



THIRTY-NINTH PARLIAMENT

REPORT 26

**STANDING COMMITTEE ON PUBLIC
ADMINISTRATION**

TRANSPORT OF PERSONS IN CUSTODY

Presented by Hon Liz Behjat MLC (Chairman)

June 2016

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“5. Public Administration Committee

5.1 A *Public Administration Committee* is established.

5.2 The Committee consists of 5 Members.

5.3 The functions of the Committee are to –

- (a) inquire into and report on –
 - (i) the structure, efficiency and effectiveness of the system of public administration;
 - (ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;
 - (iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;
 - (iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

- (b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

5.4 The Committee is not to make inquiry with respect to –

- (a) the constitution, functions or operations of the Executive Council;
- (b) the Governor’s Establishment;
- (c) the constitution and administration of Parliament;
- (d) the judiciary;
- (e) a decision made by a person acting judicially;
- (f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or
- (g) the merits of a particular case or grievance that is not received as a petition.”

Members as at the time of this inquiry:

Hon Liz Behjat MLC (Chairman)

Hon Darren West MLC (Deputy Chairman)

Hon Nigel Hallett MLC

Hon Jacqui Boydell MLC

Hon Amber-Jade Sanderson MLC (to
18 August 2015 and from 16 February 2016)

Hon Dr Sally Talbot (from 18 August 2015 to
16 February 2016)

Staff as at the time of this inquiry:

Dr Julia Lawrinson (Advisory Officer) until
21 August 2015

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Government Response

This Report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or the Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.

Glossary

CS&CS Act	<i>Court Security and Custodial Services Act 1999</i>
AIMS	Australian Integration Management System
ALS	Aboriginal Legal Service of Western Australia (Inc)
Commissioner	Commissioner of the Department of Corrective Services, Mr James McMahon
Contract	Court Security and Custodial Services Contract between the Commissioner of the Department of Corrective Services, for and on behalf of the State of Western Australia and Serco Australia Pty Limited, June 2011
CS&CS Regulations	<i>Court Security and Custodial Services Regulations 1999</i>
DCS	Department of Corrective Services
DoTAG	Department of the Attorney General
EY	Ernst and Young Australia
EY Review	Procurement and Tendering Advice for Court Security and Custodial Services Contract, Department of Corrective Services, 2 December 2014
GSL	Global Solutions Limited
G4S	G4S Custodial Services
Legal Aid	Legal Aid of Western Australia
Minister	Minister for Corrective Services
MOU	Memorandum of Understanding
OICS	Office of the Inspector of Custodial Services
PIC	Persons in Custody
PSC	Public Sector Comparator
PWH	Perth Watch House
SCEPA Report	Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 23, <i>Inquiry into the Transportation of Detained Persons: the Implementation of the Coroner's Recommendations in Relation to the Death of Mr Ward and Related Matters</i> , July 2011
Serco	Serco Australia Pty Limited

SERS	Electronic prisoner escort recording system
Treasury	Department of Treasury
WAPOL	Western Australian Police
WAPU	Western Australian Police Union of Workers

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EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS

EXECUTIVE SUMMARY

Background

- 1 On 26 November 2014 the Standing Committee on Public Administration (Committee) resolved to initiate an own-motion inquiry into the Transport of Persons in Custody (Inquiry).
- 2 The Inquiry arose following the Committee identifying concerns relating to the transport of persons in custody (PICs) while undertaking its oversight role. The Committee's Terms of Reference require it to consult regularly with named statutory office holders, including the Office of the Inspector of Custodial Services.¹
- 3 The Inquiry's Terms of Reference required the Committee to focus on the Court Security and Custodial Services Contract (Contract) which is currently held by Serco Australia Pty Limited (Serco).

Inquiry Strategy

- 4 Submissions were called for and twelve received. The Committee received a large amount of evidence during a number of public and private hearings and conducted site visits to several Perth prisons, the Perth Watch House in Northbridge and the District and Supreme Courts. It should be noted that some of these visits occurred as part of the Committee's statutory office holder oversight function.

Changed Focus

- 5 During the Inquiry, Hon Joe Francis MLA, Minister for Corrective Services (Minister), advised Parliament that the current Contract would not be rolled over, and that tender documents would be released '*in the coming months*'.² A copy of the Minister's statement is attached at **Appendix 1**.
- 6 The Committee resolved to continue the Inquiry in order to inform Parliament of the outcome of its investigations and of relevant facts and gaps identified in the Contract. The Committee hopes that this report will assist the decision makers in the re-tender process.

¹ Legislative Council Standing Committee on Public Administration, Term of reference 5.3(b).

² Hon Joe Francis MLA, Minister for Corrective Services, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 16 June 2015, p 4349.

Non-provision of documents

- 7 Ernst and Young Australia (EY) were engaged to undertake a mid-term review of the Contract in September 2014.³
- 8 Given the importance of the EY Review to its Inquiry, the Committee requested the un-redacted document from the Minister on numerous occasions. Between May and December 2015 the Committee wrote to the Minister four times and each time received a refusal to provide the un-redacted EY Review. Reasons given included:
- *‘EY’s review contains commercially sensitive information which, if published, could prejudice the State’s position in a future tender process, or provide tenderers with an advantage over other tenderers in negotiations’;*⁴ and
 - *‘public disclosure of the commercially sensitive parts of the EY review could prejudice the State’s position in relation to the re-tender. The State may not obtain the optimal tender price through the re-tender process, and its ability to deliver cost effective correctional services to the community may be compromised.’*⁵
- 9 The Committee is concerned and disappointed at the lack of co-operation by the Minister and his continuing refusal to provide documents central to the Inquiry despite numerous requests and assurances from the Committee as to the safe custody and use of the information in those documents.

Conclusion

- 10 This Inquiry has changed direction from its original course due to the announcement made by the Minister that the current Contract was not going to be renewed. The Committee has, through the course of the Inquiry, been able to scrutinise the existing Contract and the way it has operated. The Committee has concluded that re-tendering for the contract was the correct decision and hopes that the findings and recommendations within this report will be helpful for any future contract negotiations.

FINDINGS AND RECOMMENDATIONS

- 11 Recommendations are grouped as they appear in the text at the page number indicated:

³ Submission 9 from Department of Corrective Services, 31 March 2015, p 14.

⁴ Letter from Hon Liza Harvey MLA, Acting Minister for Corrective Services, 3 August 2015, p 1.

⁵ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 27 November 2015, p 1.

Page 13

Finding 1: The Committee finds that its work was frustrated throughout this Inquiry due to the continuing refusal by the Minister to provide an un-redacted copy of the Ernst and Young Review for consideration by the Committee.

Page 13

Finding 2: The Committee finds that the Minister should have provided the un-redacted Ernst and Young Review to the Committee with a request that it be kept private rather than providing a heavily redacted version of the document.

Page 14

Finding 3: The Committee finds that the status afforded to documents and the use of the information contained in them is a decision for Parliamentary Committees to make; that process, which is integral to the function of any Parliamentary Committee, should not be circumvented by the non-provision or redaction of documents.

Page 16

Finding 4: The Committee finds that in evidence the Commissioner indicated that some services delivered by the contractor are more than 75 per cent cheaper than those delivered by the public sector. However the Committee is unable to verify these figures due to the non-provision of the un-redacted Ernst and Young Review and Public Sector Comparator.

Page 16

Recommendation 1: The Committee recommends that in its response to this report the Government provide to the Legislative Council the Public Sector Comparator in order to verify the evidence given by the Commissioner.

Page 18

Finding 5: The Committee finds that reports by the Office of the Inspector of Custodial Services provide independent, expert information and analysis. Past reports have been extremely useful in recommending changes to improved prisoner transport.

Page 18

Finding 6: The Committee finds that the Inspector is not required under the *Inspector of Custodial Services Act 2003* to investigate matters relating to the transport of persons in custody.

Page 18

Recommendation 2: The Committee recommends that the *Inspector of Custodial Services Act 2003* be amended to require that the Office of the Inspector of Custodial Services conduct regular reviews and make recommendations regarding all aspects of transport of persons in custody.

Page 22

Finding 7: The Committee finds that the Commissioner failed to fully explain the purpose and role of the Director Generals Governance Group and Senior Officers Group and that neither group has met since mid-2015.

Page 24

Finding 8: It was not clear to the Committee whether the significant reduction in contract staff at the Department of Corrective Services equating to a forty five per cent overall reduction impacted directly on its ability to oversee the operation of the Contract, as the Department of Corrective Services submitted that the reduction in staff whose sole responsibility was to manage the Contract reduced from five staff to four.

Page 24

Finding 9: The Committee finds that in the opinion of the Inspector of Custodial Services the uneven balance of contract management across a number of Department of Corrective Services contracts over the years represents significant risk.

Page 24

Finding 10: In the absence of clear evidence, the Committee finds on the balance of probabilities that a high level of risk does exist in contract management within the Department of Corrective Services.

Page 24

Recommendation 3: The Committee recommends that the Minister advise how, in future contracts, this significant risk will be managed.

Page 26

Finding 11: The Committee finds that there was a significant reduction in abatements between financial years 2013-14 and 2014-15.

Page 33

Finding 12: The Committee finds that the current multiple handling of persons in custody is inefficient and onerous for police officers and prison officers.

Page 33

Finding 13: The Committee finds that multiple handling of persons in custody is a significant factor in delays in transporting persons in custody to and from court.

Page 33

Recommendation 4: The Committee recommends that any future contract address the issues identified by the Committee regarding the multiple handling of persons in custody with a view to streamlining the current inefficient process.

Page 33

Recommendation 5: The Committee recommends that any future contract address the issues identified by the Committee regarding prisoner transport vehicles that arrive early to court. These vehicles should be cleared for entry immediately rather than having to wait outside the sally port.

Page 44

Finding 14: The Committee finds that for 2014-15:

- For seven out of the 10 transfer services performed in the court security and custodial services sector, at least a quarter of the total services were performed outside of the Contract.
- Two thirds of the total ‘visits’ transfers were performed outside of the Contract by the Department of Corrective Services.
- Nearly half of the total ‘prison to hospital’ and ‘medical appointments’ transfers were performed outside of the Contract by the Department of Corrective Services.
- Where a portion of a transfer service was performed outside of the Contract, that portion was almost exclusively provided by the Department of Corrective Services.

Page 44

Finding 15: The Committee finds that for a number of the transfer services the scope of the Contract was inadequate.

Page 44

Finding 16: The Committee finds that providing transfers outside of the Contract has a significant cost and staffing impact for the Department of Corrective Services.

Page 44

Recommendation 6: The Committee recommends that any future contract should make greater allowance for transfers to occur within the scope of the contract.

Page 63

Finding 17: The Committee finds that the Contract does not meet the operational expectations of the stakeholders with regard to transport of persons in custody from some areas.

Page 63

Finding 18: The Committee finds that the Contract has a significant gap in relation to the Rockingham Magistrate's Court and Rockingham police lock up.

Page 63

Finding 19: The Committee finds that it is inefficient to have the Magistrate's Court at the Northbridge Police Complex functional but not operating seven days per week.

Page 63

Recommendation 7: The Committee recommends that each of the Director Generals Governance Group and the Senior Officers Group meet regularly to ensure, in regard to any future contract, better communication and clarity for stakeholders.

Page 63

Recommendation 8: The Committee recommends that any future contract address the current gaps regarding the transfer of persons in custody to and from Rockingham.

Page 63

Recommendation 9: The Committee recommends that the Magistrates Court at the Northbridge Police Complex be funded to operate seven days per week.

Page 72

Finding 20: The Committee finds that it was appropriate for the Contract to be re-tendered.

Page 72

Recommendation 10: The Committee recommends that any future contract address the significant gaps outlined in this report.

Finding 21: The Committee finds that the use of video links should be used on a case by case basis taking into account the individual circumstances of each person in custody.

CHAPTER 1

REFERENCE AND PROCEDURE

Reference

- 1.1 On 26 November 2014 the Standing Committee on Public Administration (Committee) resolved to initiate an own-motion inquiry into the Transport of Person in Custody (Inquiry) with the following Terms of Reference:

The Committee will to inquire into and report on the transport of persons in custody in Western Australia, in particular:

a) oversight and management of the Court Security and Custodial Services Contract, including sub-contractors, by the Department of Corrective Services;

b) whether the current scope of the contract adequately meets service demand;

c) the interaction between stakeholders in the performance of the contract;

d) implications for Department of Corrective Services on regional transportation of prisoners and contract scope; and

e) any other related matters.

- 1.2 On 26 November 2014, the Committee notified the Legislative Council on the self-initiated inquiry pursuant to Standing Order 179(2). This was done by way of Report 22 of the Committee, which is available on the Committee's website.
- 1.3 The Inquiry arose following the Committee identifying concerns relating to the transport of PICs while undertaking its oversight role. The Committee's Terms of Reference require it to consult regularly with named statutory office holders, including the Office of the Inspector of Custodial Services.⁶

⁶ Legislative Council Standing Committee on Public Administration, Term of reference 5.3(b).

- 1.4 During the Inquiry, Hon Joe Francis MLA, Minister for Corrective Services (Minister), advised Parliament that the current Court Security and Custodial Services Contract (Contract) would not be rolled over, and that tender documents would be released '*in the coming months*'.⁷ A copy of the Minister's statement is attached at **Appendix 1**.
- 1.5 The Committee resolved to continue the Inquiry in order to inform Parliament of the outcome of its investigations and of relevant facts and gaps identified in the Contract. The Committee hopes that this report will assist the decision makers in the re-tender process.

Committee procedure

- 1.6 Submissions were called for and twelve received. The Committee received a large amount of evidence during a number of public and private hearings and conducted site visits to several Perth prisons, the Perth Watch House in Northbridge and the District and Supreme Courts. It should be noted that some of these visits occurred as part of the Committee's statutory officer holder function.
- 1.7 The Committee acknowledges and thanks the people who met with it during the Inquiry. A list of submissions received and evidence given is provided at **Appendix 2**.

⁷ Hon Joe Francis MLA, Minister for Corrective Services, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 16 June 2015, p 4349.

CHAPTER 2

TRANSPORT OF PERSONS IN CUSTODY: CONCERNS AND CONTEXT

Transport of persons in custody

- 2.1 The term ‘persons in custody’ is defined in section 3 of the *Court Security and Custodial Services Act 1999* (CS&CS Act) to refer to ‘a person of any age who is in custody under a law of the State or the Commonwealth and in the case of a written law, whether or not that law has been repealed, with exceptions for intoxicated detainees and involuntary patients under the *Mental Health Act 1996*. ‘Persons in custody’ includes people who may not yet have been charged with an offence.
- 2.2 On an average day during 2014-15, the Department of Corrective Services (DCS) managed 5,402 adult prisoners which was an increase of 7.4 per cent compared with the previous year.⁸ As at 24 May 2016 the prisoner population was 6,228.⁹
- 2.3 Figures quoted by the Australian Bureau of Statistics show that for the last quarter of 2015, by comparison, average daily adult prisoner numbers in New South Wales were 12,210, Victoria had 6,309, and Queensland 7,454.¹⁰ Comparative population statistics for different Australian jurisdictions are shown in **Table 1**.

State	Population as at 30 September 2015 ¹¹	Total adult prison population at 30 June 2015 ¹²	Total adult prison population at 30 June 2015 who are men ¹³	Total adult prison population at 30 June 2015 who are Aboriginal and Torres Strait Islanders ¹⁴	Land mass (including islands) ¹⁵ square kilometres
WA	2,598,200	5,555	5,030 (91%)	2,113 (38%)	2,529,875
NSW	7,644,200	11,797	10,933 (93%)	2,846 (22%)	800,642

⁸ Department of Corrective Services, *Annual Report 2014-2015*, Government of Western Australia, 2015, p 20.

⁹ Mr James McMahon, Commissioner, Department of Corrective Services, Legislative Assembly, *Parliamentary Debates (Hansard)*, Assembly Estimates Committee A, 24 May 2016, p E30.

¹⁰ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0> (viewed on 18 May 2016).

¹¹ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0> (viewed on 18 May 2016).

¹² <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0> (viewed on 18 May 2016).

¹³ <http://www.healthinfonet.ecu.edu.au/health-facts/health-faqs/aboriginal-population> (viewed on 18 May 2016).

¹⁴ Ibid.

¹⁵ <http://www.ga.gov.au/scientific-topics/geographic-information/dimensions/area-of-australia-states-and-territories> (viewed on 18 May 2016).

State	Population as at 30 September 2015 ¹¹	Total adult prison population at 30 June 2015 ¹²	Total adult prison population at 30 June 2015 who are men ¹³	Total adult prison population at 30 June 2015 who are Aboriginal and Torres Strait Islanders ¹⁴	Land mass (including islands) ¹⁵ square kilometres
VIC	5,966,700	6,219	5,797 (93%)	483 (8%)	227,416
QLD	4,792,900	7,318	6,611 (90%)	2,306 (32%)	1,730,648
SA	1,701,100	2,732	2,568 (94%)	629 (23%)	983,482
TAS	517,200	519	486 (94%)	79 (15%)	64,401
NT	244,500	1,593	1,447 (91%)	1,344 (84%)	1,349,129
ACT	392,000	396	379 (96%)	76 (19%)	2,358

Table 1: Comparative population statistics for different Australian jurisdictions.

