercial relations between St Vincent de Paul and ACM broke down, so ACM went to the Uniting Church and asked for clothes and basic housing items to be provided (such as curtains). According to the Uniting Church, there was no suggestion that they would pay for these items. When the Uniting Church realised that "the government is actually, on behalf of the Australian people, paying ACM to provide those things and we decided then not to go ahead with it" (Mares, 22/11/2000). The situation exposed the fact that the



government had no way of holding the private operator accountable for how they provided the service. The outcome proved controversial as it allowed the private operator the opportunity to exploit charitable organisations to fulfil its contractual requirements in an attempt to maximise its profits. In this situation the use of private operators and the claims that these operators can provide the services more cost effectively, has meant the provider under the private system can be held less accountable than a government provider.

Secondly, the correctional services fee also appeared to be a straightforward payment, but instead, it has proven quite controversial. For example, in January 2003, prison guards at Arthur Gorrie Correctional Centre were in dispute with ACM over a plan to use prison labour to increase prison profits (Private Prison Report International, May 2003). The proposal involved replacing prison staff with inmates in areas such as the kitchen. Although ACM was paid a fee to provide for the day-to-day management of the centre, this proposal did not appear to contravene the contract as the contract had not defined how the services should be provided. After protracted negotiations with unions, the proposal was dropped. This presented a similar dilemma to that outlined previously, the mode of delivery was left out of the contract to enable 'flexibility' but instead could be interpreted as allowing the company access to exploitative practices to maximise returns. There was no formal process that allowed the government and the community to hold the provider accountable for how the service was to be delivered.

And finally, the performance-linked fee was designed to enable the company to be paid a fee that was above the costs of the operation based on them meeting certain specified standards. Unfortunately, the performance incentive has often led to under reporting of incidents, rather than excellence in service quality. For example the Woomera detention centre provides graphic examples of the extent that corrections corporations will go to in order to be 'cost effective' and ultimately generate a profit. In the case of Woomera, it appeared that Australasian Correctional Management (ACM) failed to report 'incidents' that related to its performance evaluation. Such an incident received considerable media attention when it was reported in 2000 that ACM failed to report an alleged rape of a 12-year-old boy in their Woomera facility. It was also widely reported that they were reluctant to disclose this information because it would lead to a financial penalty of around \$20,000.

This would suggest that the presence of a financial penalty and the corresponding effect this would have on the profitability of the centre, meant that the accountability arrangements written into the contract were not sufficient and may well have led to opposing outcomes. For ACM to be held accountable if they breach their responsibilities to care for refugees and keep them free from physical and sexual abuse, the government relies on them to report incidents accurately. Conversely, to ensure a profit, the company has an interest in ensuring reports do not expose them to a financial penalty.

Detailed information is important in order to understand how the profit motive is affecting the provision of prison services and how 'cost-effectiveness' is actually achieved. Without this type of information financial accountability becomes emasculated and technical, lacking any substantial information on which to assess performance. As few contracts are available, and the costing remains secret in many cases, it forces the public to rely on secondary sources. It becomes hard to scrutinise costs, let alone form a picture as to whether the

cost savings (if there are any) are morally defensible or are the result of practices that are unacceptable to the community.

#### 4.3. Contractual monitoring

Richard Harding: To give an example, in Junee Prison, which is in New South Wales, there was at one stage a riot, and this riot wasn't even mentioned in the annual report of the monitors about the prison. It was quite a major riot, and obviously they didn't quite conceive, or their superiors did not quite conceive their role as dealing with the feel of what's happening in the prison, the ethos, they were more concerned with tick-a-box kind of monitoring.

(Haultain, 1997)

From a purely technical point of view, the contract with the private prison needs to ensure access for official visitors, Ombudsmen's right to oversee the operations, parliamentary scrutiny and freedom of information. Notably, these things would be almost identical to the monitoring rights of the community if the facilities were being managed by the public sector, but in addition to these the contracts must ensure that an independent monitor is appointed to check contract compliance and compliance with general standards. In order to perform a monitoring task, the contracts that are being monitored need to be available, however in many cases the "final contracts themselves are treated as being 'commercial in confidence'" (Harding, 1992, p. 5). As noted earlier, the controversy surrounding public sector secrecy and a protracted legal battles using Freedom of Information legislation has led the Western Australian and Victorian government to make available private prison contracts to the public. Although this kind of openness is an essential part of accountability, it is not enough in itself.

Monitoring the contract is essential to ensure that the service that has been defined and paid for is actually being provided. Harding (1998) suggested that the monitoring of contracts under the stated arrangements and within the organisational cultural contexts provides a situation that is open to regulatory capture. This sections opening statement by Richard Harding (Haultain, 1997) on the Junee Prison riots provides an example of regulatory failure, as the Correction Service Commission of New South Wales had not persisted with the on-site full-time monitor provided for in the contract. Instead they had withdrawn that person from the system, leaving Junee prison without a person equipped to monitor the operations properly. There are a number of examples of this 'capture' within contractual arrangements. One such example is the Borallon prison in Queensland, which was supposed to have a monitor on site 5 days per week. This person was directly responsible to the Queensland Corrective Services Commission (QCSC). When interviewed a year after the opening of the prison, the monitor was spending 1 day per week at the site as the person had become responsible for the monitoring of five sites (Moyle, 1994). Harding (1998) suggested that this process was the result of resource constraints and neither a corporate or government organisational culture that was supportive of the need for monitoring, making it difficult for the monitor to access the information and resources to fulfil the obligations of the role. In this way, the contracting out decision may service the needs of both the private operator and the government, as neither have had to maintain the monitoring standard required previously—and both have been able to blame each other for the inadequacies.

Although the accountability mechanisms may appear sound within the contract, the practicalities are never as clearly represented (Funnell, 2001). This is a point that has been clearly made by Cavise, when he argued that

(i)f the interests of society and the rights of the individual are to be safeguarded, the “government of the people” is under an obligation to ensure that the goals of incarceration are met by the constant control and monitoring exercised by a state agency that is not motivated by profit but by societal and individual concerns (1998, p. 20).

It has been suggested that if the contract is sound, it can provide strict safeguards in terms of specification of standards, default, penalty, termination and step-in clauses. According to Harding, “(a) loose contract will tend to have loose accountability; a tighter one should facilitate accountability” (1998, p. 80). However, as the Borallon and Junee example suggest, contracted and actual accountability may be significantly different. All this may enable us to forget that we are talking about accountability in and for prisons, which has a moral and social responsibility beyond the technical (in)accuracies of a contract. As Shearer has argued “any theory of moral responsibility must ultimately rest on ethical considerations regarding the nature of the economic entity, including its relationship to the human community within which it operates” (Shearer, 2002, p. 543).