- 2.4 Transport of PICs is required between prisons, lock-ups, courts, court custody centres, and remand centres, and also to attend medical appointments, hospital and funerals, or to other locations as required.¹⁶
- 2.5 The DCS currently operates two contracts for the provision of court security and custodial services as described in the CS&CS Act. The Contract covers services at metropolitan courts, all major regional courts and custodial transport throughout Western Australia. Serco Australia Pty Limited (Serco) currently provides services under the Contract.
- 2.6 In 2014-15 there were a total of 34,543 movements of PICs by various means (air, coach, secure vehicle or other vehicles) under the Contract,¹⁷ as well as 2,110 movements of juvenile PICs.¹⁸ The cost of providing these services in 2014-15 was \$36,583,233.¹⁹ The gross total of providing both transport and court custody and court security in the same period was \$58,091,323.²⁰ This comparison shows that transport of PICs is the largest part of the Contract. Services not provided by the Contract are provided by DCS or the Western Australian Police (WAPOL): there is nothing in the Contract preventing other agencies from performing additional transports.²¹

Adverse events in prisoner transport

- 2.7 On 27 January 2008, a 46 year old Aboriginal elder, Mr Ward, died while being transported from Laverton to Kalgoorlie following his arrest on traffic offences.²² The

¹⁶ Submission 9 from Department of Corrective Services, 31 March 2015, p 4.

¹⁷ Court Security and Custodial Services Contract between the Commissioner of the Department of Corrective Services, for and on behalf of the State of Western Australia and Serco Australia Pty Limited, June 2011.

¹⁸ Department of Corrective Services, *Contract for the Provision of Court Security and Custodial Services: Annual Report 2014-2015*, Government of Western Australia, 30 September 2015, p 9.

¹⁹ Ibid, p 10

²⁰ Ibid, p 17.

²¹ Submission 10 from Professor Neil Morgan, Inspector of Custodial Services, 17 April 2015, p 2.

²² Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No. 9/09, June 2009, p 3.

report of the Standing Committee on Environment and Public Affairs (SCEPA Report) noted that Mr Ward ‘*suffered a tragic and preventable death as a result of his being transported in a custodial vehicle in conditions of grossly excessive heat over an extended period of time.*’²³ The death was the subject of a great deal of public ‘*anger, disbelief and concern*’,²⁴ and a Coroner’s report into the death and the circumstances surrounding it was published in June 2009.²⁵ The SCEPA Report, published in 2011, followed up the recommendations from the Coroner’s report.

- 2.8 As the Office of the Inspector of Custodial Services noted,²⁶ there has been an increased public awareness of issues surrounding the provision of the transport of PICs as a result of Mr Ward’s death: many of the witnesses who gave evidence to this Inquiry mentioned Mr Ward.
- 2.9 The potential risk to prisoners, transport personnel and the public has attracted concern. The escape of two dangerous prisoners in 2014 refocused attention on the risks of transporting PICs, and whether the Contract, the contractor, or a lack of oversight of either contributed to the escapes. This incident is discussed below.

Escape from Geraldton

- 2.10 On 3 January 2014, eight PICs were being transferred from Greenough Regional Prison to Perth.²⁷ While at the Geraldton airport, two PICs kicked open the inner doors of the Serco Lima 5 prisoner transport vehicle, stole a car from a nearby rental car company and escaped.²⁸
- 2.11 They were captured 36 hours later at significant cost to the taxpayer. The escape created a great deal of media interest and community concern, especially as one of the PICs was a convicted rapist.²⁹

²³ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 23, *Inquiry into the Transportation of Detained Persons: the Implementation of the Coroner’s Recommendations in Relation to the Death of Mr Ward and Related Matters*, July 2011, p 3.

²⁴ Ibid.

²⁵ Ibid.

²⁶ <http://www.oics.wa.gov.au/reports/prisonerdetainee-transportation-wa/>, p 3, (viewed on 18 June 2015).

²⁷ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 2 April 2014, p 6.

²⁸ Ibid.

²⁹ For example <http://www.abc.net.au/news/2014-02-11/further-details-revealed-on-serco-escape/5252756>, (viewed on 10 February 2016); <http://www.watoday.com.au/wa-news/wa-prison-escapees-cameron-graham-and-kelden-fraser-face-three-new-charges-20140106-30cug.html?rand=1389242192709>, (viewed on 10 February 2016).

- 2.12 Public concern was expressed about the contractor's ability to provide services. Questions arose as to whether the Contract should be terminated as a result of the escapes.³⁰
- 2.13 When Mr James McMahon, Commissioner of DCS (Commissioner), gave evidence to this Committee as part of its statutory office holder function in April 2014, he advised that a decision had been made '*to keep the contract [with Serco] based on performance history.*'³¹ That history included approximately 80,000 transports around the State between the commencement of the Contract and the date of the Geraldton incident.³²
- 2.14 On 15 June 2015, the Commissioner stated that '*I believe Serco took on board the clear direction that was given to them in a number of key areas.*'³³ He also stated that DCS has changed their own policies and practices, including risk assessments, classification systems for prisoners, restraints use and restraints policy.³⁴ The Commissioner noted that in 2014-15, there were no escapes resulting from the transport of persons under the Contract.³⁵

Background to the Court Security and Custodial Services Contract (Contract)

- 2.15 The CS&CS Act was introduced in 1998 by Hon Kevin Prince MLA, the then Minister for Police and Emergency Services, in response to the '*ill-defined, fragmented and complex*'³⁶ provision of court security and transport arrangements. The aim was to '*expressly provide for these services in a coherent manner requiring high standards of accountability and practice*'³⁷ and envisioned the private provision of some services. Indeed, at the time the CS&CS Act was introduced, tenders had already been called for and a potential provider selected.³⁸ The then Minister reported particularly strong support from Aboriginal groups for '*a dedicated and impartial*

³⁰ For example <https://au.news.yahoo.com/thewest/regional/gascoyne/a/21228092/serco-contract-can-be-broken/>, (viewed on 9 February 2016).

³¹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 2 April 2014, p 11.

³² Ibid.

³³ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 15 June 2015, p 3.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Hon Kevin Prince MLA, Minister for Police, Emergency Services, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 12 November 1998, p 3373.

³⁷ Ibid.

³⁸ Ibid.

*approach to the management of lockups and the transport of prisoners and accused persons.*³⁹

Key dates and service providers

2.16 Key dates and service providers for the Contract are set out in **Table 2**.

Service Provider	Contract Commencement Date	Initial Contract Length	Extension Option	Comments
Corrections Corporations Australia (later known as Australian Integration Management Services (AIMS))	2000	5 years	3 years	Contract novated to G4S Custodial Services prior to contract expiration
Global Solutions Limited (GSL) (later G4S Custodial Services)	2007	Novated from AIMS with 1 year remaining	3 years	Contract extended to 2011
Serco Australia	2011	5 years	5 years	Contract not extended, to be re-tendered – refer to paragraph 1.4

Table 2: Key dates and service providers for the Contract. [Source: Submission Number 9 from DCS, 31 March 2015.]

2.17 As noted above, Australian Integration Management System (AIMS) commenced providing prisoner transport services in August 2000.⁴⁰ AIMS owned the fleet of vehicles used for prisoner transportation, planning for the fleet to be replaced over five years.⁴¹ However, when the Department of Justice purchased the fleet of vehicles used for prisoner transport from AIMS in May 2005, the replacement of the fleet was not

³⁹ Ibid, p 3374.

⁴⁰ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 23, *Inquiry into the Transportation of Detained Persons: the Implementation of the Coroner's Recommendations in Relation to the Death of Mr Ward and Related Matters*, July 2011, p 23.

⁴¹ Ibid, p 23-24.

requested until the 2006-07 and 2007-08 budget processes.⁴² Neither request was approved.⁴³

2.18 In July 2007, AIMS was replaced by Global Solutions Limited (GSL) as the contractor of custodial transport services.⁴⁴

2.19 In May 2008 GSL was taken over by G4S Custodial Services (G4S).⁴⁵

2.20 The Contract was awarded to Serco in 2011 for a five year term, with an extension option of five years. The Contract is between the Commissioner on behalf of the State of Western Australia and Serco.

Vehicles

2.21 In 2011, at the time of the SCEPA Report, the custodial transport fleet consisted of 43 vehicles, owned by DCS and managed at that time by G4S. DSC also owned the smaller prison transport and juvenile transport fleets.⁴⁶

2.22 The vehicles currently used by the contractor have seating capacity for eight, 12 and 14 PICs. All vehicles are air conditioned and allow direct communication between the officers and the PICs. Control units enable monitoring of the PICs by officers who can identify issues during transport as well as the air temperature in the cell compartments. A number of vehicles are equipped with a toilet on board. These are used primarily in regional Western Australia.⁴⁷

2.23 The contractor introduced a special purpose vehicle (see Photograph D in **Appendix 3**) for special needs transports in February 2013. It advised that *'The need was identified shortly after taking on the Contract and specifications were developed for escorting Persons in Custody in wheelchairs or for Persons in Custody for whom movement in a secure vehicle is not feasible based on a risk assessment. The base vehicle, a Volkswagen Caddy Maxi, was modified for security, safety and wheelchair access.'*⁴⁸

⁴² Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No. 9/09, June 2009, pp 96-97.

⁴³ Ibid, p 97.

⁴⁴ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 23, *Inquiry into the Transportation of Detained Persons: the Implementation of the Coroner's Recommendations in Relation to the Death of Mr Ward and Related Matters*, July 2011, p 31.

⁴⁵ Ibid.

⁴⁶ Ibid, p 24.

⁴⁷ Email from Mr Tim Evans, Corporate Affairs, Serco Asia Pacific, to Committee staff, 22 September 2015, p 1.

⁴⁸ Ibid.

- 2.24 Photographs of the current vehicle types used by the contractor in the performance of the Contract are attached at **Appendix 3**.

The Contract

- 2.25 The Contract was awarded to Serco in 2011, as noted above. Serco performs the prison transport and court security services with its staff, and subcontracts the supply elements of the Contract with the approval of the Commissioner, the principal of the Contract. Suppliers currently include Paul Lyons Aviation Pty Ltd, Broome Air Services, Goldfields Air Services, Shine Aviation, Ashley Group Pty Ltd (vehicle maintenance), Adams Coaches, Skippers Aviation, Qantas, Virgin, Shoal Air and Karratha Flying Services.⁴⁹
- 2.26 The Contract provides that *‘The Contractor shall be required to be responsible for the provision and on going maintenance of a fleet of suitable vehicles for the provision of movement services.’*⁵⁰ It further provides that *‘The Contractor shall have a secure escort vehicle replacement strategy and shall not use a secure escort vehicle (chassis) older than five (5) years old or greater than the manufacturer’s warranty period or a secure escort vehicle pod older than ten (10) years old.’*⁵¹

Review of the Contract by the Department of Finance

- 2.27 In 2014, the Commissioner requested the Executive Director, Government Procurement, Department of Finance *‘to do a review of the Contract – performance and value for money.’*⁵² The review was *‘primarily concerned with examining the appropriateness and effectiveness of the Contract, and identifying improvements to it.’*⁵³
- 2.28 The review dated July 2014 has not been released to the public. The Committee obtained a copy of the review in October 2014, accompanied by a request from the Minister to keep the document private as the review *‘contains information of a commercial nature, and release of this may be prejudicial to future negotiations with the existing service provider.’*⁵⁴

⁴⁹ Supplementary Information from Serco Group Pty Limited, Answer to Question on Notice B3, 5 August 2015, p 9.

⁵⁰ Clause 4.7 of Schedule 6: Movement Requirements, Court Security and Custodial Services Contract.

⁵¹ Ibid.

⁵² Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 2 April 2014, p 11.

⁵³ Submission 9 from Department of Corrective Services, 31 March 2015, p 13.

⁵⁴ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 15 July 2015, p 1.

- 2.29 Despite the request that the review be kept confidential, DCS advised the Committee that the Department of Finance found that the Contract *‘is appropriate and reflective of the nature of the services provided’*.⁵⁵ It made a number of recommendations on how the Contract could be improved, including a greater focus on value adding activities and improving performance through incentives to innovate.⁵⁶

Mid-term review of the Contract by Ernst and Young Australia

- 2.30 Ernst and Young Australia (EY) were engaged to undertake a mid-term review of the Contract in September 2014.⁵⁷ The resulting Procurement and Tendering Advice for Court Security and Custodial Services Contract, Department of Corrective Services, 2 December 2014 (EY Review) focussed on:

- whether the Contract delivers intended outcomes
- whether the Contract meets the needs of Government
- whether the Contract provides a value for money outcome to the State
- procurement options for the delivery of court security and custodial services.⁵⁸

- 2.31 DCS in its submission to the Committee stated that *‘while EY found that the contract largely delivered the intended outcomes and represents value for money, it did make recommendations in relation to improvements to the contract and the future of the contract.’*⁵⁹

- 2.32 DCS submitted that the Department of Finance review and the EY Review will inform DCS’s advice to the Government on the future and form of the Contract.⁶⁰

Non-provision of documents

- 2.33 Given the importance of the EY Review to its Inquiry, the Committee requested the document from the Minister on numerous occasions.

- 2.34 The first request was on 29 May 2015. The response from Hon Liza Harvey MLA, Acting Minister for Corrective Services, on 3 August 2015, stated that DCS *‘considers that EY’s review contains commercially sensitive information which, if published,*

⁵⁵ Submission 9 from Department of Corrective Services, 31 March 2015, p 13.

⁵⁶ Ibid.

⁵⁷ Ibid, p 14.

⁵⁸ Procurement and Tendering Advice for Court Security and Custodial Services Contract, Department of Corrective Services, 2 December 2014, p 2.

⁵⁹ Submission 9 from Department of Corrective Services, 31 March 2015, p 14.

⁶⁰ Ibid.

*could prejudice the State's position in a future tender process, or provide tenderers with an advantage over other tenderers in negotiations. The State Solicitor's Office agrees with this assessment.'*⁶¹ For the reasons given, the Acting Minister refused to release a copy of the EY Review.

- 2.35 In addition to the EY Review, the Committee also sought to obtain a copy of the Public Sector Comparator (PSC) that had been used in the procurement process for the Contract. The Committee requested the PSC from a witness from the Department of Treasury (Treasury) during a hearing on 17 June 2015. Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury took the question on notice, saying *'I would have to seek advice on this to say whether we could release that to you.'*⁶²
- 2.36 In his written answer to the Committee on 21 July 2015, Mr Jones advised that *'As custodians of the CS&CS contract, the Public Sector Comparators resides with the Department of Corrective Services. Given the confidential nature of this information, I would ask that the Committee seek the Public Sector Comparators from the department directly.'*⁶³
- 2.37 The Committee's second request for a copy of the EY Review was on 9 September 2015. Given the response from the Department of Treasury, it also requested the provision of the PSC used in the procurement process for the Contract.
- 2.38 On 29 September 2015 the Minister provided a copy of the EY Review which had been *'redacted in the interest of commercial in confidence information.'*⁶⁴ The Minister's letter indicated that he was also providing the PSC used in the procurement process for the Contract, although only one document (the EY Review) was provided.
- 2.39 To fully discuss and understand the information in the EY Review, and in particular the information that had been redacted, the Committee conducted a hearing with representatives from DCS, including the Commissioner, on 10 November 2015. A representative from the State Solicitor's Office was also in attendance.
- 2.40 The hearing commenced as a public hearing but moved into a private hearing in order for the Committee to canvass some questions it had in relation to the EY Review.

⁶¹ Letter from Hon Liza Harvey MLA, Acting Minister for Corrective Services, 3 August 2015, p 1.

⁶² Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 17 June 2015, p 2.

⁶³ Letter from Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, 21 July 2015, p 1.

⁶⁴ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 29 September 2015, p 1.

- 2.41 A majority of the Committee was satisfied that the evidence provided in the private hearing was sufficient for its deliberations, however a minority were not. Despite the differing opinions regarding the content of the EY Review and its relevance to the Inquiry, the whole Committee resolved to pursue the provision of the un-redacted document.
- 2.42 The Committee wrote to the Minister on 20 November 2015 requesting for a third time that he provide an un-redacted copy of the EY Review and the PSC.
- 2.43 The Minister's reply dated 27 November 2015 reiterated that the EY Review contains commercially sensitive information, and that based on advice from the State Solicitor's Office, he considered that *'public disclosure of the commercially sensitive parts of the EY review could prejudice the State's position in relation to the re-tender. The State may not obtain the optimal tender price through the re-tender process, and its ability to deliver cost effective correctional services to the community may be compromised.'*⁶⁵ The Minister declined the Committee's request for an un-redacted copy of the EY Review.
- 2.44 The next request to the Minister on 2 December 2015 was that an un-redacted copy of the EY Review and the PSC used in the procurement process for the Contract be delivered to the Clerk of the Legislative Council and be made available to Members of the Committee for perusal for three months on a 'no publication, no copy' basis.
- 2.45 In his reply dated 11 December 2015 the Minister advised that *'based on advice from the State Solicitor's Office, I remain of the view that public disclosure of the commercially sensitive parts of the EY review could prejudice the State's position in relation to the re-tender.'*⁶⁶ He advised that *'In order to protect the integrity of the procurement process, and to minimise any detriment to that process, I respectfully decline your request to provide a copy of the EY review and PSC to the Clerk of the Legislative Council.'*⁶⁷ The Minister attached a copy of the notice required under section 82 of the *Financial Management Act 2006*.

⁶⁵ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 27 November 2015, p 1.

⁶⁶ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 11 December 2015, p 1.

⁶⁷ Ibid.

2.46 **Table 3** below sets out the timeline for the Committee's numerous requests for the provision of the EY Review and the PSC.

Date of Request	Details	Date of Refusal	Details
29 May 2015	Request to Minister for Corrective Services for EY Review	3 August 2015	Acting Minister for Corrective Services declined citing commercial sensitivity
17 June 2015	PSC requested during a hearing with Department of Treasury	21 July 2015	Acting Executive Director, Strategic Policy and Evaluation for Department of Treasury directed the Committee to request PSC from DCS
9 September 2015	Request to Minister for Corrective Services for both EY Review and PSC to DCS	29 September 2015	A redacted copy of EY Review provided by DCS. PSC not provided
10 November 2015	Public hearing with DCS and SSO. Moved into private hearing to fully discuss non-redacted EY Review		
20 November 2015	Request to Minister for Corrective Services for both un-redacted EY Review and PSC	27 November 2015	Request for un-redacted copy declined, PSC also not provided
2 December 2015	Request to Minister for Corrective Services to provide copies of un-redacted EY Review and PSC to the Clerk of the Legislative Council	11 December 2015	Minister declined citing commercial sensitivity. Minister provided Section 82 Notice under <i>Financial Management Act 2006</i>

Table 3: Timeline for the Committee's numerous requests for the provision of the EY Review and the PSC.

Finding 1: The Committee finds that its work was frustrated throughout this Inquiry due to the continuing refusal by the Minister to provide an un-redacted copy of the Ernst and Young Review for consideration by the Committee.

Committee comment:

The Committee members had differing views as to the necessity of obtaining an un-redacted copy of the EY Review by summons. No summons was issued.

Finding 2: The Committee finds that the Minister should have provided the un-redacted Ernst and Young Review to the Committee with a request that it be kept private rather than providing a heavily redacted version of the document.

Finding 3: The Committee finds that the status afforded to documents and the use of the information contained in them is a decision for Parliamentary Committees to make; that process, which is integral to the function of any Parliamentary Committee, should not be circumvented by the non-provision or redaction of documents.

Evidence

- 2.47 The following comments are based on the redacted EY Review.
- 2.48 The EY Review found that *‘the current package of services delivered by the Contract represents value for money when compared against an adjusted PSC.’*⁶⁸ However it noted that *‘on a service by service basis it appears that there is potential for the public sector to deliver certain services at a lower cost.’*⁶⁹
- 2.49 The EY Review recommended that *‘the Government further investigates a range of in-house service delivery options to assess whether there is the appetite and capacity for these services to be delivered in-house, and what the expected costs to deliver would be.’*⁷⁰
- 2.50 In evidence to the Committee the Commissioner made the following points:
- *holistically, it is all about economy of scale. It goes back to Derby prison holding—I am calling it Serco; just call it a contractor—a contractor there to do very limited movements at some level becomes uneconomical.*⁷¹
 - *the contract and value in the contract works best for everyone where there is bulk movement...It works best in an economy of scale.*⁷²
 - *The contract also works best...if you put it all together commercially, it makes sense for an operator to get the economy of scale to get the best price [for] the particular movement they want to do.*⁷³
- 2.51 When asked about the comparison in the EY Review between the contractor and the PSC for movement service costs, the Commissioner said:

⁶⁸ Procurement and Tendering Advice for Court Security and Custodial Services Contract, Department of Corrective Services, 2 December 2014, p 20.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015 p 8.

⁷² Ibid.

⁷³ Ibid.

There are some line items in there where the private contract is markedly better value than the public sector—like, markedly, and I am not going to go into what percentage it is, but I use the word “significant”.⁷⁴

2.52 In further evidence on this point, the Commissioner told the Committee that:

Hon SALLY TALBOT: *Would I be right in saying that the metro figures are comparable to the PSC and the regional ones are not?*

Mr McMahon: *The majority—just jump in, so I am not missing this—of the metro figures are an improvement over the public system, and the regional is about 50–50, but the one I want you to take is where there is an advantage in the public side. The word is that it is significant. It is not small; it is large.*

Hon SALLY TALBOT: *And what about where there is a gap—where there is a significant variance?*

Mr McMahon: *Where there is a gap it is not major in terms of the significance of the other figures, so the public and private are—there are some differences, and that is fair, because on some level the public is an improved thing, but it is along the themes that I have already discussed. They are not—I would use the word—the private ones are significant where there are differences. Where the public is different—I am just putting my mind on it—they are not what I would call significant in terms of the other figures.⁷⁵*

2.53 In order to understand the cost differences between public and private providers, and having not been provided with the un-redacted figures in the EY Review, the Committee pressed the Commissioner on the meaning of the word ‘significant’ in this context:

The CHAIRMAN: *When you say it is significant, what is significant? To me, 50 per cent is significant, but to some people 10 per cent might be significant.*

Mr McMahon: *We are way above 50 per cent.*

The CHAIRMAN: *Way above 50 per cent?*

⁷⁴ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015 p 8.

⁷⁵ *Ibid*, p 9.

Mr McMahon: *Way above 50 per cent.*

Hon SALLY TALBOT: *Way above 25 per cent?*

The CHAIRMAN: *Way above 50. He is saying way above 50. Do you mean 75 per cent?*

Hon SALLY TALBOT: *I mean 75 per cent.*

Mr McMahon: *Would you say way above?*

Mr Alderton: *Yes.*⁷⁶

Finding 4: The Committee finds that in evidence the Commissioner indicated that some services delivered by the contractor are more than 75 per cent cheaper than those delivered by the public sector. However the Committee is unable to verify these figures due to the non-provision of the un-redacted Ernst and Young Review and Public Sector Comparator.

Recommendation 1: The Committee recommends that in its response to this report the Government provide to the Legislative Council the Public Sector Comparator in order to verify the evidence given by the Commissioner.

Contract review

- 2.54 In relation to the management of the Contract, and its responsiveness to changes in demand, DCS gave the following evidence to the Committee:

*The Contract provides for a quarterly review of volume bands across all pricing tables. The review considers the actual service demand for the 3 month period prior to each review date as well as projected service demand and agreeing the applicable volume band for the next period. The review involves a comparison of the data provided by the Contractor against client agency records. Inconsistent data is clarified and disputes are resolved as required.*⁷⁷

⁷⁶ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015 p 9.

⁷⁷ Tabled Paper No. 4 from the Department of Corrective Services, 25 June 2015, p 1.

- 2.55 The contractor is required to submit a staffing plan annually, which is reviewed ‘*against the contractor’s original bid as well as its adequacy in the context of current identified service issues.*’⁷⁸

Contract Annual Report

- 2.56 Details regarding the performance of the Contract are provided for in the Annual Report of the Contract for the Provision of Court Security and Custodial Services.⁷⁹ These are published separately to the annual reports of DCS.

Non-renewal of Contract

- 2.57 On 16 June 2015, the Minister advised Parliament that the Contract would not be rolled over, and that tender documents would be released ‘*in the coming months.*’⁸⁰ A copy of the Minister’s statement is attached at **Appendix 1**.

The role of the Inspector of Custodial Services in the oversight of the transport of persons in custody

- 2.58 As part of its Terms of Reference, the Committee consults regularly with a number of statutory office holders, including the Inspector of Custodial Services.
- 2.59 A number of the Office of the Inspector of Custodial Services’ (OICS) reports have informed this Inquiry. These include:
- *Escapes and Attempted Escapes from Corrections in Western Australia*, February 2015.⁸¹
 - *Funeral Attendances by Incarcerated People in Western Australia*, September 2013.⁸²
 - *Medical Transport Incidents – Individuals Transported After Major Surgery: Audits, Reviews and Thematics*, March 2013.⁸³

⁷⁸ Tabled Paper No. 4 from the Department of Corrective Services, 25 June 2015, p 1.

⁷⁹ <https://www.correctiveservices.wa.gov.au/about-us/statistics-publications/cscs-annual-report.aspx>, (viewed on 10 February 2016).

⁸⁰ Hon Joe Francis MLA, Minister for Corrective Services, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 16 June 2015, p 4349.

⁸¹ <http://www.oics.wa.gov.au/reports/escapes-attempted-escapes-corrections-western-australia/>, (viewed on 10 February 2016).

⁸² <http://www.oics.wa.gov.au/reports/funeral-attendances-incarcerated-people-western-australia/>, (viewed on 10 February 2016).

⁸³ <http://www.oics.wa.gov.au/reports/medical-transport-incidents-individuals-transported-major-surgery/>, (viewed on 10 February 2016).

- *Prisoner/Detainee Transportation 1 July 2011 – 31 December 2011: Audits, Reviews and Thematics*, October 2012.⁸⁴

2.60 The Inspector is not required under the *Inspector of Custodial Services Act 2003* to investigate matters relating to the transport of PICs. While the legislation requires the Inspector to inspect each prison, detention centre, court custody centre and lock-up at least once every three years,⁸⁵ the Inspector advised the Committee that:

*Transport is optional, if you like, and it is one of those areas where under the terms of the legislation we can conduct what is called an “occasional review”. I think we have been active in that space and we have tried to make sure that we not only publish reports that are specifically about transport but that we cover it off in our prison reports and we also cover it off in specific thematic work that we do whether it is about funerals or escapes.*⁸⁶

2.61 In his evidence to the Inquiry, the Inspector of Custodial Services stated that:

*The complex patchwork of transport services needs to be understood if issues of contract scope, management, performance and improvement are to be properly understood.*⁸⁷

Finding 5: The Committee finds that reports by the Office of the Inspector of Custodial Services provide independent, expert information and analysis. Past reports have been extremely useful in recommending changes to improved prisoner transport.

Finding 6: The Committee finds that the Inspector is not required under the *Inspector of Custodial Services Act 2003* to investigate matters relating to the transport of persons in custody.

Recommendation 2: The Committee recommends that the *Inspector of Custodial Services Act 2003* be amended to require that the Office of the Inspector of Custodial Services conduct regular reviews and make recommendations regarding all aspects of transport of persons in custody.

⁸⁴ <http://www.oics.wa.gov.au/reports/prisonerdetainee-transportation-wa/>, (viewed on 10 February 2016).

⁸⁵ Section 19 *Inspector of Custodial Services Act 2003*.

⁸⁶ Professor Neil Morgan, Inspector, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 15 June 2015, p 8.

⁸⁷ Submission 10 from Inspector of Custodial Services, 17 April 2015, p 2.

CHAPTER 3

OVERSIGHT AND MANAGEMENT OF THE COURT SECURITY AND CUSTODIAL SERVICES CONTRACT, INCLUDING SUB-CONTRACTORS, BY THE DEPARTMENT OF CORRECTIVE SERVICES

Introduction

- 3.1 DCS manage the Contract, and the Principal of the Contract is the Commissioner.⁸⁸ In 2014-15, the total cost of delivering the services in the Contract was \$58,091,323.⁸⁹ Information regarding the Contract is published by DCS in an annual report as provided for in section 45 of the CS&CS Act.
- 3.2 The Commissioner is the Principal of the Contract. Three agencies - DCS, Department of Attorney General (DoTAG) and WAPOL - receive services under the Contract. DoTAG and WAPOL are not signatories to the Contract.
- 3.3 In 2014, a Governance Working Group, comprising representatives from DCS, DoTAG, WAPOL and Treasury was established to improve governance arrangements.⁹⁰ Two further groups emerged from this meeting: a Joint Management Group and a Director Generals' Governance Group.⁹¹
- 3.4 Evidence to the Committee was that the Joint Management Group would comprise senior officers from DCS, DoTAG, Treasury and WAPOL. It would meet once a month. These officers would have authority to make decisions on operational matters and be responsible for:
- managing inter-agency operational matters
 - preparing advice regarding contract variations

⁸⁸ Department of Corrective Services, *Contract for the Provision of Court Security and Custodial Services: Annual Report 2014-2015*, Government of Western Australia, 30 September 2015, p 6.

⁸⁹ Ibid, p 17.

⁹⁰ Submission 9 from Department of Corrective Services, 31 March 2015, p 2.

⁹¹ Ibid.

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- implementing internal frameworks to monitor usage of the Contract
 - providing consolidated advice to the Directors' General Governance Group.⁹²
- 3.5 Further evidence was that the Directors' General Governance Group will comprise the Commissioners of DCS and WAPOL, the Director General of DoTAG and Under-Treasurer representation.⁹³ It will be responsible for setting the strategic direction for the Contract and '*determining a consolidated position in communications with the contractor.*'⁹⁴ It will meet quarterly or on an as-required basis.⁹⁵
- 3.6 In November 2015 the Committee was advised that the Directors' General Governance Group had met on 5 May 2015 and 15 September 2015.⁹⁶ The Directors' General Governance Group has not met since September 2015 but the Committee has been advised that it '*will meet in the future.*'⁹⁷
- 3.7 In early 2015 a Senior Officer's Group was established to replace the Joint Management Group as it was considered '*too senior*'⁹⁸ and '*at a very strategic level*'⁹⁹ and the Commissioner felt '*from a governance perspective, that we were not delving down enough into the operational issues.*'¹⁰⁰ The Senior Officer's Group comprises senior representatives from DCS, DoTAG and WAPOL. It meets bimonthly.¹⁰¹
- 3.8 In November 2015 the Committee was advised that the Senior Officer's Group had met on 30 June 2015 and 26 August 2015.¹⁰² The Senior Officers' Group has not met since August 2015 but the Committee has been advised that, like the Directors' General Governance Group, it '*will meet in the future.*'¹⁰³
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⁹² Submission 9 from the Department of Corrective Services, 31 March 2015, p 2.

⁹³ Ibid, p 3.

⁹⁴ Ibid.

⁹⁵ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 15 June 2015, p 2.

⁹⁶ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 14.

⁹⁷ Email from Ms Lorna Hardman, A/Executive Officer, Office of the Commissioner of the Department of Corrective Services to Committee staff, 6 April 2016.

⁹⁸ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 3.

⁹⁹ Ibid.

¹⁰⁰ Ibid, p 4.

¹⁰¹ Ibid, p 3-4.

¹⁰² Ibid, p 14.

¹⁰³ Email from Ms Lorna Hardman, A/Executive Officer, Office of the Commissioner of the Department of Corrective Services to Committee staff, 6 April 2016.

- 3.9 The Commissioner said ‘*The directors’ general governance group is the strategic one and underneath that is the senior officers’ group, which focuses more on the operational, day-to-day issues.*’¹⁰⁴
- 3.10 These are the only two groups that currently exist.¹⁰⁵
- 3.11 The Committee noted that although Treasury was represented in the membership of the Joint Management Group, there is no such representation on the Senior Officer’s Group which replaced it. It was put to the Commissioner that ‘*Treasury are no longer involved in that process – you saw no need for that?*’,¹⁰⁶ to which the Commissioner replied ‘*Other than they see all our figures on the contract and what it is doing in a budgetary process. That is where they have oversight of the contract costs.*’¹⁰⁷

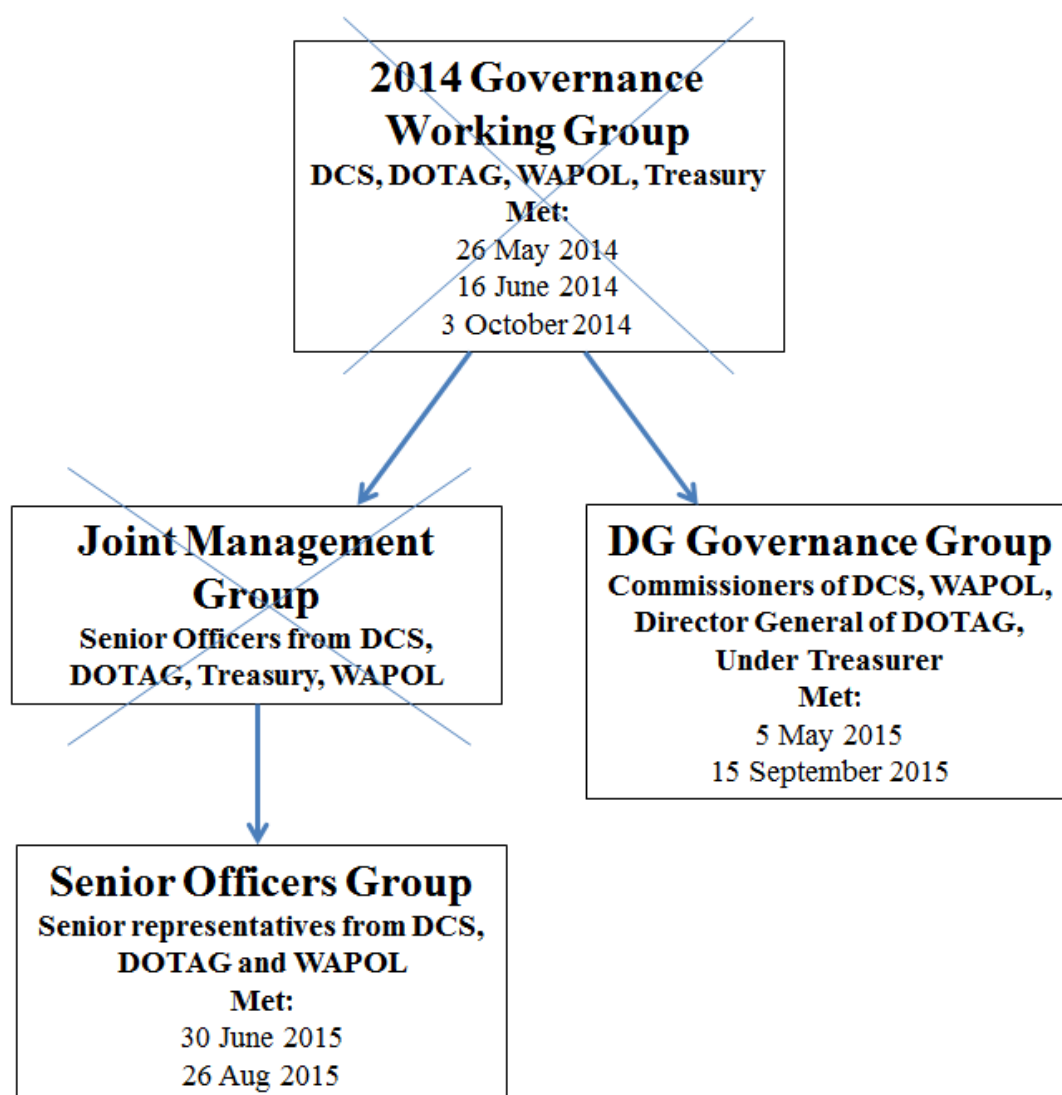
¹⁰⁴ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 14.