#### 4.4. *Contract awarding, renewal and termination*

The process of awarding, renewing and terminating contracts must enable the government to hold the contractor accountable for their actions and also should allow the community to have input as to the acceptability of the contractual arrangement (Schoombee, 1997; Scott, 1996). Unfortunately, this has proven difficult in Australia as the tendering and renewal process has not encouraged the kind of competition that is supposed to lead to better outcomes. This is particularly true in the case of contract renewal, wherein many of the contracts allow the current operating company the right to the contract over other operators in the industry.

There are a variety of possible contractual arrangements between government and the private contractor, from purely outsourcing the administration of prisons, to contracting out design and construction of the prisons, to full ownership and financing of the complete prison arrangement. There have been considerable investigations into the mixture that is the most cost effective, whilst maintaining the minimum quality required (Logan, 1990). According to Harding (1998) there has been considerable take up of the model that ensures private contractors, or their financiers, have paid for and own the prison structure itself, with the government repaying the capital and borrowing costs over time. At the expiry of this, the private contractor continues to own the structure and has a further 20-year lease of the land. These contracts also come with initial 5-year management contracts with 3-year renewal periods. This arrangement has been adopted heavily in Victoria, leading Harding to question how accountability can be maintained within these contractual arrangements as it “gives the owner/operator a powerful position in bidding for the continuance of the initial contract” (1998, p. 2). As the “loss of a management contract to a competitor” is an “important element in effective accountability” this is “unlikely” (Harding, 1998, p. 2). Currently in Australia, Borallon, Arthur Gorrie and Mt Gambier are ‘management only’

contracts; Woodford and Junee are 'design, construct and management' contracts; with Victoria's Deer Park, Fulham and Port Phillip being the only fully privatised prisons.

The private ownership of prison buildings and land may present a serious issue to governments if they choose to take back the administration of prison services. As the ability to reclaim the administration of the prison is an integral part of the accountability process, these ownership and control issues could erode the 'actual' existence of appropriate accountability mechanisms. Harding has argued that

(d)eferred ownership of real estate and physical plant and long-term financial commitment by way of certificates of participation together constitute real if not insuperable barriers to state policy reversal in this area (1997, p. 13).

There are many examples of State governments failing to step in when companies have breached their contracts. For instance, the Prison Privatisation Report International (PPRI) reported in May 2003, that the Inspector General of Corrective Services for NSW commented on ACM's management of the Junee Correctional Centre, stating that "there appear to be a number of ongoing areas where the contractor and the department (of corrective services) have disagreed in terms of service delivery, but these matters never seem to be resolved. Nevertheless the department continues to find the contractor satisfactorily meets its contractual obligations" (PPRI, May 2003).

During a lockdown in Port Phillip prison operated by Group 4 in May 2003, a pistol, ammunition, drugs, mobile phones and a digital camera were found in prison cells. As the government did not step in, there was considerable community concern surrounding the "imbalance of power in the contracts between the government and Victoria's two private prison operators" (PPRI, June 2003). PPRI drew attention to an interview with Andre Haermeyer on ABC Radio in which he said "we have contractual obligations and it is only when there is a serious and repeated material default against the contract that we can actually step in" and when asked whether a loaded gun constituted such a breach he replied "well, no, it isn't, under the contract, no . . ." (PPRI, June 2003). In fact, the contracts for this prison and Fulham (run by Group 4) was renewed in October 2002 with what the government described as 'tighter performance measures', however, this was not part of a competitive retendering process because the initial contract gave these operators first rights to new contracts.

The difficulties faced by governments when they decide to reverse the decision to privatise or contract out has been evidenced in the case of the Metropolitan Women's Correctional Centre in Victoria, where the government has faced community concern about the cost of the reversal. Even though the situation at the MWCC was revealed to be in breach of the contract, the decision to terminate the contract was not easy. With the return of MWCC to public control in 2000, this situation arose after 4 years of repeated breaches of contract and failure to meet the service delivery outcomes required.

However, there was little precedence for such a situation and the conditions of that return were complicated and negotiations were protracted. In the end, the state of Victoria was forced to purchase the building from the contractor. Acknowledging the breaches the contractor requested a negotiated settlement of the contractual arrangements, which meant that the state of Victoria was not exposed to extended litigation. In November 2000, the Government took back ownership and management of the prison for \$ 20.2 million, \$ 17.8

million of which was for the building, infrastructure and chattels and \$2.4 covered the costs of terminating the loan on the facility that had been taken out by the private operator (Auditor General—Victoria, 2001). The Auditor General—Victoria (2001) identified that \$1.2 million of these costs were specifically related to the step-in and administration of the facility.

These indicate the costs that are not considered when a contracting out or privatisation decision is made and is indicative of the ideologically driven cost data that is produced in order to justify privatisation decisions. As a result of the complexities of the contracting process, it is hard to hold the government or the private operator accountable for their actions. As Robinson (2003, p. 184) pointed out “reports generated through performance measurement initiatives were supposed to give the voting public a way to see how responsible and accountable their government had become. But the presence of such unintended consequences might inspire us to consider the following idea: scientific knowledge can be used as a weapon”. Perhaps an extension of this would be to say that in light of neoliberal ideology, these consequences may benefit both the government and the private prison operator as they produce the appearance of accountability whilst distorting its meaning in fundamental ways that enable a retreat from responsibility (Funnell, 2001).

## 5. Ethical accountability and prison profits

Frank Vincent: The State creates the offences, imposes the sanctions, enforces the law, and then either incarcerates individuals or subjects them to community-based orders of one kind or another. The whole process is an activity of the State, and for the purposes of the State, and it makes no sense then that the State would not be central to it. It must be realised that at the end of the day that what is being exercised is a considerable amount of power in relation to individuals.

(Haultain, 1997)

In the previous section it has been established that even a procedural view of accountability is difficult to ensure, but even if it was easy, it is still insufficient as it fails to ground our ideas of accountability within a “substantive moral framework” (Lehman, 2005, p. 976). As Lehman (2005, p. 985) has argued “(i)t remains problematic whether procedural conceptions of accountability expand our understanding of citizenship” instead, it is possible that “people the atoms that make a market system work”.