¹⁰⁵ Ibid.

¹⁰⁶ Hon Liz Behjat MLC, Chairman, Standing Committee on Public Administration, *Transcript of Evidence*, 10 November 2015, p 4.

¹⁰⁷ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 4.

- 3.12 The diagram below shows the history of the various groups established to develop communication and coordination between stakeholders to the contract.



Finding 7: The Committee finds that the Commissioner failed to fully explain the purpose and role of the Director Generals Governance Group and Senior Officers Group and that neither group has met since mid-2015.

- 3.13 A new coordination centre has also been established to ‘give us greater oversight of when prisoners were moving, when and why.’¹⁰⁸ The Commissioner informed the Committee that ‘Up until that point, the department never had a 24/7 coordination centre. We now have that. It is growing and it is improving. Every quarter it improves

¹⁰⁸ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 4.

*in what it does, but it gives us oversight and a check about why we are moving certain types of prisoners, when and where.'*¹⁰⁹

- 3.14 The 2011 Contract involved the contractor subcontracting out a number of services related to the movement of PICs. The contractor pointed out in evidence that *'In terms of the actual services, which is about managing persons in custody, we do not subcontract any of those obligations. What we do have is a number of suppliers that we acquire goods and services from, and the main ones are in relation to transport.'*¹¹⁰ The contractor was clear that *'we do not subcontract the delivery of the services, they are providing a vehicle.'*¹¹¹

Contract management resourcing

- 3.15 The Inspector of Custodial Services observed that effective contract management requires *'adequate resourcing, combined with experience and expertise on the part of contract managers.'*¹¹² Specifically in relation to the Contract, the Inspector stated that ideally the management team *'should include a combination of high level operational experience and legal skills.'*¹¹³
- 3.16 The Inspector of Custodial Services further stated that his team had observed the *'balance of contract management across a number of Departmental contracts has often been good but that it has been uneven over the years.'*¹¹⁴ In his view, this represents *'significant risk.'*¹¹⁵ He further noted that contract management resources at DCS had been reduced since 2012.¹¹⁶
- 3.17 DCS confirmed that there has been a reduction in the number of Departmental contract staff full time equivalent positions from 49 in June 2012 to 27 in June 2015.¹¹⁷ This equates to a 45 per cent reduction in contract staff. Fourteen of the 22 full time equivalent staff lost were the result of voluntary redundancies.¹¹⁸

¹⁰⁹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 4.

¹¹⁰ Mr Aboo Kajee, Contract Director, Serco Australia Pty Ltd, *Transcript of Evidence*, 17 June 2015, p 3.

¹¹¹ Ibid.

¹¹² Submission 10 from the Inspector of Custodial Services, 17 April 2015, p 13.

¹¹³ Ibid.

¹¹⁴ Ibid, p 14.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Supplementary Information from the Department of Corrective Services, 5 August 2015, p 3.

¹¹⁸ Ibid.

- 3.18 The staff to which these figures relate are responsible for a range of contracts between DCS and both commercial providers and providers within the not-for-profit sector. The figures include, but are not restricted to, those staff whose sole responsibility is to manage the Contract.¹¹⁹ Four DCS staff have responsibility for managing the Contract.¹²⁰ Prior to the reduction in DCS contract staff, DCS had five staff managing the Contract.¹²¹
- 3.19 In relation to contract management, the Commissioner stated that the structural review taking place at DCS includes ‘*reforming the methodology around the way we do contracted services.*’¹²²

Finding 8: It was not clear to the Committee whether the significant reduction in contract staff at the Department of Corrective Services equating to a forty five per cent overall reduction impacted directly on its ability to oversee the operation of the Contract, as the Department of Corrective Services submitted that the reduction in staff whose sole responsibility was to manage the Contract reduced from five staff to four.

Finding 9: The Committee finds that in the opinion of the Inspector of Custodial Services the uneven balance of contract management across a number of Department of Corrective Services contracts over the years represents significant risk.

Finding 10: In the absence of clear evidence, the Committee finds on the balance of probabilities that a high level of risk does exist in contract management within the Department of Corrective Services.

Recommendation 3: The Committee recommends that the Minister advise how, in future contracts, this significant risk will be managed.

¹¹⁹ Email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, to Committee staff, 14 September 2015.

¹²⁰ Email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, to Committee staff, 16 September 2015.

¹²¹ Email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, to Committee staff, 9 October 2015.

¹²² Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 10.

Abatements

- 3.20 The Contract includes an abatement regime based on the contractor's service delivery performance measured against key performance indicators. The contractor is expected to deliver 100 per cent of all services in accordance with the contracted service requirements.
- 3.21 The abatement regime applies if the contractor fails to deliver services as required. The contractor can be charged a fixed abatement amount in dollars, or by accumulating abatement points which are then converted into a dollar amount which is calculated as a percentage of the monthly service fee.
- 3.22 The precise amount of the abatement depends on the type and severity of the failure.¹²³
- 3.23 The Commissioner informed the Committee that *'The Department acknowledges that the abatement regime is complex and resource intensive for both parties, [the Department and Serco] as most service failures involve the provision and consideration of case-specific mitigation. The Department intends to review the abatement regime as part of the re-tender of the CS&CS contract.'*¹²⁴
- 3.24 DCS advised that during 2013-14 there were seven significant incidents relating to escapes which resulted in eight PICs escaping from the contractor's direct supervision. Two escapees were apprehended by the contractor prior to leaving the facility and six were subsequently apprehended by WAPOL.¹²⁵

¹²³ Submission 9 from the Department of Corrective Services, 31 March 2015, p 12.

¹²⁴ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 3.

¹²⁵ Submission 9 from the Department of Corrective Services, 31 March 2015, p 12.

3.25 Incidents identified for abatement during 2013-14 are shown in **Table 4** below.¹²⁶

Incident	Number	Maximum Abatement (per incident)
Escape of a secure person from an unsecure environment	4	\$33,156
Escape of a secure person in custody	4	\$110,520
Serious failure to provide a service	1	\$55,260
Unauthorised release of an unsecure person in custody	3	\$2,763
Failure to provide a service	6	\$5,526

Table 4: Significant abatement incidents during 2013-14. [Source: Submission Number 9 from DCS, 31 March 2015.]

3.26 The total value of abatements applied in respect of the 2013-14 financial year was \$436,375.¹²⁷

3.27 The total value of abatements applied for 2014-15 was \$98,833.¹²⁸ This is a reduction of \$337,542, or 77.4 per cent.

Finding 11: The Committee finds that there was a significant reduction in abatements between financial years 2013-14 and 2014-15.

Court delivery and court clearance times

Contractual provisions

3.28 The relevant provision in the Contract regarding arrival times to court reads:

Persons in Custody are to be delivered to Courts at least thirty (30) minutes prior to the time scheduled on the warrant. The Contractor shall endeavour to deliver Persons in Custody no earlier than sixty (60) minutes prior to the earliest listed Court appearance for courts other than the District Court Building and Central Law Courts. The Contractor shall deliver Persons in Custody no earlier than ninety

¹²⁶ Submission 9 from the Department of Corrective Services, 31 March 2015, p 13.

¹²⁷ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 1.

¹²⁸ Department of Corrective Services, *Contract for the Provision of Court Security and Custodial Services: Annual Report 2014-2015*, Government of Western Australia, 30 September 2015, p 16.

*(90) minutes for the District Court Building and Central Law Courts.*¹²⁹

3.29 The Contract further provides that:

*It is a requirement for Persons in Custody to be delivered to the required Court at least thirty (30) minutes prior to time scheduled on warrant for Court appearance. This is to allow for sufficient time for consultation with legal representatives and other required visits.*¹³⁰

Disruptions to court

3.30 Disruptions to court proceedings are defined in the Contract to mean ‘*where a Court has to be adjourned, or cannot proceed, as determined by the Judicial Officer in charge of that Court.*’¹³¹

3.31 The Contract provides that a failure to provide a service which results in a major disruption to court attracts an abatement level of \$5000 per incident.¹³² The abatement amount is subject to an indexation factor and hence increases each year for each specified event. In 2013-14 the abatement amount for a major disruption to court was \$5,526 and in 2014-15 was \$5,696.50.¹³³

3.32 Since January 2013 there have been 11 disruptions to court due to late deliveries to court, four of which were caused by Contractor failure.¹³⁴ Information regarding disruptions to court due to late deliveries to court from January 2013 to January 2015 is set out in **Table 5** below.¹³⁵

Date	Place	Reference No.	Cause
26 March 2013	Supreme Court	2013_663	Error by prison
18 September 2013	Supreme Court	2013_1105	Error by prison
7 October 2013	Armada Court	2013_1151	Contractor failure
29 October 2013	District Court	2013_1258	Contractor failure
9 December 2013	Broome Court	2013_1348	Contractor Failure

¹²⁹ Court Security and Custodial Services Contract, Schedule 6, cl3(o).

¹³⁰ Ibid, Schedule 6, cl7.1.

¹³¹ Clause 1.1 of the Court Security and Custodial Services Contract, June 2011.

¹³² Specified Event Number 8(3) of clause 6 of Schedule 1 – Specified Events – of the Court Security and Custodial Services Contract, June 2011.

¹³³ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 4.

¹³⁴ Supplementary Information from the Department of Corrective Services, 5 August 2015, p 6.

¹³⁵ Ibid, Attachment 3.

Date	Place	Reference No.	Cause
23 May 2014	Central Law Courts	2014_1699	Custody handover issues at Northbridge
26 May 2014	Central Law Courts	2014_1700	Custody handover issues at Northbridge
6 June 2014	Perth Children's Court	2014_1692	Contractor Failure
7 November 2014	Broome Court	2014_2214	WA Police unable to handover custody of person due to other commitments
19 December 2014	Supreme Court	2014_2444	Error by prison
4 January 2015	Magistrates Court at Perth Watch House Northbridge	2014_2432	WA Police unable to handover custody of person due to other commitments

Table 5 *Disruptions to Court due to Late Deliveries to Court* [Source: Supplementary Information from DCS, 5 August 2015.]

Late deliveries to court

- 3.33 The threshold for late deliveries to court is lower than that for disruptions to court. There are a higher number of late deliveries to court than disruptions to court. Nevertheless, lateness to court has a potential impact on access to legal representation for PICs even if it does not disrupt court proceedings.
- 3.34 During 2013-14, there were 7,774 deliveries of PICs from prison to court.¹³⁶ In the same period, there were 453 late deliveries to court and late court clearances, resulting in \$98,000 in abatements being paid by the contractor.¹³⁷
- 3.35 The contractor is not abated for a major disruption to court as well as a late delivery to court for the same incident.¹³⁸
- 3.36 **Table 6** below provides late to court information on a monthly basis from July to December 2014.

¹³⁶ Supplementary information from the Department of the Attorney General, 30 July 2015, Attachment 1.

¹³⁷ Submission 9 from Department of Corrective Services, 31 March 2015, p 13.

¹³⁸ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 4.

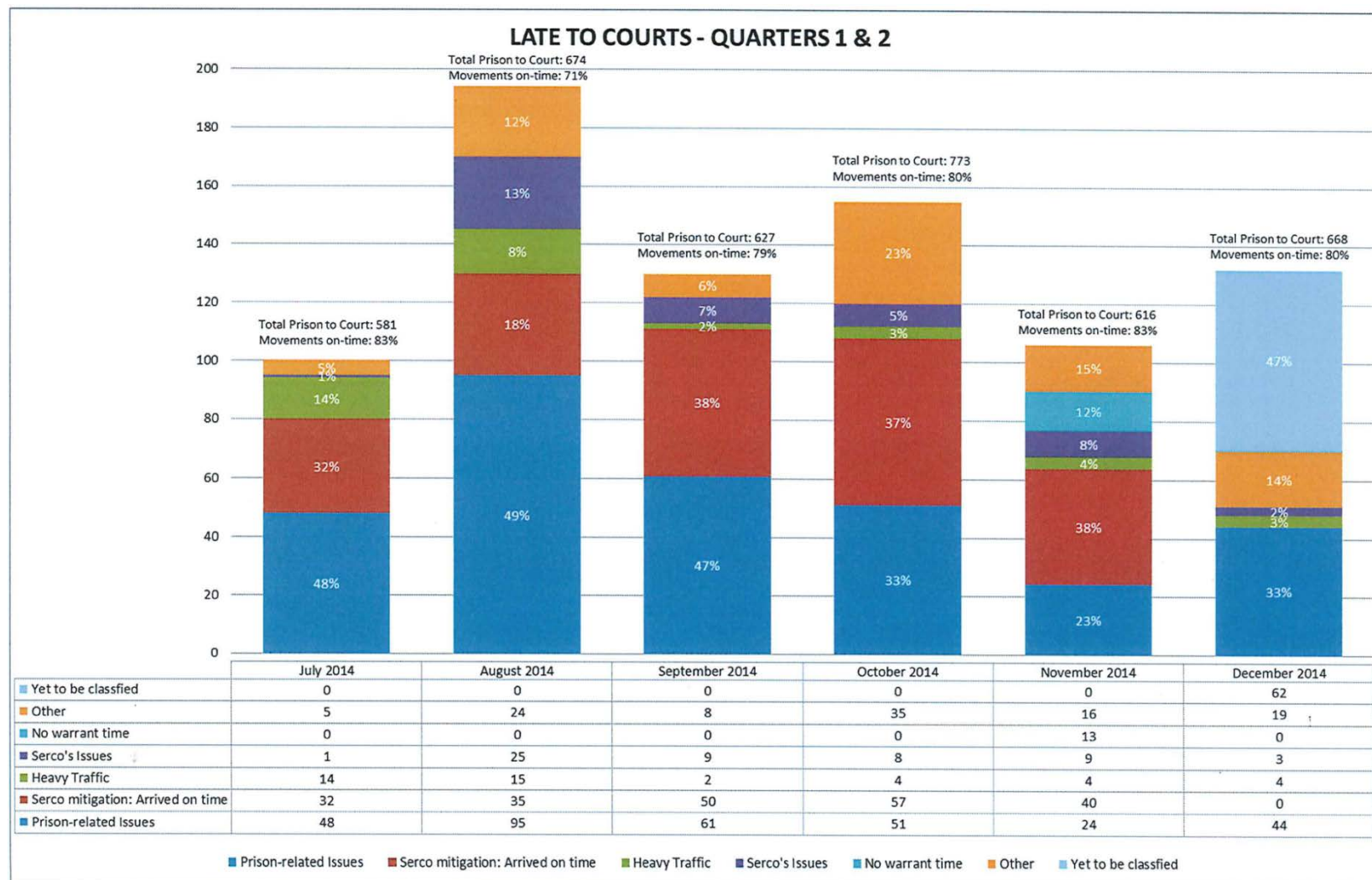


Table 6: Late to Court Information from July to December 2014 [Source: Supplementary Information from DCS, 5 August 2015.]

- 3.37 Legal Aid of Western Australia (Legal Aid) outlined their experiences regarding prisoners not being transported to court in time to meet with their legal representatives, despite the Contract requiring PICs to be delivered to court ‘at least thirty minutes prior to the time scheduled on the warrant.’¹³⁹ In evidence, Legal Aid stated:

*Frequently, by the time [persons in custody] arrive at court and are processed, the court has already started. The issues that arises from this, particularly if it is a trial matter, is that you might not be able to speak to your client before the trial starts, or you may have to say to the magistrate, “My client has only just arrived I need to seek some time just to speak with the client.” It seems to be a more recent issue. I recall in the past always if we were at court by around 8.30am the prisoners would be ready to be seen, but it just seems to be getting later and later.*¹⁴⁰

- 3.38 The Committee wrote to DoTAG seeking its view on Legal Aid’s statement above. The response is attached as **Appendix 4**.
- 3.39 In summary, DoTAG stated the evidence from Legal Aid needs to be considered in two contexts: PICs being delivered to court from a prison and those who have been arrested by police, refused bail and held in custody overnight pending appearance before court the following day.¹⁴¹
- 3.40 DoTAG submitted that ‘*There is an ongoing issue with the late prisoners being delivered to the District Court Building later than is contractually required.*’¹⁴² However ‘*the greater majority of prisoners arrive at the courthouse before the commencement of court, notwithstanding it is after the required contract time.*’¹⁴³
- 3.41 DoTAG advised that meetings between DCS, G4S and the contractor to negotiate a more effective protocol in relation to timely movements to and from the District Court Building led to more timely movements, in particular from the courthouse back to prisons at the end of each day.¹⁴⁴

¹³⁹ Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 3.

¹⁴⁰ Mrs Kelly Niclair, Duty Lawyer Service, Legal Aid of Western Australia, *Transcript of Evidence*, 15 June 2015, p 4.

¹⁴¹ Letter from Mr Michael Cardy, Executive Manager, Court Risk Assessment Directorate, Department of the Attorney General, 30 September 2015, p 1.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

3.42 In relation to the movement of overnight arrestees, DoTAG advised that all persons appearing in the Central Law Courts are held overnight at the Perth Watch House (PWH) and transported to the court house the following morning.¹⁴⁵ The exceptions are Saturdays, Sundays and public holidays, when such persons appear before the Northbridge Magistrate's Court. DoTAG advised that because of the large numbers of overnight arrestees the contractor is required to make several trips each morning between the PWH and Central Law Courts.¹⁴⁶

3.43 Lateness to court was also mentioned by DotAG, with a concern for the administration of court proceedings:

*The issue for us is one of lateness to court. That is ultimately what we worry about – that the judge is not sitting, waiting for a person in custody being moved to the court. Sometimes the handover point is where a delay might be occurring, so if they are late because they have been busy coming through traffic or late clearing from the prison, it is making sure that the judge knows that they are going to be late by 30, 40 or 60 minutes so we can work around our court listings, which inevitably we do, because sometimes it is well beyond the transport person's control coming late into court.*¹⁴⁷

3.44 DotAG also stated that one of the issues with having a handover between the contractor and G4S, which is contracted to deliver court custody services in the District Court and Central Court Buildings, is that the handover of the PIC between the contractor and G4S can create delays.¹⁴⁸

3.45 In evidence to the Committee, the contractor stated:

*In regard to late court appearances, I think there needs to be an acknowledgement that we are only one part of the task of getting somebody from a prison or from a police station into a court. There are many factors which can actually affect the delivery to court. When you look at the KPI performance in relation to late deliveries to court, we are achieving over 99 per cent in terms of on-time delivery.*¹⁴⁹

¹⁴⁵ Letter from Mr Michael Cardy, Executive Manager, Court Risk Assessment Directorate, Department of the Attorney General, 30 September 2015, p 1.

¹⁴⁶ Ibid.

¹⁴⁷ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 15 June 2015, p 2.

¹⁴⁸ Ibid.

¹⁴⁹ Mr Andrew Beck, Deputy Managing Director and Director of Operations, Justice and Health, Serco Australia Pty Ltd, *Transcript of Evidence*, 17 June 2015, p 7.

3.46 The contractor also advised that in terms of trying to improve performance:

*So we actually engaged with the department, with the police, on a project to actually identify areas where improvements could be made, such as the processing in the prison. How can we actually get people processed through the prison quicker to make sure that they are ready on time and make sure that our vehicles get into the prisons, because we may have three or four vehicles that have got to leave the prison. They only process one at a time. How can we actually smooth that process?*¹⁵⁰

3.47 The contractor further advised:

*Similarly, we worked with the police in Northbridge to actually smooth their process and then worked with G4S at the CLC court to ensure that we actually make improvements in that area.*¹⁵¹

3.48 DCS stated in relation to late arrivals to court that ‘the majority by far have had mitigations in relation to a reason for the delay that is outside of the contractor’s control.’¹⁵² See **Table 6** at paragraph 3.36 for late to court information. Reasons for delays outside the contractor’s control include heavy traffic and prison-related issues such as the PIC not being ready.

3.49 In relation to lateness to courts that did not meet the disruption threshold, DCS provided data from the second quarter of 2014-15, at the Committee’s request. The information is from the Court Security and Custodial Services Board Report for the second quarter of 2014-15 and is ‘sourced from daily reports provided by Serco, reports from DCS Monitors and information provided by DotAG and Adult Justice Services.’¹⁵³ Key points were:

19 per cent of all prison to court movements (2057) during the quarter resulted in a late to court delivery (393).

Compared to the previous quarter the percentage of ‘prison-related’ issues which contributed to a late delivery to court decreased across all three months.

¹⁵⁰ Mr Andrew Beck, Deputy Managing Director and Director of Operations, Justice and Health, Serco Australia Pty Ltd, *Transcript of Evidence*, 17 June 2015, p 8.

¹⁵¹ Ibid.

¹⁵² Ms Sue Holt, Manager, Court Security and Custodial Services Contract, Department of Corrective Services, *Transcript of Evidence*, 15 June 2015, p 8.

¹⁵³ Supplementary Information from the Department of Corrective Services, 5 August 2015, Attachment 1.

The most frequent reason for a delay within the prison was the person in custody not being ready.

While Hakea Prison had the greatest number of prisoners delivered late to court (152) for the quarter, when compared to the number of prison to court movements, the percentage of late deliveries to court from Hakea Prison ranged from 11% to 17% late deliveries or 89% to 83% on-time deliveries.

For October and November 2014, the most commonly occurring reason was vehicle arriving and waiting outside sally port. This was followed by Prison-related issues, which include PICs not being ready at reception, Vehicle not let in before scheduled time, Other vehicles in sally port, and Late add-on to the Transfer and Discharge sheet.

Hakea Prison accounted for 47% of all prison to court movements (313 court movements from Hakea's prison out of a total of 668 across the State during December 2014).

The information provided during mitigation showed that Serco vehicles arrived outside the court sally port prior to the required time and often waited outside for a period of time. This information is consistent with advice provided by the Monitors.¹⁵⁴

Finding 12: The Committee finds that the current multiple handling of persons in custody is inefficient and onerous for police officers and prison officers.

Finding 13: The Committee finds that multiple handling of persons in custody is a significant factor in delays in transporting persons in custody to and from court.

Recommendation 4: The Committee recommends that any future contract address the issues identified by the Committee regarding the multiple handling of persons in custody with a view to streamlining the current inefficient process.

Recommendation 5: The Committee recommends that any future contract address the issues identified by the Committee regarding prisoner transport vehicles that arrive early to court. These vehicles should be cleared for entry immediately rather than having to wait outside the sally port.

¹⁵⁴

Supplementary Information from the Department of Corrective Services, 5 August 2015, Attachment 1.

CHAPTER 4

WHETHER THE CURRENT SCOPE OF THE CONTRACT ADEQUATELY MEETS SERVICE DEMAND AND STAKEHOLDER INTERACTION

- 4.1 Many of the submissions noted the inadequacy of the 2011 Contract regarding its ability to reflect and provide for current demands for the transport of PICs.

Transport and related services for adults

- 4.2 **Table 7** below shows that there are 16 different categories of services related to the movement of adults in custody, with six different providers of these services. This table also indicates where different agencies or companies provide the same services in different locations, such as court security and transfers between prisons. It also indicates where there is likely to be interaction between stakeholders to the Contract, such as the transfer of people remanded from regional police lockups to a prison.

Service Needs	WA Police	Serco	Facility	ESG	ACC	Other
1. Police lockup custodial management						
2. Court security & custodial services						G4S
3. Transfers of arrestees from police lockups to a court						
4. Transfers of adult arrestees from Perth Watch-house to metro courts						
5. Transfer of remandees from regional police lockups to a prison						
6. Transfers between courts and prisons						
7. Hospital orders from court to Frankland Centre						
8. Transfers between prisons						
9. Inter-facility visits						
10. Emergency medical escorts						
11. Medical escorts						
12. Hospital bed sits						
13. Funerals & other approved escorts						
14. Transfers to and from work camps.						
15. Section 95 activities/ reintegration leave/ other day leave.						Various
16. Journey home on or before release						TOP

KEY:

- Main service provider
- Secondary/step-in service provider
- Serco Contractor for Court Security and Custodial Services
- Facility Relevant Prison or Work Camp (Department of Corrective Services)
- ESG Emergency Services Group (Department of Corrective Services) responsible for High Security Escorts
- ACC Adult Community Corrections (Department of Corrective Services), with Offices throughout WA

Table 7: Summary of the provision of transport and related services for adults [Source: Submission No. 10 from the Office of the Inspector of Custodial Services, 17 April 2015.]

- 4.3 In terms of the volume of movements performed by the contractor, the majority are prison to court and court to prison, followed by lock-up clearances and inter-prison transfers. There are also a significant number of medical appointment transports.
- 4.4 The tables below are taken from the Annual Reports for the Contract for the periods 2013-14 and 2014-15 and show the individual custody movements performed for both periods.

Individual Custody Movements Performed 2013-14

Services	Movements	Comments ¹
Inter-prison Transfers	6,539	Inter-prison movements include metropolitan to regional and vice versa, and within regional areas and the metropolitan area. Movements are conducted by coach, air or secure vehicle. There was an increase of 6.6% in movement of prisoners during 2013/14.
Court to Prison	6,450	Court to Prison movements have decreased by 4.4%.
Prison to Court	7,774	Prison to Court movements have decreased by 4.5% during 2013/14.
Medical Appointments	4,471	Scheduled and unscheduled medical appointments have decreased by 8.4% during 2013/14.
Funerals	149	Funeral movements have decreased by 43.3%
Day Admissions	141	These services are for prisoners who are admitted to hospital for surgical or other procedures. This figure indicates a 14.5% decrease during 2013/14.
Prison to Hospital	197	Prison to Hospital movements have not changed during 2013/14.
Hospital to Prison	211	Hospital to Prison movements have decreased by 12.8% during 2013/14

Services	Movements	Comments ¹
Lock-up Clearance (Metropolitan and Regional)	9,314	<p>Using data provided by Serco, Lock-up clearance numbers have increased from the previous service year by 11.6%.</p> <p>For regional areas, this service clears persons in custody from 24 WA Police Hub locations to local regional prisons. This service requires persons in custody to be cleared within 24 hours' notice.</p> <p>During this period Lock-up clearances from metropolitan areas for persons in custody were cleared from the PPC (Northbridge).</p>
Visits	29	These services include visits to ill relatives and other approved escorts. This figure has decreased 25.6% during 2013/14.

¹ Increases and decreases in percentages for Table 1 are calculated between the numbers provided for each service in the 2012-2013 Annual Report and the numbers provided for service in the 2013-2014 Annual Report. A small amount of movements may have been facilitated by prisons.

Table 8: Individual Custody Movements Performed [Source: Department of Corrective Services, Annual Report 2013-14, Contract for the Provision of Court Security and Custodial Services.]

Individual Custody Movements Performed 2014-15

Services	Movements	Comments ¹
Inter-prison Transfers	4,988	Inter-prison movements include metropolitan to regional and vice versa, and within regional areas and the metropolitan area. Movements are conducted by coach, air or secure vehicle. There was an decrease of 23.7% in movement of prisoners during 2014-2015.
Court to Prison	6,452	Court to Prison movements have increased by 0.03%.
Prison to Court	7,797	Prison to Court movements have increased by 0.3% during 2014-2015.

Services	Movements	Comments ¹
Medical Appointments	4,581	Scheduled and unscheduled medical appointments have decreased by 2.5% during 2014-2015.
Funerals	170	Funeral movements have increased by 14.1% during 2014-2015.
Day Admissions	161	These services are for prisoners who are admitted to hospital for surgical or other procedures. This figure indicates a 14.2% increase during 2014/2015.
Prison to Hospital	117	Prison to Hospital movements have decreased by 40.6% during 2014-2015.
Hospital to Prison	137	Hospital to Prison movements have decreased by 35% during 2014-2015
Lock-up Clearance (Metropolitan and Regional)	10,117	<p>Using data provided by Serco, lock-up clearance numbers have increased from the previous service year by 8.6%.</p> <p>For regional areas, this service clears persons in custody from 24 WA Police Hub locations to local regional prisons. This service requires persons in custody to be cleared within 24 hours' notice.</p> <p>During this period Lock-up clearances from metropolitan areas for persons in custody we cleared from the PPC (Northbridge).</p>
Visits	23	These services include visits to ill relatives and other approved escorts. This figure has decreased by 20.7% during 2014-2015.

¹ Increases and decreases in percentages for Table 1 are calculated between the numbers provided for each service in the 2012-2013 Annual Report and the numbers provided for service in the 2013-2014 Annual Report. Movements are also facilitated by prisons.

Table 9: Individual Custody Movements Performed [Source: Department of Corrective Services, Annual Report 2014-15, Contract for the Provision of Court Security and Custodial Services.]

- 4.5 Table 8 and Table 9 show that during 2014-15 there was a notable decrease in prison to hospital movements (40.6%), hospital to prison movements (35%) and inter-prison transfers (23.7%) performed by the contractor.
- 4.6 DCS advised that the following factors have contributed to a reduction in the number of movements in relation to inter-prison transfers:
- Enhanced coordination and management of the prisoner population through the establishment of the Coordination Centre within DCS.
 - A reduction in the number of scheduled metropolitan inter-prison movements under the Contract from two to one per week.
 - Increased use of audio-visual links for court appearances, requiring fewer inter-prison transfers in readiness for court.¹⁵⁵
- 4.7 DCS also advised that the following factors have contributed to the reduction in the number of hospital-related movements:
- Commencement of the Fiona Stanley Hospital secure outpatient facility on 16 March 2015.
 - Improved risk assessment procedures for unsecure movements resulting in increased use of alternative transport arrangements.
 - Increased use of DCS staff in relation to movements to and from Graylands Hospital.¹⁵⁶

¹⁵⁵ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 1.

¹⁵⁶ Ibid.

- 4.8 The individual custody movements performed during 2014-15 that were outside the Contract are set out below in **Table 10**.¹⁵⁷

Individual Custody Movement Performed – Outside of CS&CS Contract 2014-15¹

Services	Movements
Inter-prison Transfers ²	2,522
Court to Prison	125
Prison to Court	186
Medical Appointments ³	3,748
Funerals	58
Day Admissions	77
Prison to Hospital	112
Hospital to Prison	60
Lock-up Clearance	N/A

¹ Movements are performed by the Department of Corrective Services and Serco in its capacity as operator of the Acacia Prison and the Wandoo Reintegration Facility.

² Includes movements relating to the 'Acacia Fill Project' and movements excluded under the CS&CS Contract.

³ Includes movements excluded under the CS&CS Contract.

Table 10: Individual custody movements performed during 2014-15 that were outside the Contract

[Source: Letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2.]

- 4.9 In addition to the data provided in the table above, the Committee was advised that 47 custody movements for visits were performed outside of the Contract in 2014-15.¹⁵⁸
- 4.10 Comparisons of the movement services performed inside and outside of the Contract for 2014-15 are set out in Tables 11-13 below.

¹⁵⁷ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2.

¹⁵⁸ Email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, 16 May 2016.

Transfer Services	Total Movements	Inside Contract (% of Total)	Outside Contract (% of Total)
inter-prison ¹⁵⁹	7,510	66.42	33.58
court to prison	6,577	98.10	1.90
prison to court	7,983	97.67	2.33
medical appointments	8,329	55.00	45.00
funerals	228	74.56	25.44
day admissions	238	67.65	32.35
prison to hospital	229	51.09	48.91
hospital to prison	197	69.54	30.46
lock-up clearance	10,117	100.00	0.00
visits	70	32.86	67.14

Table 11: Percentage comparison of individual custody movements performed inside and outside of the Contract for 2014-15. [Sources: Department of Corrective Services, Annual Report 2014-15, Contract for the Provision of Court Security and Custodial Services, letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2 and email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, 16 May 2016.]

Transfer Service	Entity	Number	Percentage of Total (%)
inter-prison ¹⁶⁰	Serco (inside Contract)	4,988	66.42
	DCS (outside Contract)	2,522	33.58
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
court to prison	Serco (inside Contract)	6,452	98.10
	DCS (outside Contract)	125	1.90
	Serco (outside Contract – Acacia)	0	0.00

¹⁵⁹ ‘Includes movements relating to the ‘Acacia Fill Project’: Letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, Enclosure, pp 1-2.

¹⁶⁰ ‘Includes movements relating to the ‘Acacia Fill Project’: Letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, Enclosure, pp 1-2.