Along with this, it is important to acknowledge that accountability within the prison sector has important ethical dimensions, the removal of a persons right to participate in society is a significant State power and public support because of its moral intent. This intent cannot be discharged by a ‘check the box’ style accountability arrangement, as the State, the community, the ‘prison provider’ and the ‘criminals’ moral responsibility is more substantive than immediate, measurable outcomes would lead us to believe. In this section, two issues will be explored in order to illustrate the centrality of ethics, when discussing public accountability for prisons. Firstly, the quasi-judicial powers of prisons mean that corporations could have a substantial affect on the length and type of punishment that a person may endure; and secondly, there are considerable socio-political and ethical questions sur-

rounding the future of a society that sanctions a connection between profit and punishment. As Shichor argued “instrumental goals are usually clear, consistent and easily quantifiable, on the other hand, the goals of human service organisations are harder to quantify, their level of performance does not lend itself to easy evaluation” (1998, p. 89).

### *5.1. The quasi-judicial powers of prisons*

When addressing issues of moral responsibility and prison management, the outsourcing of prisons has been justified on claims that the sentence and the administration of that sentence can be clearly separated (Harding, 1992). However there are a number of problems with this, particularly in regard to ‘quasi-legal’ decisions that are made within prisons themselves. These are made with little outside arbitration or scrutiny and in some cases there is no outside arbitration at all. This means that prison management does have the ability to affect the way that the sentence is administered, and has some ability to significantly change the experience of that sentence as a result of internal decisions, particularly in the case of alleged breaches of prison discipline. In these cases, the hearing and review process often occurs entirely within a correctional centre (Moyle, 1999), drawing into question the ability for private sector management to make credible, uninterested decisions, about the treatment of prisoners. Moyle (1994) attended a number of hearings at Borallon and Lotus Glen in Queensland, and some of the transcripts illustrate the lack of scrutiny within internal hearings. He outlined the position of Manager of Operations (MO) at the Borallon prison saying

it was acceptable to breach inmates because they were a “problem at the centre”. The MO clarified the meaning of “problem at the centre” as “protecting CCA’s business name”.

(Moyle, 1999, p. 166)

This is not an isolated incident. In Queensland, the private company ACM runs the reception centre at Arthur Gorrie. At this facility, all the decisions about the prisoner’s classification as a maximum/medium/minimum security inmate are made. It goes without saying that these will seriously affect the movement of a prisoner through the correctional system, and although there are regulations that guide this decision-making process there is, in practice, extensive discretion to be exercised on behalf of the classification staff. When Moyle interviewed a sentence classification officer at ACM in 1997, they gave an example:

“Here is an inmate who is a serious sex offender. We have to look at presentation, appearance, behaviour, mood, what he is thinking and his employment history. We should get a psychologist to do this but because of a shortage we have a teacher doing it. I shouldn’t tell you that. The recommendation should not be made by a teacher . . . We know it’s not their place”.

(Moyle, 1999, p. 169)

This decision-making process has serious consequences for the person about to enter the correctional system as it will affect the ‘type’ of sentence they will have to undergo. Moyle’s (1999) paper argued that the fact that a private facility was able to make these decisions meant that they might have the opportunity to choose ‘profitable’ or ‘cheap’ prisoners (Harding,

1998, also outlines this possibility). Private management can also exercise quasi-judicial powers by placing a prisoner in solitary confinement, which is a practice that amounts to punishment and it does not have to be sanctioned directly by the State. At the Acacia prison in Western Australia, AIMS corporation came under criticism from the Inspector General, Richard Harding when he discovered that there was evidence that “some inmates had been locked in their cell, with the electricity off as a form of punishment” (PPRI, May 2003).

According to Moyle, these internal “disciplinary regimes involve an extension of state authority” (1999, p. 172). Russell voiced concern over these arrangements when he wrote

(p)ivate prisons can directly affect remission, parole, disciplinary decisions and a number of other issues which potentially increase the length of sentence of an inmate and some these matters are not subject to review or appeal (1997, p. 8).

The fact that private companies, primarily answerable to their shareholders, can make decisions about prisoners that go beyond administration, undermines the government’s argument that a prison sentence can be managed by a private entity. It is obvious that the quasi-judicial powers of prison management impinge on the government’s ultimate responsibility to determine the punishment of the person. It also complicates the public accountability process as the punisher is further removed from the society in whose name the punishment is being carried out. The affect of profiting from punishment on public accountability will be considered in the following section.

## 5.2. *Profiting from punishment*

As punishment is complex social, ideological and cultural terrain, it will never be an entirely rational execution of orders with clear objectives and controllable outcomes. It is has multiple and competing aims and innumerable intended and unintended consequences. In accordance with this Garland has argued “(t)he failure of modern punishment is in part the inevitable outcome of an over rationalized conception of its functions” (1991, p. 12). As prisons enable a society to separate and classify those that it deems to be ‘criminal’, the introduction of privately operated prisons further separates criminals from society because of the shifts this enables in terms of public accountability. In light of this, the ability for a private corporation to profit from nuanced state and social objectives acted out on the body of a citizen could be considered unreasonable and morally repugnant. By no means is it surprising that corporations will act to minimise costs, and cost is an obvious consideration in the delivery of any public sector function but the centrality of cost and the possibility of profit are problematic. Prisons and penal policy should be focused on broader social objectives and questions that lead to better outcomes for all members of a society, including prisoners, as has been shown, these questions are not enabled within the current accountability arrangements. This is a view supported by Shearer (2002, p. 546) who argued that “when economic entities render accounts of themselves in economic terms, the identity so portrayed and the obligations of the entity with respect to the broader community are both dependent upon the specific conceptions of subjectivity and intersubjectivity that are instantiated by economic discourse”.

It has been argued throughout this paper that imprisonment has an undeniable moral component, as punishment imposes deprivation and suffering on a citizen as a result of them

breaking the law. According to Ryan and Ward, it should be remembered that punishment represents “organized use of force in liberal democratic states” (1989, p. 70) which means there is a huge scope for abuse in this process by both private and public agencies. They argued that it is morally repugnant to punish people for profit because it creates a link between pain and suffering, and profits. For them it is not punishment that is the problem, but the socio-political message sent via “the rewards that accrue to penal entrepreneurs” (1989, p. 70). It is also possible that these rewards may create a prison industrial complex, in which there is a vested interest in prison expansion (Stern, 1998). This would suggest that there are profound ethical and ideological issues surrounding the privatisation of prisons, yet these have been ignored largely in favour of discussions regarding cost-effectiveness, comparative costs and value for money—all strong indicators of a government driven by neoliberal ideology (both Logan, 1990, and Calabrese, 1993, discuss this in detail). It is difficult to accept the argument that problems associated with the private/public sector split of responsibilities can be overcome with effective accountability, because the accountability proposed is highly technical, rational and objective, disconnected from the moral and ethical dimensions present within accountability relationship. As has been argued by Freiberg

(t)he provision of correctional services carries with it greater responsibilities and unusual requirements of accountability than most other areas of government services. Because prisons are concerned with the liberty of individuals, issues of authority, legitimacy, procedural justice, liability and corruptibility must play a major role in their management (1999, p. 122).