Transfer Service	Entity	Number	Percentage of Total (%)
	Serco (outside Contract – Wandoo)	0	0.00
prison to court	Serco (inside Contract)	7,797	97.67
	DCS (outside Contract)	186	2.33
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
medical appointments	Serco (inside Contract)	4,581	55.00
	DCS (outside Contract)	3,617	43.43
	Serco (outside Contract – Acacia)	73	0.88
	Serco (outside Contract – Wandoo)	13	0.16
	other ¹⁶¹	45	0.54
funerals	Serco (inside Contract)	170	74.56
	DCS (outside Contract)	58	25.44
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
day admissions	Serco (inside Contract)	161	67.65
	DCS (outside Contract)	77	32.35
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
prison to hospital	Serco (inside Contract)	117	51.09
	DCS (outside Contract)	112	48.91
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
hospital to prison	Serco (inside Contract)	137	69.54
	DCS (outside Contract)	60	30.46
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00
lock-up clearance	Serco (inside Contract)	10,117	100.00
	DCS (outside Contract)	0	0.00
	Serco (outside Contract – Acacia)	0	0.00

¹⁶¹ Includes ‘ambulance and other non-standard movements’: Letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, Enclosure, pp 1- 2.

Transfer Service	Entity	Number	Percentage of Total (%)
	Serco (outside Contract – Wandoo)	0	0.00
visits	Serco (inside Contract)	23	32.86
	DCS (outside Contract)	47	67.14
	Serco (outside Contract – Acacia)	0	0.00
	Serco (outside Contract – Wandoo)	0	0.00

Table 12: Comparison of individual custody movements performed inside and outside of the Contract 2014-15 — by providing entity [Sources: Department of Corrective Services, Annual Report 2014-15, Contract for the Provision of Court Security and Custodial Services, letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2, letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, Enclosure, pp 1-2 and email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, 16 May 2016.]

No.	Transfer Service (Outside Contract)	Number	Percentage of Total (%)
1	visits	47	67.14
2	prison to hospital	112	48.91
3	medical appointments	3 748	45.00
4	inter-prison ¹⁶²	2 522	33.58
5	day admissions	77	32.35
6	hospital to prison	60	30.46
7	funerals	58	25.44
8	prison to court	186	2.33
9	court to prison	125	1.90
10	lock-up clearance	0	0.00

Table 13: Percentage comparison of individual custody movements performed outside of the Contract for 2014-15 – in descending order. [Sources: Department of Corrective Services, Annual Report 2014-15, Contract for the Provision of Court Security and Custodial Services, letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2 and email from Mr Leigh Quealy, Principal Policy Officer, Strategic Policy, Office of Reform, Department of Corrective Services, 16 May 2016.]

¹⁶²

Includes ‘ambulance and other non-standard movements’: Letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, Enclosure, pp 1- 2.

Finding 14: The Committee finds that for 2014-15:

- For seven out of the 10 transfer services performed in the court security and custodial services sector, at least a quarter of the total services were performed outside of the Contract.
- Two thirds of the total ‘visits’ transfers were performed outside of the Contract by the Department of Corrective Services.
- Nearly half of the total ‘prison to hospital’ and ‘medical appointments’ transfers were performed outside of the Contract by the Department of Corrective Services.
- Where a portion of a transfer service was performed outside of the Contract, that portion was almost exclusively provided by the Department of Corrective Services.

Finding 15: The Committee finds that for a number of the transfer services the scope of the Contract was inadequate.

Finding 16: The Committee finds that providing transfers outside of the Contract has a significant cost and staffing impact for the Department of Corrective Services.

Recommendation 6: The Committee recommends that any future contract should make greater allowance for transfers to occur within the scope of the contract.

Transport and related services for youths

4.11 **Table 14** below summarises the provision of transport and related services for youths. It shows that, as with adults, the contractor provides a large number of services under the Contract.

Service Needs	WA Police	Serco	Facility	ESG	YJC	YJCS
1. Police lockup custodial management						
2. Court security & custodial services						
3. Transfers of arrestees from police lockups to a court						
4. Transfers of youth arrestees from metro & near-metro police lockups to detention ie Banksia Hill						
5. Transfer of remandees from regional police lockups to detention						
6. Transfers between courts and detention facility						
7. Hospital orders from court to Frankland Centre						
8. Transfer from detention to prison						
9. Inter-facility visits						
10. Emergency medical escorts						
11. Medical escorts						
12. Hospital bed sits						
13. Funerals & other approved escorts						
14. Day release						
15. Journey home on release						

KEY:

- Main service provider
- Secondary/step-in service provider
- Areas for which YJC is traditionally responsible but presently undertaken by Serco.
- Serco Contractor for Court Security and Custodial Services
- Facility Relevant Prison or Work Camp (Department of Corrective Services)
- ESG Emergency Services Group (Department of Corrective Services) responsible for High Security Escorts
- YJCS Youth Justice Community Services (Department of Corrective Services), with Offices throughout WA

Table 14: Summary of the provision of transport and related services for youth [Source: Submission Number 10 from the Office of the Inspector of Custodial Services, 17 April 2015.]

4.12 Transport services for youths being managed under the *Young Offenders Act 1994* were not included in the original Contract.¹⁶³

4.13 However, from October 2013, the contractor began providing state-wide provision of youth transport on an interim basis, as well as custodial services for the Perth Children's Court, the contract for which has been extended until DCS issues a termination notice.¹⁶⁴ From June 2014, the service was expanded to include funeral

¹⁶³ Schedule 6.1, Contract for Court Security and Custodial Services, Contract No. DCS0402010, June 2011, p 194.

¹⁶⁴ Submission 9 from Department of Corrective Services, 31 March 2015, p 12.

escorts, medical appointments, release to freedom transfers, and hospital sits.¹⁶⁵ The submission from the Inspector of Custodial Services suggests that these arrangements were made as a result of staff shortages in Youth Justice Custodial Services in the wake of the Banksia Hill Detention Centre riot in January 2013.¹⁶⁶

4.14 Youth transport is an area under consideration for the tender process for, and drafting of, the new contract.¹⁶⁷ For this reason, the Committee includes the comments received in evidence on the transport of young people.

4.15 The Committee received evidence that youths in regional areas may travel considerable distances: in some cases, they may travel from the North-West of Western Australia to Perth in order to be remanded for short periods.¹⁶⁸

4.16 A 2010 OICS report stated that:

*juveniles from remote areas should not be subject to the arduous road journeys taken by adult prisoners and cannot be safely or humanely accommodated in the prisons or the Carnarvon Police Lockup on the journey.*¹⁶⁹

4.17 The OICS report also stated that:

*It is of great concern that juveniles are taken so far from their home communities and families to be incarcerated in Perth and, indeed, that so many are remanded in custody.*¹⁷⁰

4.18 In response to the Committee's request for his comment on these statements given the upgrade to the Carnarvon Lockup and that the contractor currently undertakes youth transports, Professor Morgan advised the Committee that '*As a broad statement, the issues raised are no longer of concern.*'¹⁷¹ Professor Morgan noted that '*juveniles are no longer subject to arduous road journeys because air transfers are now the*

¹⁶⁵ Submission 9 from Department of Corrective Services, 31 March 2015, p 12.

¹⁶⁶ Submission 10 from Inspector of Custodial Services, 17 April 2015, pp 11-12.

¹⁶⁷ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 5.

¹⁶⁸ Submission 6 from Legal Aid of Western Australia, Pilbara Regional Office and Aboriginal Legal Service of Western Australia, South Hedland Office, 27 March 2015, p 5.

¹⁶⁹ Report No.65, Office of the Inspector of Custodial Services, *Thematic Review of Court Security and Custodial Services in Western Australia*, May 2010, p 90.

¹⁷⁰ Ibid.

¹⁷¹ Letter from Professor Neil Morgan, Inspector of Custodial Services, 8 October 2015, p 1.

*preferred mode of transport. This also eliminates any need for juveniles (or indeed adults) to stop overnight at the Carnarvon Police Lockup.*¹⁷²

- 4.19 However he noted that *‘the issue of juveniles being incarcerated so far from home remains, because Banksia Hill Detention Centre is the state’s only [youth] detention centre.’*¹⁷³

- 4.20 Youth transport was a common theme in many submissions. For example:

*That these young people are transported all the way to Perth from the North West, particularly when they may only be remanded for one week, is unacceptable and inappropriate.*¹⁷⁴

- 4.21 In its submission to the Inquiry, members of the Western Australian Police Union of Workers (WAPU) expressed their concerns about the long periods spent by youths in custody in police lock-ups and the quality of custodial and detention facilities, particularly in the Kimberley.¹⁷⁵

- 4.22 Concerns from regional based police officers were that juvenile escorts divert frontline police and tasking vehicles.¹⁷⁶ Metropolitan officers expressed their frustration with what they claimed to be unnecessary and time consuming paperwork that had to be lodged at Curtin House.¹⁷⁷

- 4.23 The President of WAPU told the Committee that:

*On the topic of juveniles, it was a view amongst many of our members that an agency other than WA Police should transport juveniles. We recommend that future contracts need to cater for juveniles to be transported from every station in the state. Further, it is imperative that the red tape surrounding the paperwork for juveniles in the metropolitan area be reviewed.*¹⁷⁸

¹⁷² Letter from Professor Neil Morgan, Inspector of Custodial Services, 8 October 2015, p 1.

¹⁷³ Ibid.

¹⁷⁴ Submission 6 from Legal Aid of Western Australia, Pilbara Regional Office and Aboriginal Legal Service of Western Australia, South Hedland Office, 27 March 2015, p 5.

¹⁷⁵ Submission 5 from the Western Australian Police Union of Workers, 24 August 2015, p 19.

¹⁷⁶ Ibid, p 18.

¹⁷⁷ Ibid, p 19.

¹⁷⁸ Mr George Tilbury, President, Western Australian Police Union of Workers, *Transcript of Evidence*, 17 June 2015, p 2.

4.24 The Commissioner stated that *'I have not seen an abatement or any major incident that has said to me that that [youth transport] has not been done properly.'*¹⁷⁹

4.25 Mr Greg Italiano from DCS stated that:

*The Serco officers who undertake juvenile movements do additional training specifically in the handling of juveniles, and when we move them we also move them with a fixed ratio of two officers for each person. So there are additional measures and preparedness in relation to juvenile escorts over and above those we take in relation to adult movements.*¹⁸⁰

Transport of high risk detainees

4.26 Fundamental to this Inquiry is the contractor's ability to meet its requirement to transport PICs under the Contract.

4.27 The following movement services are outside the scope of the Contract:

- Any prisoner, including those classified as level 2 or 3, assessed by DCS as requiring to be moved by a high security escort.
- Any prisoner who requires immediate medical treatment which, if delayed, may be detrimental to the prisoner's well-being.
- Any prisoner in the custody of a prison who is returned to or handed over to the WA Police for operational purposes.¹⁸¹

4.28 Movement services excluded from the Contract are carried out by WAPOL or the special operations group, a group of highly trained prison officers who deal with PICs who are violent or who require a high-security escort.

4.29 Accordingly, the security classification a PIC is given when they are detained is a key factor in the contractor's performance of the Contract.

4.30 During its visit to the PWH, the Committee observed the process undertaken to assess the security classification of persons who have been detained in custody. Following on

¹⁷⁹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 5.

¹⁸⁰ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 5.

¹⁸¹ Court Security and Custodial Services Contract, Schedule 6: Movement Services, Clauses 10 (b), (g) and (h). There are other movement services outside the scope of the CS&CS Contract but these are not high risk movements.

from its site visit, the Committee sought further information about this process from DCS.

- 4.31 The Commissioner discussed cases where the contractor does not transport a PIC. These include if a person *‘is very unruly, as in he is violent and he does not want to get in the back of the vehicle’*¹⁸² or *‘is a high security escort so there is potential of escape with people outside’*¹⁸³ or in cases where there are medical issues. The Commissioner said:

*There is not one size does fit all. What Serco do, if I can give a very broad view, is they will move the one size fits all, but we cannot account for that. Our system needs to account for a whole variety of people.*¹⁸⁴

- 4.32 The Committee queried the ability to reassess a security rating to enable the contractor to transport a person in circumstances where that person had a previous high-risk classification. The Commissioner told the Committee that *‘One, we are not sophisticated enough for that at this stage...and two, I would be very hesitant to remove a flag on the run.’*¹⁸⁵ He said *‘I can tell you now that that flag is not going anywhere. I would have to personally have a very, very good look at that as commissioner.’*¹⁸⁶
- 4.33 In reinforcing his point, the Commissioner said *‘We try to balance the needs of the prisoner, but ultimately it is the safety of the community that will override that. Changing flags on the run is not a business I would be into.’*¹⁸⁷
- 4.34 The default position for persons who come into custody who are unknown to the system is that they are treated as a maximum-security prisoner. They are transported by the contractor, however as a maximum-security prisoner needing secure movement.¹⁸⁸
- 4.35 Where a person unknown to the system comes into custody but there is some intelligence to indicate the person may be a security risk (for example, involved in organised crime), WAPOL and the contractor are able to contact the coordination

¹⁸² Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 16.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid, p 17.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ms Sue Holt, Manager, Court Security and Custodial Services Contract, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 18.

centre (discussed in paragraph 3.13) and a flag is noted against that person. The Commissioner told the Committee:

*That co-ord[ination] centre is really the hub of movement. That is what it has become. It has obviously cost us more resource[s] but it is important to have a more effective and efficient system.*¹⁸⁹

Emergency transport and hospital sits

- 4.36 Emergency visits to hospital are not provided for in the current Contract. While unplanned services may incur significant costs, the Commissioner stated:

*So it is really a duty of care more than anything. If something is an emergency, a prison officer sees that someone is face down in a cell and might have for whatever reason had a fit, Serco will not be able to help us in that. We need an ambulance there with paramedics to do the right thing. So that emergency piece needs to be done by an ambulance, not by being in the back of the pod of a car.*¹⁹⁰

- 4.37 Hospital sits (a static escort supervising and managing the security, safety, well-being and control of a PIC who has been admitted to hospital external to a custodial facility¹⁹¹) can be provided within three hours of notification to enable the contractor to take over each sit.¹⁹²

Lock-ups

- 4.38 The *Court Security and Custodial Services Regulations 1999* (CS&CS Regulations) created under the CS&CS Act provide for some police lock-ups to be prescribed under the CS&CS Act. These are Albany, Carnarvon and Kalgoorlie.¹⁹³
- 4.39 DCS advised that the contractor does not manage police lockups. It only manages PICs in court cells that have a warrant to attend court, a warrant of commitment, or are in default of payment of a fine and are to be moved to a prison.¹⁹⁴ The key distinction is the use of a cell as a court cell as opposed to a police cell.

¹⁸⁹ Ms Sue Holt, Manager, Court Security and Custodial Services Contract, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 18.

¹⁹⁰ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 6.

¹⁹¹ Definition of 'hospital sit' in clause 1.1 of the CS&CS Contract, p 20.

¹⁹² Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 6.

¹⁹³ *Court Security and Custodial Services Regulation 1999*, r5, Table.

¹⁹⁴ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p 8.

- 4.40 In the case of the Albany Justice Complex and, more recently, the Kalgoorlie Justice Complex, PICs are managed by the contractor within the one facility that is used as both court custody and police lockup. The contractor manages these people from the court cells on Monday to Friday from 8.00am to 4.30pm, and on Saturday depending on the number of people who are listed to attend court on the day. Times vary depending on court sitting times.¹⁹⁵ WA Police manage PICs outside the times they are managed by the contractor.¹⁹⁶
- 4.41 DCS advised that at the commencement of the Contract the Albany Justice Complex had been redesigned, and there was ‘*a clear understanding of the services required by the contractor to operate in the lockup and undertake custody and lockup services.*’¹⁹⁷ On this basis, the Albany facility was prescribed for the purposes of the CS&CS Act, enabling court cell management to be carried out by the contractor. Building development works had not commenced at Carnarvon and Kalgoorlie at the time the Contract was being developed.¹⁹⁸

Interaction between stakeholders

- 4.42 The interaction between stakeholders in the performance of the Contract is defined by legislative limitations, and by the complexity of the transport of PICs. In addition, there may be unrealistic expectations about the ability of the contractor to provide services under the Contract, and to criticise the contractor for limitations set out in the Contract itself. As Mr Greg Italiano observed:

*I think this is where the complexity of the contract comes in because when we say “role”, there is no exclusivity around roles. Police do have a role in prisoner transportation in the way we move prisoners around the state. It is not exclusively Serco’s obligation. The contract provides a mechanism and then the scope of the contract effectively limits to where that service is then applied. This notion there is an end-to-end open obligation for one party is not how this rather complex or logistical transportation unfolds in the world.*¹⁹⁹

¹⁹⁵ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, pp 8-9.

¹⁹⁶ Letter from Hon Joe Francis MLA, Minister for Corrective Services, 18 April 2016, p 2.

¹⁹⁷ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 10 November 2015, p9.

¹⁹⁸ Ibid.

¹⁹⁹ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 15.