Questions about the quality and purpose of corrections services must be central to the debate, which has led Russell to argue that

private prisons should be opposed fundamentally because of the inferior quality of services prisoners receive as a result of the insatiable drive to increase the profit margin in such institutions (1997, p. 7).

As has been suggested, the boundaries between the allocation and administration of punishment are also complicated within a private prison system as the prison operator does have many discretionary powers that can affect the length and type of incarceration that the prisoner experiences (Moyle, 1999; Ryan and Ward, 1989). This is also true of public prisons, but when a corporation who is ultimately bound by corporation law to maximise returns to shareholders is responsible for such decision making, keeping prison beds filled and the industry growing is essential to the growth potential of the company. This may lead to a situation in which “doing well beats doing good” (Smith, 1993) in the corrections industry. There is substantial evidence of this within the industry, for instance the Inspector General’s report on the Acacia prison in Western Australia highlighted this when he discovered that “quantities of food seemed to have diminished as population increased, as if the same sized cake were being divided more times” (PPRI, May 2003).

This is a view supported by Hallett who claimed that combining privatising aspects of the corrections system has enabled a solution to over-crowded and costly prisons that leaves the root cause of crime unaddressed, and “in this case, the fountain of all profits – large populations of disenfranchised surplus population trapped in the inner city to be incarcerated for non-violent drug crime – conveniently intact” (2002, p. 389). Instead of communities



demanding a form of accountability that highlights their elected officials efforts to address root causes of crime, and information about a government's efforts to reduce behaviour that is deemed to be socially inappropriate, we are left with accounts of how governments are reducing the costs of crime through privatisation. This is obviously in the interests of those that profit from imprisonment, because if we were to begin to address root causes, it is imaginable that the number of people going to jail would decrease and this would have a corresponding negative impact on shareholder wealth of private corrections companies. Overall, connecting profits to punishment means that there will be less incentive to reduce rates of incarceration and enormous private resources will be mobilised to ensure that prison policy does not deviate from a policy that continues to enrich private interests (Chomsky, 1999). For Shichor even the potential "for conflict between the social interests to reduce prison population, and the financial interests of private correctional corporations to increase it" (1998, p. 84) is too much and he argued that

(t)he logic and nature of corporations further the consistent drive toward expansion and they will build a growth factor into the correctional system.

(Shichor, 1998, p. 86)

## 6. Conclusions

The dominance of neoliberal ideology in post-industrial societies has meant that the prison has not been left untouched by decision-making models founded on 'economic rationalism'. Chomsky (1999) has argued that this is part of a systematic effort to erode democracy, which in his view benefits corporations and governments. Both are able to distance themselves from the will of the people and act in ways that are mutually beneficial to ensure expanding profits for corporations and a diminished citizenry for governments to have to respond to. The privatisation of prison management and prison building connects punishment with profit, and although many argue that the sentence and the administration of that sentence can be separated, this paper indicates that there are significant areas of overlap. The expeditions of private capital into areas that have been off limits are indicative of the crises that face the expansionist imperative of capitalism in economies that are no longer industrially oriented. As capital looks for places to grow, public sector services are a logical focus and prisons have not been left out of this process. Within the context of private prison operations, effective accountability plays a vital role in order to provide the conditions that enable the private provider, the state and citizens to scrutinise penal policy and operations. Unfortunately, as this paper has shown, the technical mutations of accountability have dominated these processes and it has also been argued that the emphasis placed on procedural accountability has helped obfuscate the ethical and moral components of accountability relationships.

The idea that profits can be derived from punishment presents our society with a considerable ethical dilemma, and those opposed to such a relationship have often couched this opposition in terms of the superiority of the state over the private sector. The difficulty with this argument is that public prison systems are also riddled with problems, and a debate that centres on the provider can fail to analyse the role of prisons and punishment within society.

Raising ethical accountability issues creates a level of complexity that can be confusing and messy, but such issues can lead to deeper considerations of the inequities that operate within our societies and the impact these have on criminality; the prejudices that are institution-alised and the affect this has on the ways we define deviance and illegality; the alienation experienced within post-industrial society and the corresponding need to act out; and the ways that power operates to define the parameters of the acceptable and unacceptable. It is in this way that punishment is both a social expression and an instrument of social control, wherein discussions about the role of the state in sentence administration can be a distraction from the deeper issues of economic, political and social influence. Unfortunately, the technical mutations of accountability appear to have provided a vehicle for such distraction.

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## Value for Money?

### Neoliberalism in New South Wales Prisons

(Forthcoming, *Australian Accounting Review*, 2009)

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#### Abstract

The NSW prison sector has undergone considerable reform over the last ten years. The NSW government now oversee the operation of publicly managed prisons, one privately managed prison and a number of new public prisons operating under the new 'Way Forward' management model. In order to establish which approach to prison management offered the best value for money, the NSW government undertook a 'value for money' assessment in 2005. In this paper, we argue the cost accounting information is privileged in the assessment process. However, we contend that this information was limited and partial, and provided a poor basis on which to form policy. Even so, the NSW government has proceeded on this basis. In order to explain this, we position the report within the wider neoliberal turn in policy-making and the workplace reforms that have accompanied it.

Classification Code: M40

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Key Words: Prison privatization; neoliberalism; new public management; public sector reform; public accountability.



## **Value for Money?**

### **Neoliberalism in New South Wales Prisons**

In September 2005 the New South Wales Parliament's Public Accounts Committee released a report entitled "Value for Money from NSW Correctional Centres". The report considers three different approaches to correctional service delivery in New South Wales. These can be loosely categorized as public prisons; private prisons and a "way forward" model that draws on elements of both. The report is part of a global trend whereby policymakers have sought to determine which mixture of private and/or public prison arrangements are the most efficient and effective (Schicor, 1995; Cooper and Taylor, 2003; Roth, 2004; Andrew, 2007).

We argue that this report is fundamentally flawed on its own terms. Although efficiency has many meanings, we posit the most significant measure of efficiency for the New South Wales government in its value for money assessment has been 'cost-effectiveness', rather than service delivery and the stated 'corrective' objectives, of incarceration. It is undeniable that cost effectiveness is important in the design of any policy, but it is only ever part of the story (Newberry and Pallot, 2003). In this case 'cost effectiveness' has been given such a central position that other issues that should be considered in the design of good prison policies have been neglected. Not only is cost considered central to the NSW government's prison policy recommendations, we show how the cost data used to build an understanding of the prison sector is flawed and based on assumptions that are not supported with externally verifiable evidence.