Western Australian Police

- 4.43 The WAPOL stated that the relationship between WAPOL officers and the contractor was positive, *‘with generally very good local arrangements in place.’*²⁰⁰ However, they were of the view that *‘greater efficiencies and higher standards in custodial transport can be achieved through resourcing a single agency to provide custodial transport services, rather than resourcing multiple agencies to carry out similar, often overlapping, custodial transport functions.’*²⁰¹
- 4.44 Only one memorandum of understanding (MOU) exists between stakeholders to the Contract; between DCS and WAPOL.²⁰² It entitles the use of the WAPOL air wing for the transportation of youth detainees and adult prisoners or PICs.²⁰³ The Commissioner advised that DCS did not use the police air wing for the movement of adult prisoners during the last year, however on occasions inquiries are made by DCS for this service.²⁰⁴
- 4.45 The submission from the WAPU indicates that its members are aware of the existence, over the years, of MOUs between WAPOL and DCS or the contractor regarding the transport of persons in custody.²⁰⁵ However there is *‘confusion as to whether these MOUs are variations of one another, reference different matters, or are still in operation.’*²⁰⁶
- 4.46 WAPU submitted that it has been made aware of the following:

The provision of court security and custody at regional circuit courts is currently managed by WA Police, arrangements of which were made under an MOU signed in 2000 between the then Ministry of Justice and WA Police. WAPU understands this MOU has expired and it appears the relevant agencies are still in discussion about the terms and scope of the MOU

A thematic review of court security and custodial services, undertaken by the OICS in May 2010 referred to an MOU between the former Ministry of Justice and WA Police which made the Contractor responsible for all transport services for adults from police lock-ups

²⁰⁰ Submission 12 from Western Australia Police, 6 May 2015, p 2.

²⁰¹ Ibid.

²⁰² Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 13.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Submission 5 from the Western Australian Police Union, 26 March 2015, p 6.

²⁰⁶ Ibid.

and courts at every known police and court facility in country WA. The review noted that the Commissioner of Police advised the Corrective Services Commissioner in 2009 that police would be withdrawing from this MOU (no reason is provided in the review)

WAPU understands that “it was agreed that WA Police would continue to provide transportation services for juvenile offenders within regional areas” but is not certain if this arrangement has been enshrined in an MOU

The Albany lock-up is treated uniquely by the Court Security and Custodial Services Act, Regulations and Contract but there is no formal MOU between Albany Police and Serco outlining the details of this relationship. An old local service arrangement stands but there appears to be differences in interpretation of this arrangement.²⁰⁷

4.47 This led WAPU to ask:

- Which MOUs are still in existence?
- Who is party to these MOUs?
- Are any available to view outside of the noted agencies?
- Are these MOUs reviewed and if so, are they reviewed regularly?
- Why has there been such a delay in arranging a new MOU following the expiration or withdrawal from previous MOUs?²⁰⁸

4.48 WAPU asked its members about their awareness of any MOUs between Western Australian Police and DCS and or the contractor. More than 70 per cent of respondents were not aware of the existence of any MOU.²⁰⁹ Of those who were aware of the existence of an MOU, there was uncertainty regarding the detail and content.²¹⁰

4.49 The Commissioner of Police informed the Committee that WA Police:

are largely comfortable with the way Serco have been operating in terms of what we do. There are gaps in the service delivery that we

²⁰⁷ Submission 5 from the Western Australian Police Union, 26 March 2015, p 6.

²⁰⁸ Ibid.

²⁰⁹ Ibid, p 7.

²¹⁰ Ibid.

*have identified and we are working with DCS on, but I do not think overall we have got too many concerns.*²¹¹

4.50 Mr Bell, Assistant Police Commissioner advised the Committee that WAPOL:²¹²

have worked through one example in one of the country areas on how it would work but those officers then conduct some other duties aligned to the contract. So, it may be court security or court orderly or provide some other functions seeing they are paid already and they are at the location; and they do that, which would relieve some impost on us and we would have officers return to other duties. Then at the end of that, they will go back to their escort from the lockup to the airport and return. So, it is really getting some more tweaking out of an already paid officer that is at the site and we can get some other duties out of them that are currently not being completed.

4.51 WA Police added that the best model for WAPOL in regional areas would be an holistic approach where the contractor is responsible for managing the PIC from transporting them to the court, managing them through the court process, and transporting them to their return location.²¹³

Department of Corrective Services

4.52 DCS noted that three agencies (DCS, DoTAG and WAPOL) receive services under the Contract and that this has led to complex governance arrangements resulting in issues around coordination and communication between these agencies.²¹⁴

4.53 There are currently two groups which manage the operational and strategic requirements of the Contract. These are the Directors' General Governance Group and the Senior Officers' Group and are discussed from paragraph 3.3.

4.54 The contractor implemented an electronic prisoner escort recording system (SERS) which supports the management of PICs while they are under the contractor's care. SERS receives automated transport requests from DCS's Total Offender Management

²¹¹ Dr Karl O'Callaghan, Commissioner of Police, Western Australian Police, *Transcript of Evidence*, 15 June 2015, p 3.

²¹² Mr Duane Bell, Assistant Commissioner, Western Australian Police, *Transcript of Evidence*, 15 June 2015, pp 3-4.

²¹³ Mr Gary Dreiberger, Deputy Commissioner, Specialist Services, Western Australian Police, *Transcript of Evidence*, 15 June 2015, p 4.

²¹⁴ Submission 9 from the Department of Corrective Services, 31 March 2015, p 2.

System which, according to DCS, ‘contributes to the efficient movement of persons in custody.’²¹⁵

Department of the Attorney General

4.55 In relation to interaction between stakeholders to the Contract, DotAG stated that:²¹⁶

The CHAIRMAN: You mentioned the Western Liberty Group. Does DOTAG have any input into Western Liberty subcontracting their services to G4S? Do you have any input into how that all works?

Mr Warnes: There is a five-year benchmarking exercise that gets done as part of that contract, so every five years Western Liberty Group can go back and retest the market if they want. We have some part in that benchmarking exercise if we do not think things are working very well.

The CHAIRMAN: You do not think they are working very well?

Mr Warnes: No; we think they are. It is G4S that are managing that within the District Court. There are times when the interplay between Serco delivering transport to the District Court and then the handover regime can cause us some issues.

The CHAIRMAN: What are those issues? Can you be specific on those?

Mr Warnes: The issue for us is one of lateness to court. That is ultimately what we worry about—that the judge is not sitting, waiting for a person in custody being moved to the court. Sometimes the handover point is where a delay might be occurring, so if they are late because they have been busy coming through traffic or late clearing from the prison, it is making sure that the judge knows that they are going to be late by 30, 40 or 60 minutes so we can work around our court listings, which inevitably we do, because sometimes it is well beyond the transport person’s control coming late into court. The interface is then making sure that G4S quickly prioritise those offenders who are coming off a truck to get those we are waiting for within the courtroom environment.

4.56 Another issue DoTAG raised is the handover of PICs between the contractor and G4S.

²¹⁵ Submission 9 from the Department of Corrective Services, 31 March 2015, p 3.

²¹⁶ See Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 15 June 2015, p 2.

- 4.57 The example provided was where a person in the custody of G4S within the District Court needs to go to hospital. In that case, G4S will take the person to hospital, but DoTAG stated that *‘the contract at the moment is not necessarily clear on the handover. It is not necessarily G4S’s responsibility to get them back to the prison. We are working our way through with DSC and Serco at the moment where that responsibility for handover lies so Serco can come to the hospital and take them by authority back to prison.’*²¹⁷

Customer satisfaction survey

- 4.58 Clause 11.1 of Schedule 2 (Key Performance Indicators) of the Contract provides that:

The Contractor’s performance will be subjected to regular measurement through customer satisfaction reviews (Customer Satisfaction Surveys) based on achievement of specific service objectives.

- 4.59 The survey is required to be undertaken quarterly²¹⁸ and is described in the Contract as an *‘assessment of the relationship the Contractor has with the Client Agencies, based on overall service delivery, flexibility, relationship management, including third-Party relationships, and customer focus.’*²¹⁹
- 4.60 Under the Contract, a Customer Satisfaction Performance Fee is calculated and payable quarterly to the contractor based on the most recently conducted customer satisfaction survey.²²⁰ The Customer Satisfaction Performance Fee is calculated with reference to the Customer Satisfaction Measurement Table in **Table 15**.²²¹

Customer Satisfaction Measurement Table	
Satisfaction Survey results	Performance Based Percentage
Over 90%	100%
71 – 90%	60%
50 – 70%	20%
Less than 50%	nil

Table 15: Customer Satisfaction Measurement Table

²¹⁷ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 15 June 2015, p 5.

²¹⁸ Clause 11.2(a) of Schedule 2 of the Court Security and Custodial Services Contract.

²¹⁹ Customer Satisfaction Service Level table in clause 11.1 of Schedule 2 of the Court Security and Custodial Services Contract.

²²⁰ Clause 11.4 of Schedule 2 of the Court Security and Custodial Services Contract.

²²¹ Ibid.

4.61 The Annual Report 2013-14 for the Contract stated that:

On completion of the surveys, conducted quarterly, the Contractor Serco achieved an average Customer Satisfaction Measurement of 56.28% for this service year. This is a decrease of 4.92% in Customer Satisfaction on the previous year. The Contractor has, however, managed to remain within the 'Meets Expectation' performance level.

*The Department continues to assess the effectiveness of the Customer Satisfaction Survey, noting that the tool is potentially more effective as a form of customer feedback rather than a KPI. Work will continue this coming year 2014/15 to refine this survey.*²²²

4.62 The Annual Report 2014-15 for the Contract states:

*On completion of the surveys, conducted quarterly, the Contractor Serco achieved an average Customer Satisfaction Measurement of 57.78% for this service year. This is an increase of 1.5% in Customer Satisfaction on the previous year. The Department and client agencies continue to review the questions posed as part of the Customer Satisfaction Survey to improve the effectiveness of this mechanism.*²²³

4.63 Although the contractor improved its customer satisfaction survey results during the last reporting period, it placed within the same band as the previous year. The customer satisfaction performance fee payable was therefore also calculated according to the same percentage as the previous reporting period; that is, 20 per cent.

4.64 WAPU submitted that it *'finds it baffling that Serco would receive a customer satisfaction performance fee of 20% for each quarter in 2013-2014 when it only just manages to receive a base level of satisfaction of performance from client agencies.'*²²⁴

4.65 In a survey of WAPU members, when asked about their awareness of a customer satisfaction survey, just over 90 per cent of respondents were not aware of the existence of any such survey.²²⁵

4.66 When asked about the customer satisfaction survey in a Committee hearing, the Commissioner advised that:

²²² Department of Corrective Services, Annual Report 2013-2014, Contract for the Provision of Court Security and Custodial Services, p 12.

²²³ Ibid, p 17.

²²⁴ Submission 5 from the Western Australian Police Union of Workers, 27 March 2015, p 13.

²²⁵ Ibid, p 14.

*The customer satisfaction survey is completed by a range of persons from each client agency as identified by representatives of each agency. The survey is administered by DCS and has been revised on a number of occasions following review and input from client agency representatives. In addition, DCS regularly reviews participation rates and advises client agency representatives. If response rates are less than desirable, DCS reminds client agencies of the importance and value of responding to the survey. DCS also regularly requests the participants' list to be reviewed to ensure relevant persons are included in the survey.*²²⁶

4.67 In 2013 the OICS reported that:

*the robustness of the [customer satisfaction] survey methodology was questionable. The questions were confusing, the scale of responses were not mutually exclusive, there were some questions missing responses and the overall sample size was too low to allow comparison against each quarter. The survey, if tightened up, could be a useful tool for providing feedback to the contractor, but is simply not robust enough, at present, to be used for a performance tool.*²²⁷

Committee comment:

The contractor improved its Customer Satisfaction Measurement from 2013-14 to 2014-15 however it fell within the same percentage band for both periods.

Transport issues in specific locations

4.68 Evidence received noted transport concerns in South Hedland, Rockingham and the Perth Watch House.

South Hedland

4.69 The Pilbara Regional Office, Legal Aid and the South Hedland Office of the Aboriginal Legal Service of Western Australia (Inc) (ALS) submitted that:

There appears to be uncertainty as to the division between Serco and the Police, as to which stakeholder is responsible for the prisoner while in custody at the South Hedland Magistrates Court. It is often the case that when prisoners are transported from RRP (Roebourne

²²⁶ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 13.

²²⁷ Office of the Inspector of Custodial Services, *Court Custody Centres' Inspection Report*, Report 87, December 2013, p 41.

Regional Prison) to the Court, South Hedland Police are of the view that the Police are only holding the prisoner, whilst Serco appear to be of the view that the prisoner is not their responsibility when being held at the Police Station.²²⁸

- 4.70 The submission provided the following example demonstrating this uncertainty regarding responsibility for prisoner welfare at South Hedland:

a remand prisoner was brought up to South Hedland from RRP to be sentenced in the District Court. This prisoner instructed that she was not provided with her blood pressure or diabetes medication as she had left the prison too early to access medical services. Serco advised her lawyer that she was too unwell to appear in court. For some time, South Hedland Police and Serco debated who was responsible for the remanded prisoner, who had the authority to take her to the hospital and in what cells she should be held awaiting her appearance in court. Throughout this period the prisoner was moved between Police and Serco cells on a number of occasions. Ultimately Police transported the prisoner to Hedland Health Campus, however the prisoner was still not provided with her required medication although the Police were issued with a 'fitness to hold in custody' certificate. On the basis of this certificate, Serco further determined that the client was well enough to appear in court to be sentenced. Ultimately, the client did receive her required medication, some 7 hours and 40 minutes after she had left RRP.²²⁹

- 4.71 In relation to the contractual responsibility for prisoners at South Hedland, the Commissioner stated:

The contract provides for court security services at South Hedland court. Custody services are not included in the contract and remain the responsibility of WA Police. At the point of handover of a person in custody from police custody to Serco custody to facilitate court-related matters, the person is in the custody of Serco for the duration of those proceedings. When a person is returned to WA Police following the court appearance, the person returns to being in the custody of WA Police.²³⁰

²²⁸ Submission 6 from Legal Aid of Western Australia, Pilbara Regional Office and Aboriginal Legal Service of Western Australia, South Hedland Office, 27 March 2015, p 3.

²²⁹ Ibid, p 4.

²³⁰ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 14.

- 4.72 One of the gaps in the Contract the Commissioner of Police identified was in situations where the contractor's officers stand down from duty after handing over PICs to the police, particularly at regional courts. WAPOL advised the Committee that:

*Currently Serco are contracted in some areas to transport the prisoner from the airport to the lockup. When they arrive then, they stand down and we will take that prisoner, work in the lockup and convey them to the court; and the Serco officers are basically sitting there. So we have been working with the contract manager from Corrective Services and we are just working through a protocol.*²³¹

- 4.73 When asked to comment on claims of staffing issues with the contractor failing to provide contracted services in regional areas, the contractor explained that:

I think you need to look at what the contract specifies in terms of the service that we are required to deliver...

*In terms of the regional areas and in terms of some of the surveys that have been conducted and some of the feedback that I have certainly read from the submissions, some of what the people report on is actually what they want from the contract or what they expect from the contract, and that is not actually what the contract provides for. So some of the expectations far exceed what the contract is actually set up to provide. Whilst people would like that service, the contract does not provide that service. I think that sometimes there is a gap between contract and expectation, which often creates some frustration for people, particularly in the regions.*²³²

- 4.74 The contractor provided an example from South Hedland to illustrate their point:

I think one of the submissions was in relation to Pilbara–South Hedland and I think legal aid doing legal visits with their clients and being told that Serco do not have the staff. If we look at South Hedland, the custody facility is not provided and not contracted to Serco; it is a police lock-up. Whoever is responsible for the custody function is also responsible for legal visits. Now, we have a group of staff who work in South Hedland. Predominantly, their role is to provide the court orderly or take any persons in custody, when they

²³¹ Mr Duane Bell, Assistant Commissioner, Western Australian Police, *Transcript of Evidence*, 15 June 2015, p 3.

²³² Mr Andrew Beck, Deputy Managing Director and Director of Operations, Justice and Health, Serco Australia Pty Ltd, *Transcript of Evidence*, 17 June 2015, pp 6-7.

*are ready to be presented in court, into the dock, and we provide the front-of-house security in terms of the roving. We have also got another group of staff there. These staff are interchangeable, because we need that flexibility in a small town. They are also responsible for doing medical appointments for people at the local prison in Karratha. They are also responsible for a lock-up clearance from one of the hubs in the Pilbara. They are also responsible for collecting from Karratha prison and taking them to one of the remote courts that we are not contracted to service other than delivering prisoners from a prison to court for their hearing. So, on days when we may not have those numbers of movements to do a lock-up or a court appearance to one of the remote sites or a medical appointment, we may have those staff available, and what we have done is said to the police, "We are happy to assist you in doing some of these legal visits." Unfortunately, when we get those other jobs and other tasks, we have got to respond to those because they are our contractual obligation. When we do that, then our response is, "We do not have the staff to be able to assist you." If the police are not quick enough in doing what they need to be doing, that can then causes the delay, which I think is the way it has been reported.*²³³

Rockingham

- 4.75 The Commissioner advised the Committee that *'The contract provides for court security and court custody services to be provided at Rockingham court, as well as movement services to and from prisons.'*²³⁴
- 4.76 DCS advised that police may choose to bring a PIC from Rockingham to the PWH if they deem it more operationally appropriate in the circumstances than holding them in custody at the local police station.²³⁵ This would likely be due to a question of staffing at the Rockingham police station and that it would be considered preferable to spend the time conveying the PIC to the PWH and releasing the officers to undertake duties for the rest of the shift rather than to hold that PIC for the duration of that time.²³⁶
- 4.77 This highlights the fact that the Contract does not include the transport of persons in police custody who will have been processed at the time of their arrest at Rockingham,

²³³ Mr Aboo Kajee, Contract Director, Serco Australia Pty Ltd, *Transcript of Evidence*, 17 June 2015, p 7.