We also argue that the report positions workplace reform as the central innovation required for positive transformation of the prison system in New South Wales. Although other aspects of innovation are acknowledged, none are considered to the level of detail offered labour reform. While we recognise that the maintenance of a private prison in New South Wales has a number of objectives; our reading of this report suggests its primary purpose has been to discipline labour. It is an example of the use the private sector to achieve reforms within the public sector.

This paper is divided into three parts. Firstly, we discuss the content of the report and consider how the NSW Government has framed prison policy. We challenge the cost data used within the report and show that this does not present a clear foundation for policy. Secondly, we explore how neoliberalism functions within NSW Government policy processes. Using this perspective, we argue the cost focus of the NSW Government belies the strategies that are actually operating. Thirdly, we explore an alternative explanation, arguing that the paradoxical position of the government has strategic-political motivations that underpin the appeal to 'value for money'.

## **1. New South Wales Prisons**

### **Our Mission:**

Managing offenders in a safe, secure and humane manner and reduce risks of re-offending

### **Our Vision:**

Contribute to a safer community through quality correctional services

(NSW Department of Corrective Services,  
[www.dcs.nsw.gov.au/about\\_us/Mission\\_and\\_Vision.asp](http://www.dcs.nsw.gov.au/about_us/Mission_and_Vision.asp), accessed 17/04/2007)

The delivery, management and maintenance of prisons are no longer the exclusive domain of government. In 2007, about 17% of the overall prison population of Australia is held in a private facility (Andrew, 2007). NSW has adopted incarceration policies that have led to a prison population that in 2004-2005 was about 10% above the national average (Auditor-General, 2006). At the last census date, in June 2006, NSW held the largest number of prisoners in Australia, with approximately 9,800 sentenced and unsentenced people incarcerated ([www.justiceaction.org.au/index.php?option=com\\_content&task=blogsection&id=9&Itemid=30](http://www.justiceaction.org.au/index.php?option=com_content&task=blogsection&id=9&Itemid=30), 17/4/2007). Without a doubt, NSW incarceration policies place a significant burden on the prison system, and the state now has 35 correctional centres that need to be operated and maintained. None of these centres are identical. For instance, they vary in terms of size, security level, geographical location, the age of the infrastructure, the gender of the inmates. The ability of the government to maintain and expand prisons to meet the expanding demand for prison space and services has caused considerable concern within the government.

## **2. The Report: Value for Money**

Despite the promise of cost reduction, much evidence shows that the cost differences between state and private prisons are insignificant (Cooper and Taylor, 2005: 506)

The Public Accounts Committee is an extension of the NSW Legislative Assembly, taking direction from Ministers or the Auditor General to scrutinize the “efficiency and effectiveness” of government activities. In April 2005, the Public Accounts Committee began an inquiry into the “value for money” of NSW correctional centres. The report states that “value for money is usually defined as the efficient, effective and economic use of resources” (Public Accounts Committee Report No.13/53 (No.156), 2005: iv), however no definition of efficiency and effectiveness is provided. Considering the complexity of issues that surround the provision of correctional centres, most significantly their stated purpose (in NSW this is corrective) and the acceptable means through which this purpose can be obtained (such as the level of educational opportunities, work experience programs and drug rehabilitation considered appropriate to correct ‘criminal’ behaviour), it is noteworthy that a definition of ‘efficient and effective’ is not provided as this would help set up a basis for assessment. Although service quality and policy outcomes are essential to a determination of ‘value for money’ these are peripheral to the NSW report (2005). We argue that this enables the report to position cost-effectiveness at the heart of NSW prison policy and legitimizes public debate that focuses on this issue, whilst deligitimising alternative criteria for assessment, such as safety, educational outcomes, or low recidivism (in NSW about 40% of people released from prison return to serve a sentence within 2 years) (Auditor General 2002; Andrew, 2007).

## 2.1 Cost over value?

'Value for money' is an increasingly popular approach to assessing the 'value' of current and future government policies and projects (Jacobs, 1998). Considering its significance it is surprising that it has not been clearly defined within the literature and that the terms of assessment remain ambiguous (Grimsey and Lewis, 2005). In general, value for money has involved the assessing of the cost and quality trade-off to determine the viability of a current or potential project in terms of its stated objectives. Unfortunately, for the most part this interpretation is not one that has been adopted by governments in their assessments. According to Grimsey and Lewis (2005:375) "the value for money test frequently comes down to a simple, single point comparison between two procurement options...the problem is that value for money is more often than not poorly understood and often equated with the lowest cost".

The report into the Value for Money from NSW Correctional Centres (2005) substantiates the argument that value is being equated with cost. In this report, there was no discussion of what may constitute 'value'. Instead it was assumed throughout the report that cost and value are ostensibly synonymous. This privileging of 'cost' is evident from the outset and is embedded in the report's terms of reference which begins with two objectives that state the report will make cost comparisons within and across the sector. Somewhat paradoxically, the third objective of the report focuses on the development of appropriate costing methods that enable such comparisons. The report acknowledges the difficulties associated with costing and cost comparisons within the sector, but states clearly that despite this, "the focus of this inquiry is on the financial aspects of value for money" (VFM, 2005, p.14). It is also apparent from the terms of reference that, apart

from safety considerations, other markers of 'value', such as the quality of the services provided, will not be the focus of the report. Specifically, the terms of reference state that the report should:

1. Consider the current initiatives being undertaken by the Department of Corrective Services (DCS) to improve safety and cost effectiveness of correctional centre management;
2. Compare the cost of corrective services provided by public correctional centres using the Way Forward program and by private operators; and
3. Review whether the planned improvements to the DCS calculation of costs will facilitate better comparisons between private and public sector providers (Public Accounts Committee, Report No.13/53 (No.156), 2005:iv).

These terms of reference offer an implicit recognition that cost comparisons cannot be made. However, it is important to acknowledge qualitative matters are considered to some extent within the report, but we contend that the report is written in such a way that this is a marginal concern. Unlike cost, quality information is seen to be relatively easy to compare and as a result does not present the same difficulties in a value assessment as those related to its cost. It is well documented that the cost data available is limited and the nature of the sector makes any such direct comparison all but impossible (Roth, 2004). It is also apparent that 'value for money' is ill-defined and, as shall be argued, it is questionable whether realistic cost comparisons and assessments are the motivation for such a report. However, it does enable policy makers to reaffirm cost as its central policy

consideration and relegate other issues into the margins of public debate (Andrew, 2007). It also allows the government an opportunity to position new workplace changes to the sector in 'neutral' cost terms (as discussed later). Although we acknowledge the terms of reference of all reports must be limited, we consider the boundaries of this report to be part of a strategy to position cost at the heart of prison policy discussions.

## 2.2 Partial Cost?

Not only does the report focus on cost rather than 'value', the cost data that is provided is inadequate. The report begins with an outline of inmate costs per day which represents the costs in a way that fails to acknowledge their partiality and ambiguity. The table appearing on page one of the report (Table 1, shown below), suggests the cost per day to incarcerate a person in a private prison (Junee) is almost half the cost per day of incarceration in a public prison. This table frames the discussion that takes place in the remainder of the report, and although the limitations of this data are mentioned, it is nonetheless on this basis that the report proceeds.

		2001-02	2002-03	2003-04
<b>Department of Corrective Services</b>	Average cost per inmate per day	\$167.85	\$187.00	\$187.80
<b>Junee</b>	Average cost per	\$92.04	\$93.54	\$91.75

**Correctional Centre** inmate per day

**TABLE 1 Average Costs per Inmate (taken from the Public Accounts Committee Report, 2005)**

If the information presented in Table 1 was adequate, presenting accurate and comparable cost data, it would be logical to conclude that private prisons are cheaper. If we concluded that they were cheaper, it would be possible to argue they were more efficient and therefore a better use of public funds if this were accepted as the criteria for assessment. However, the story is not this simple. Although the table may be strikingly effective in creating an impression of private prison cost effectiveness, the information is flawed on many levels.

Firstly, the representation of the average cost per inmate per day in the Junee private prison cannot be substantiated with any externally verifiable evidence. The report states in a footnote:

These figures were not in the Auditor-General's Reports to Parliament. They have been calculated by dividing the quoted annual cost amounts by the number of days in the year. This is the cost to DCS i.e the management fee plus the allocation of department overheads, and not the actual cost to the private operator (Public Accounts Committee Report No.156, 2005:1)



These figures have been created for this report, yet there is no detailed explanation as to what constitutes the figure. The Auditor-General's report (2002) didn't include this figure because it was considered too difficult to determine. As the comparative data provided in this table is central to the presentation of the discussion within the report, it would seem appropriate that the Public Accounts Committee substantiate its calculation. Significantly, the allocation of departmental overheads is never completely clear and requires management accountants to make decisions as to how these should be reflected in their accounts. There is much room for distortion and manipulation here, and although the report claims the 'cost per inmate' includes overheads, we are not told what proportion of the Department of Corrective Service's overheads were attributed to the private operator. This complexity of cost allocations is widely acknowledged within the literature (Alam and Lawrence, 1994; Doost, 1997). For instance, Marshall (1994:12) argued that "when overhead is allocated, costs become politicized". Considering that the report proceeds on this basis, it is of concern that these cost allocations are not discussed in more detail.

Secondly, the report relies heavily on the Auditor General's reports to Parliament; however, in the presentation of this cost data the report downplays the inadequacy of this information. For example, the Auditor General (2002) stated that the weighted average cost of an inmate held in one of the State's publicly run prisons in 2001-2002 was \$61,265 per year. However, the cost of an inmate held in the State's private prison at Juneau was \$33,595 per year. Significantly, the Auditor General's 2002 report states that

“this cost cannot be readily compared to the weighted average cost for the Department of \$61,265, as that cost incorporates additional overhead and program costs.” (Auditor General, 2002:125). The nature of these overheads and program costs are not revealed, but it is clear that the calculation of the figure for Junee includes little more than the direct management of the prison. It is unclear how these figures deal with the costs incurred through the process of overseeing the individual prisons and the sector more broadly; the costs associated with contract compliance and design costs; and the cost of the building and grounds that are born by the government.

It is also apparent that Junee has been running below capacity, yet the management fee is fixed irrespective of the number of prisoners held in Junee:

Over the year, the privately operated correctional centre at Junee operated at 94.0 per cent of its capacity... The management fee is fixed, and is based on providing accommodation for 682 inmates (AG, 2002:125)

Using simple strategies, this cost data distorts the representation of the efficiency of the private operator. For instance, the cost per capita for 2001-2002 at the Junee Correctional Centre is based on a capacity of 682 prisoners, when in fact there were only 641 prisoners. Obviously, if the prison is being paid a set amount, yet needs to provide less service, the cost data will be distorted. The fact they were allowed to operate below capacity is also interesting, considering State prisons have been overcrowded, leading to

other cost implications related to the maintenance of a safe, orderly prison when there are too many people in it (NSW Legislative Council, Paper No. 924, 2001).

When cost comparisons are being constructed, it is important to acknowledge that the cost per day of housing prisoners is substantially different depending on their classification. This is apparent when state operated prisons are compared to each other. These per capita cost figures vary significantly, for instance it costs \$421.79 per day to house a prisoner in the Special Purpose Centre at Long Bay, whereas it costs only \$115.01 per day at a minimum security prison (Auditor-General, 2004). This is equally true of the costs used to compare the Department of Corrective Services (DCS) to Junee. The figures appear to vary widely, with the private operator appearing substantially more cost effective; however this needs to be placed within the context of a very diverse correctional system. The fact that the figures vary widely is not evidence in and of itself, because as we have shown, the cost figures will vary depending on the nature of the costs included in the figure and the type of prisoners/prison are being compared.

### 2.3 Secret Efficiencies

The actual internal operating efficiencies of the private operator are not made publicly available. The Public Accounts Committee Report states “the actual operating costs for Junee are not available as GEO is a private company that is in competition with other operators in Australia and this information is commercially sensitive” (2005:23). This statement reveals just how little evidence the government has available regarding the operational efficiencies of the private operator and what strategies it is using to meet its

contractual and regulatory responsibilities, and also ensure a profit for its shareholders. Although the public may be interested only in the amount it costs to provide public or private prisons, the internal efficiencies are still relevant. There are many examples of arrangements that may be made by private providers in order to meet their broad contractual obligations at the lowest cost. For instance, one provider sourced much of the internal furnishing and clothing for the prison through a charity (see Andrew, 2007). How a prison manages to minimise costs is fundamental to an accurate assessment of the prison's performance, and this may not be reflected in a tick of the box style accountability that contractual compliance audits rely on. Arguably, private prisons are at a strategic advantage if they are able to keep much of their operations confidential as the public sector competitors are required to make much of this information publicly available.

To presume efficiency and proceed on this basis is entirely insufficient, as is the argument that private operators encourage innovation if that innovation is a corporate secret and it will not be possible to use it to influence the development of the sector.

Based on this discussion we argue that the privileging of cost over value; the partiality of the costing offered within the report; and the secrecy surrounding the private operators efficiencies undermine the legitimacy of the report on its own terms. As the report proceeds on the basis of what we have shown to be inadequate, and, at times misleading, information, we suggest the report legitimizes strategic policy initiatives through the use of what is presented as 'neutral' cost accounting.

## **Neoliberalism and NSW Prisons**

It has been argued that the report "Value for Money from NSW Correctional Centres" provides little sound basis for a reasonable cost comparison between the public and private forms of prison operation under the NSW Government's jurisdiction. Nonetheless, the report found that the privatised Junee prison offered superior cost effectiveness to that of the publicly managed prisons. Using this finding as a justification, the report recommended that at least one private prison should be maintained in NSW to serve as a benchmark against which the publicly operated prisons could be evaluated. The obvious question arising from this seemingly paradoxical outcome is: why did the report find the privately operated prison to be superior in terms of cost effectiveness, when insufficient evidence existed to make such a case? It is to answering this question that we now turn.

The use of private entities to provide correctional services in NSW is part of a global neo-liberal shift in policy-making. During the past twenty years, neo-liberalism has become, albeit unevenly, the globally dominant 'rationality of government' (Dean & Hindess, 1998). As a theory of governance, neo-liberalism (or synonymous processes such as 'economic rationalism' and 'economic reform') argues that markets are, in general, the most efficient means of providing a host of social services traditionally undertaken by governments. The rise of neo-liberalism has seen the proliferation of processes such as privatisation, deregulation and marketisation for delivering public services. This rise is

often explained as a consequence of the triumph of a particular set of ideas about policy-making (see for example Yergin & Stanislaw 1998, Pusey 1991, Funnell 2001). According to this account, the 'Keynesian' consensus in policy-making which prevailed in most capitalist countries during the post-WW2 boom, and which entailed a strong role for government in the regulation of economic activity, was superseded, as policy-makers came under the sway of the neo-liberal worldview. According to this argument, neo-liberalism has therefore become the dominant logic of policy-making.

Such an analysis provides one possible explanation for the findings of the "Value for Money" report. If neo-liberalism constitutes the triumph of a particular ideology, and has become the dominant logic of policy-making globally, then in prioritising the private prison model the NSW government is, it could be argued, simply following this dominant logic. The paradigmatic dominance of neo-liberalism would help explain why the government is seemingly blind to the lack of evidence which informs its decision.

In fact, this is the same general argument in relation to neo-liberalism that has been put by many of its critics. It is argued that the capture of policy making elites by neo-liberal modes of thought helps to explain why, what such authors view as, an irrational ideology, dominates policy making. Pusey (1991, 8) for example argues that "(t)he process of reform and rationalisation is driven by an intellectual triumph of formal models over practical substance", while Funnell (2001, 1) writes, "(t)hroughout the Western world liberal democratic governments have transformed themselves in the image of the private sector and according to the beliefs of neo-liberal ideologies". While this explanation no

doubt has some merit, it ultimately relies upon the assumption that governments have been captured by an ideology that renders them blind to their own irrational decision making processes. In this case, to decisions based upon inadequate cost accounting information.

In contrast we posit an alternative explanation that emphasises the strategic aspects of the “Value for Money” document. This is not to deny the importance of ideas in influencing policy making, nor the potentially socially deleterious and unintended consequences of neo-liberal policy, nor the potential for policy makers to make irrational and ill-conceived policy decisions. Rather, it is to go beyond such explanations and to recognise that rhetorical commitment to certain philosophies of government – such as neo-liberalism or new public management (Newberry, 2004; Newberry and Pallot, 2003) – often belies the strategic-political motivations that underpin policy decisions.

### **The “Way Forward”**

(t)he proposed cost savings were illusory. Furthermore, the underlying objectives driving the proposals...were more complex than the apparently transparent aim of saving money and providing value for money (VFM). Behind the rhetoric we discern the erosion of public sector pay and conditions and the transfer of wealth from the public to private sector through the perpetuation of a particular type of prison regime (Cooper and Taylor, 2005: 501).

The previous discussion has illustrated how the cost data presented provides an inadequate basis of assessment. However, this data plays a vital role in constituting the terms of debate, offering visibility and legitimacy to cost comparisons that are partial at best. It also legitimizes the development of 'cost minimization' strategies, making significant reforms possible within a debate that has been captured by these terms.

We argue that this is strategic and is not an accidental consequence of policy investigations and government reports. It is the inevitable consequence of reports that are framed almost entirely within the limited parameters of cost effectiveness. One outcome of this has been the development of the 'Way Forward' Workplace reform within the public prison system, which has been operating in the States' two new prisons at Kempsey and Dillwynia since 2004.

According to the report, the 'main benefits' of the 'Way Forward' model are:

reduced overtime, reduced sick leave and streamlining of operational functions. This has resulted in significant cost savings when compared with correctional centers operating under the traditional model. Other advantages include improved security and safety for both staff and inmates and increased rehabilitation opportunities (Public Accounts Committee, 2005:15).

While greater cost efficiency is the acknowledged aim of the 'Way Forward' model, a closer reading of the 'Value for Money' report reveals a broader agenda. The report states



that Memorandums of Understanding based upon the 'Way Forward Model' will be introduced in the future to replace existing 'Operational Agreements' in order to:

- Consult staff on matters related to safety and workplace relations;
- Increase flexibility of management to pursue operational and economic key performance measures; and
- Reduce the union focus on maximizing overtime in future award negotiations (Public Accounts Committee, 2005:16)

The last two points are revealing. They suggest that the broader goals of the "Way Forward" program are greater managerial flexibility and a reduction in the purview of union demands. Increased managerial flexibility is noted in the document as an outcome of the "Way Forward" model. For example, the 'let go and 'lock in' process "allows more flexibility in managing staff resources ... This has resulted in overtime not being the only solution to staff shortages" (Public Accounts Committee Report, 2005: 17). Similarly, changes to the operation of court cells within correctional centres means that: "staff can be redeployed between centres and court cells to meet needs on a day to day basis. This will allow greater flexibility in staff management and reduce operating costs" (Public Accounts Committee Report, 2005: 18). Furthermore, the proposed centralization of staff rostering under the 'Way Forward' model gives greater power for the DCS to manage staff hours without incurring overtime costs and curtails the ability of prison staff to influence rostering decisions. The Way Forward model therefore points to a regime of greater managerial prerogatives, increased flexibility of management in the deployment

of labour, potential cost savings through the reduction in over-time and sick leave, and a diminution in union influence over these issues.

These reforms were negotiated using data that illustrated the cost-effectiveness of the private model, and the labour-related inefficiencies of the public model. Throughout these negotiations the government maintained its right to offer the new prisons to private tenders if the negotiations were not successful. The union representing prison staff, the Prison Officers Vocational Branch (POVB) of the Public Service Association, reported to its members that during negotiations over the 'Way Forward' model 'At all times hovering in the background is the spectre of privatisation. The Government through Treasury has made it plain that privatisation will follow if agreement on working conditions, etc, is not achieved between the Union and the department' (PSA, 2003). The POVB also claimed that 'all available sources of information confirmed the threat that the new prisons were to be operated by the private sector' (CPSU-SPSF, 2004). One of these sources was the John Hatzistergos, Minister for Correctional Services, who informed union officials at a meeting on September 10, 2003 that 'private prison operations are continually approaching the government for work' (CPSU-SPSF, 2003). It was in this context that the 'Way Forward' reforms were agreed to by the union. At the time POVB official John Scullion, argued that the agreement ensured 'that more than 500 jobs remain in he public sector' (CPSU-SPSF, 2004).

In effect, it seems that the government used the possibility of further privatization as a threat to discipline the union representing prison staff into ceding to the government's

Way Forward model. There is implicit acknowledgement of this in the 'Value for Money Report':

There was early speculation that the new correctional centres at Kempsey and Dilwynia would be privatized. Around the same time, DCS was negotiating with the Prison Officers Vocational Branch (POVB) of the Public Service Association to introduce the 'Way Forward' workplace reform to improve the efficiency and effectiveness of the public system. The negotiations with the union proved successful and a new consent award was established to cover these new facilities. Subsequently in March 2004, the NSW Government approved the public operation of the new correctional centres' (Public Accounts Committee Report, 2005: 19).

In light of this, the cost-effectiveness of the private sector is almost irrelevant – the maintenance of an alternative prison policy possibility offers the government a tool to instigate workplace reform, whilst maintaining an appearance of rationality and neutrality (Dillard, 1991). This is embodied in one of the report's key recommendations:

Recommendation 4: The Government should maintain at least one private prison in the State for the purposes of benchmarking the performance of publicly operated centres and to encourage the development of innovative management strategies" (Public Accounts Committee, 2005:v11).

If we can rule out cost effectiveness as the primary purpose for maintaining private prisons in NSW, the more revealing issues relate to workplace reforms. It seems, at the very least, plausible to suggest that the existence of the private prison at Junee acted as a disciplinary device to pressure the union into accepting the "Way Forward" model which

ceded greater flexibility and prerogative to prison management and reduced the influence of the union over staffing.

When Junee opened in 1993, the government intended for it to provide a benchmark for the public sector and according to Roth (2004) the future direction of prison management was heavily influenced by this decision. When the company was awarded a second contract in 2001, this was seen as a sign of success which paving the way for much speculation about the management of future prisons. According to the Public Services Association, who represent the public sector prison officers, the decision to open publicly managed prisons in the future rested entirely on their agreement to substantial workplace reforms. Most significantly they agreed to be paid a flat rate for overtime.

This is a position that was clear even before the construction of Junee had begun, when in September 1989 the Kleinwort Benson Report (1989) recommended to the State Government that it approve the operation of a privately run prisons. The report stated that changes in prison management would be accelerated through the use of a private prison, and that it would provide an effective benchmark to assess the efficiency of other prisons within the sector. The report was endorsed by the NSW state government, and they decided to recommend a medium security prison be built in Junee rather than the maximum security prison initially intended in order to facilitate privatisation.

Strong causal links between neo-liberal agendas and workplace reforms have been noted elsewhere. For example, Cooper and Taylor (2005), in a study of prison privatisation in

Scotland, identify reducing labour costs and increasing labour flexibilities as a key reason for privatisations. We contend that, in the specific case of the New South Wales 'Value for Money Report', the government's support for the maintenance of 'at least one private prison', in the absence of meaningful cost data, was on the basis of the continuing disciplinary effects it would have upon the union, and therefore the leverage it would grant the government in extending its workplace reform agenda. In this context, the private prison acts as a form of 'indirect regulation', meaning "the capacity of the state to regulate through a range of alternative mechanisms other than formal rules" (Gahan and Brosnan, 2006: 133). In this case, privatization is used for the indirect regulation of labour by the state.

That such processes might occur under a system of neo-liberalism is consonant with recent scholarly literature. A number of theorists, for example, note the discrepancy between the ideology of neo-liberalism, and the policies enacted by neo-liberal governments (Anderson, 1999; Brenner and Theodore, 2002; Cahill & Beder, 2005; Harvey, 2005). Indeed, a striking feature of neo-liberal policy-making globally has been the construction of a new and pervasive set of regulatory apparatuses. While the "retreat of the state" (Strange, 1996) has often been understood as a consequence of neo-liberalism, the experience of the last twenty years has been the reconfiguration, not the diminution, of state regulations (Harvey 2005, 78; Cahill & Beder, 2005). It was such observations that led Brenner and Theodore (2002) to coin the term "actually existing neo-liberalism", in order to distinguish the real-world policy regimes of neo-liberal states from the predicted outcomes of neo-liberalism put forward by many of its supporters and

detractors alike. Similarly, Anderson (1999) argues that the neo-liberal process of 'deregulation' often entails a social and market "re-regulation".

It is through such a conception of neo-liberalism that, we argue, a more nuanced understanding of the "Value for Money" document is possible. Close examination of the "Value for Money" report reveals the operation of "actually existing" neo-liberal processes that re-regulate labour in the interests of management. This is in keeping with scholarly analysis of neo-liberal labour market deregulation in Australia, which argues that governments have been empowered to regulate labour in a range of new ways (Anderson, 1999; Ellem, 2006). That the NSW correctional system embodies a hybrid model of privatized and government operated prisons reflects the 'uneven geographical development of neo-liberalism' (Harvey, 2000). The Value for Money Report also highlights the ways that accounting practices have been used as vehicles for the implementation of neo-liberal agendas globally (Newberry, 2004; Newberry & Pallot, 2003; Cooper and Taylor, 2005).

## **Conclusion**

A critical examination of the NSW Government's "Value for Money" report into prisons reveals that the cost data presented in this report provides an inadequate basis for policy decisions about the appropriate mix of public and private management of prisons in NSW. That the cost data was found wanting prompts the question of why the privatized model of prison management was held to deliver superior 'value for money'. One

possible answer to this question is that the Government has been influenced by neo-liberal theories of policy-making to such an extent that it prioritizes private over public forms of management even when there is little cost-data to support the neo-liberal belief that privatized modes of service delivery are inherently more efficient than public modes. While not denying the influence of neo-liberal ideology upon policy-makers, this article has argued that a more plausible explanation is to be found in the disciplinary leverage afforded to the government over unions in negotiations over workplace reform through the ongoing existence of a privatized prison in NSW. This highlights the ways in which the presentation of accounting information can mask power relations and political agendas, and therefore that critical-analytical tools have an important role to play in their interpretation.

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