²³⁴ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 12.

²³⁵ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 12.

²³⁶ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 12.

then transferred to PWH to be held in secure custody and then require transport back to Rockingham to appear before the Rockingham court.

- 4.78 WAPU noted that the Contract does not include Rockingham Magistrates Court and advised that its members were ‘*completely baffled*’²³⁷ that the contractor did not convey PICs from the PWH to Rockingham Magistrates Court when it was ‘*perfectly capable*’²³⁸ of doing so.

Perth Watch House

- 4.79 The PWH is located in the Northbridge Police Complex, and was opened in July 2013.²³⁹ The PWH is designed to hold up to 72 PICs. The original intention was for a magistrate to be able to hear matters six days a week at the complex.²⁴⁰ At the time of tabling the Magistrates Court at the Northbridge Police Complex was only open at weekends and public holidays. This results in PICs being transported during weekdays to the Central Law Courts or a suburban court for appearances at those courts.²⁴¹
- 4.80 Legal Aid is of the view that it is desirable for the Magistrates Court at the Northbridge Police Complex to sit daily. It considers that the elimination of the need to transport PICs to and from lock up to the Central Law Courts in Perth (in the case of Magistrate Court matters) would have a number of benefits for the PICs, custodial services staff and for the court.²⁴²
- 4.81 Those benefits include reduced time spent organising and undertaking the transport of PICs, reduced risk for custodial staff in transporting PICs and time efficiencies in accessing legal advice and appearing in court.²⁴³
- 4.82 Legal Aid urged consideration of future funding for the Magistrates Court at the Northbridge Police Complex to operate on a daily basis. It noted that funding would necessarily need to include the court, Legal Aid, the ALS and DCS.²⁴⁴
- 4.83 It is evident to the Committee that this view is held by other stakeholders arising from conversations that have been held during the Inquiry.

²³⁷ Submission 5 from the Western Australian Police Union of Workers, 27 March 2015, p 22.

²³⁸ Ibid.

²³⁹ http://www.finance.wa.gov.au/cms/News/Perth_Police_Centre_official_opening.aspx, (viewed on 10 February 2016).

²⁴⁰ Ibid.

²⁴¹ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 9.

²⁴² Submission 3 from Legal Aid of Western Australia, 26 March 2014, p 4.

²⁴³ Ibid.

²⁴⁴ Submission 3 from Legal Aid of Western Australia, 26 March 2014, p 4.

Finding 17: The Committee finds that the Contract does not meet the operational expectations of the stakeholders with regard to transport of persons in custody from some areas.

Finding 18: The Committee finds that the Contract has a significant gap in relation to the Rockingham Magistrate's Court and Rockingham police lock up.

Finding 19: The Committee finds that it is inefficient to have the Magistrate's Court at the Northbridge Police Complex functional but not operating seven days per week.

Recommendation 7: The Committee recommends that each of the Director Generals Governance Group and the Senior Officers Group meet regularly to ensure, in regard to any future contract, better communication and clarity for stakeholders.

Recommendation 8: The Committee recommends that any future contract address the current gaps regarding the transfer of persons in custody to and from Rockingham.

Recommendation 9: The Committee recommends that the Magistrates Court at the Northbridge Police Complex be funded to operate seven days per week.

CHAPTER 5

IMPLICATIONS FOR DEPARTMENT OF CORRECTIVE SERVICES ON REGIONAL TRANSPORTATION OF PRISONERS AND CONTRACT SCOPE

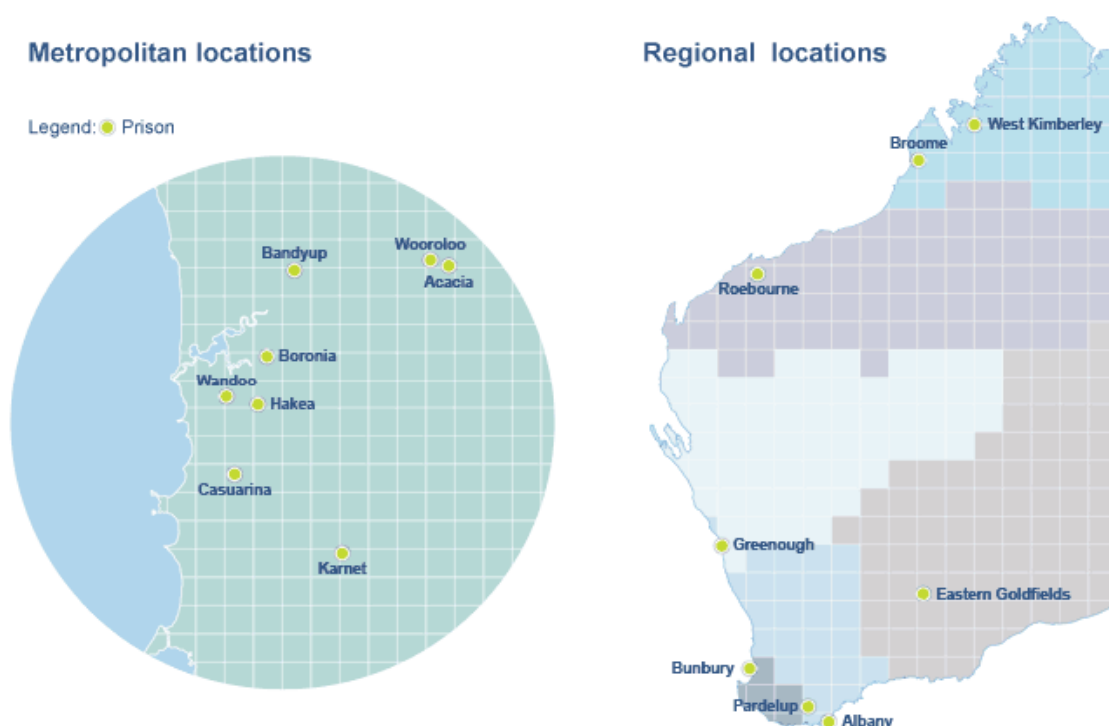
Introduction

- 5.1 Transporting PICs in regional Western Australia provides a challenge not replicated in any other jurisdiction. This is because of the geography of Western Australia, as well as the profile of prisoners.
- 5.2 Western Australia is the world's largest single police jurisdiction and covers an area of 2.5 million square kilometres. It has a structure comprising two regions, 11 districts and 157 police stations,²⁴⁵ stretching from the multi-functional police facility in the far north at Kalumburu to Albany, Denmark and Walpole in the south of the State, and from Kununurra and Eucla in the east to Shark Bay and Carnarvon on the west coast.
- 5.3 Western Australia's prisons are also geographically widespread. There are only eight prisons outside the Perth metropolitan area.²⁴⁶

²⁴⁵ <https://www.police.wa.gov.au/About-Us/About-Us> (viewed on 10 February 2016).

²⁴⁶ <http://www.correctiveservices.wa.gov.au/prisons/prison-locations/default.aspx>, (viewed on 10 February 2016).

- 5.4 The maps below show metropolitan and regional prison locations in Western Australia.²⁴⁷



- 5.5 Due to the vast distances involved, each year DCS and the contractor travel over one million kilometres when transporting prisoners throughout the State of Western Australia.²⁴⁸
- 5.6 Coverage of such diverse areas brings with it diversity in population profile. As mentioned at paragraph 2.2, on any given day there are approximately 5,400 adults in the Western Australian prison system, each of whom have different needs.
- 5.7 While Aboriginal and Torres Strait Islander people make up just 3.1 per cent of the population of Western Australia,²⁴⁹ they comprise some 40 per cent of the adult prisoner population.²⁵⁰

²⁴⁷ <http://www.correctiveservices.wa.gov.au/prisons/prison-locations/default.aspx>, (viewed on 10 February 2016).

²⁴⁸ <http://www.correctiveservices.wa.gov.au/prisons/prisoner-transport.aspx>, (viewed on 10 February 2016).

²⁴⁹ According to the 2011 Census: see http://stat.abs.gov.au/itt/r.jsp?RegionSummary®ion=5&dataset=ABS_REGIONAL_ASGS&geoconcept=REGION&measure=MEASURE&datasetASGS=ABS_REGIONAL_ASGS&datasetLGA=ABS_REGIONAL_LGA®ionLGA=REGION®ionASGS=REGION, (viewed on 10 February 2016).

²⁵⁰ <http://www.abs.gov.au/ausstats/abs@.nsf/~2014~Western%20Australia> (viewed on 10 February 2016).

5.8 During the Inquiry, the ALS stated that:

*It is also essential to ensure that the system for transportation of persons in custody recognises and accommodates the special health needs of Aboriginal people such as higher rates of cardiovascular disease, kidney disease and diabetes. The transportation arrangements for Aboriginal persons in custody must include more regular stops, health checks and ensure that the methods of transportation are designed appropriately so that safety and wellbeing is achieved.*²⁵¹

Release on bail with no transport to return home

5.9 During the Inquiry, Legal Aid raised a concern about PICs in regional areas being released to bail with no assistance to travel home.²⁵²

5.10 Legal Aid provided the following example:

*For example, regional Police stations such as Katanning, Gnowangerup and Ravensthorpe do not always hold persons in custody in their police station overnight. Instead the person is driven to Albany police station and then handover of the person occurs with Serco the following morning. The person then appears in court and if released to bail, they are released from the courthouse. It is a common occurrence that the person, unless they are able to seek assistance from an Aboriginal Legal Service Field Officer or an Indigenous Court Liaison Officer, is not provided with any assistance to travel home.*²⁵³

5.11 Legal Aid advised that:

*In an effort to assist persons in custody to travel home, we frequently find that Magistrates will remand a person in custody to appear in a court located closer to their home. For example, if the person resides in Northam and has been transported to Perth to appear in court, the Magistrate will remand the person in custody to appear in the Magistrate's Court at Northam so that Serco will transport the person back to their home town.*²⁵⁴

²⁵¹ Submission 2 from the Aboriginal Legal Service of Western Australia (Inc), 24 March 2015, p 3.

²⁵² Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 3.

²⁵³ Ibid.

²⁵⁴ Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 3.

5.12 As Legal Aid submitted:

*The concern with this practice is being remanded in custody to be transported home results in the person spending at least one night in custody when they would otherwise have been released to bail. This places people residing in regional areas at a disadvantage simply because they need assistance to travel home.*²⁵⁵

5.13 It was put to the Committee that ‘the contract scope needs to be widened to allow for the optional return transport of persons who were in custody back to where they were initially transported from, particularly in regional areas.’²⁵⁶

5.14 The Committee raised this issue with the Commissioner to which he responded:

*The transport of prisoners upon release from prison is not under consideration for inclusion in the current contract. As the question correctly identifies, this service is provided under the transport options program. The transport options program assists prisoners who have difficulty returning to their homes in remote locations once they are released from prisoner work camp. This service prevents prisoners from being stranded on release, which often increases the risk of reoffending. Transport options programs operate in the Pilbara, East Kimberley, West Kimberley, Murchison, Gascoyne and goldfields regions. This service is contracted to not-for-profit community organisations. In 2014, 140 prisoners were returned to their community as a result of using this service.*²⁵⁷

5.15 DCS further advised that the Transport Options Program is one of the service agreements they have; it is a contract they have with the not-for-profit sector separate to the Contract.²⁵⁸**Regional locations not included in the Contract**5.16 Some submissions expressed concern over a range of regional locations that are not serviced by the contractor.²⁵⁹ Examples include Busselton, Collie, Derby and Karratha.

²⁵⁵ Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 3.

²⁵⁶ Ibid.

²⁵⁷ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 16.

²⁵⁸ Mr Greg Italiano, Principal Director, Special Projects, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 16.

²⁵⁹ See for example Submission 5 from the Western Australian Police Union, 27 March 2015, p 21.

- 5.17 The WAPU submitted that these (and other locations) should be included in the Contract ‘*so that Serco could service their lock-ups and prevent valuable frontline policing hours from being wasted on prisoner transport, custodial care duties and time spent in court.*’²⁶⁰
- 5.18 The Commissioner advised the Committee that the court locations listed in the Contract are subject to variation as determined by the scope and cost of the services.²⁶¹ He said ‘*Movements from locations not covered by the contract are undertaken by WA Police from ports [sally ports] and police stations and by prison officers or the SOG*²⁶² *from DCS locations.*’²⁶³

Regional inter-prison transfers

- 5.19 Air charters are used for long distance movements, including inter-prison movements between the southern and northern regions of the state.²⁶⁴ DCS advised that strict security requirements apply to moving PICs by air, and this has cost implications.²⁶⁵
- 5.20 DCS advised that review of these movements has resulted in a higher utilisation rate of available seats [on commercial services], leading to savings of up to \$6,000 per movement.²⁶⁶
- 5.21 In its submission to the Inquiry, the Western Australian Prison Officers’ Union provided anecdotal examples of where DCS had undertaken prisoner transports for significantly less than the price quoted by the contractor. These included:
- *A funeral escort was approved to take 2 medium security prisoners to the funeral location 850km from the prison. The Serco quote for undertaking the escort was \$40000. The quote was rejected and DCS staff completed the escort at a cost of \$8000: Senior Officer – Regional Prison 2015.*²⁶⁷

²⁶⁰ Submission 5 from the Western Australian Police Union, 27 March 2015, p 21.

²⁶¹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 17.

²⁶² The Special Operations Group is a service agency within the Operational Services Division of the Department of Corrective Services. Based in the metropolitan area at the Hakea Prison Complex in Canning Vale, the Special Operations Group is the major provider of emergency support to all prisons and detention centers within the state. <http://www.correctiveservices.wa.gov.au/careers/opportunities/esg.aspx>, (viewed on 10 February 2016).

²⁶³ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 17.

²⁶⁴ Submission 9 from the Department of Corrective Services, 31 March 2015, p 3.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Submission 7 from Western Australian Prison Officers Union, 29 March 2015, p 7.

- *An inter-prison air escort was required between here and another North-West prison on a weekend after the routine Friday escort was cancelled due to cyclones and Serco staff shortages. Serco quoted \$52000 to move the 6 prisoners. DCS Prison Officers on overtime completed the escort at a cost of \$12000: Senior Officer – Regional Prison 2015.*²⁶⁸

5.22 When asked to comment, the Commissioner said:

*Madam Chair, the first thing I am really pleased about with that is internally our checking system is going well...*²⁶⁹

5.23 He also said:

*when you are running a business and you have certain assets in certain locations, if you are moving someone 850 kilometres, it is hard to have a group of people running a business on standby to do that. I make that point that I can see why – if you say it is \$40 000 and you have to fly people up et cetera, what is the security requirements et cetera....you cannot hold idle resources, and that is where that extra cost comes in.*²⁷⁰

5.24 Significantly, and looking to the future, the Commissioner also said:

*I think it gives you a view that, on those types of activities, we have said no for them to do it, and we have obviously done them ourselves at a far cheaper cost, and maybe that is an indication of what the reality is about how we need to look at the future of the contract.*²⁷¹

Regional lock-up clearances

5.25 The Contract requires that:

*Clearances from regional hub locations are to be conducted at the earliest opportunity with no clearance to take more than 24 hours from the time the Contractor receives a fully documented request, unless otherwise agreed.*²⁷²

²⁶⁸ Submission 7 from Western Australian Prison Officers Union, 29 March 2015, p 7.

²⁶⁹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 15 June 2015, p 12.

²⁷⁰ Ibid.

²⁷¹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 15 June 2015, p 12.

²⁷² Clause 7.3.1 of Schedule 6 of the Court Security and Custodial Services Contract.

5.26 The OICS submitted that consideration needs to be given to the role (and standards) of police lock ups.²⁷³ He stated that *‘From a police perspective, and from a human decency perspective, it is understandable that the target is for a 24 hour clearance: too many regional lockups are in a run-down state.’*²⁷⁴ He submitted, however, that *‘this can have expensive consequences, as where people are moved from the East Kimberley to Derby or Broome to ‘cut out’ fines.’*²⁷⁵

5.27 According to a WAPU survey of members based in regional Western Australia, 40.51 per cent said that lock-ups were not being cleared within 24 hours.²⁷⁶

5.28 A number of WAPU members expressed their concern that the contractor pushed the 24 hour clearance period to the maximum.²⁷⁷

5.29 In evidence to the Committee, the President of the WAPU stated:

*The time in which Serco and/or the Department of Corrective Services clears lock-ups needs to be reviewed. WAPU believes prisoners in lock-ups should be collected as soon as possible before the 24-hour stipulation in the contract.*²⁷⁸

5.30 When asked whether he thought the 24 hour timeframe stipulated in the Contract was unrealistic, Mr Tilbury answered:

*We do not believe that Serco has sufficient resourcing to adequately meet the timeframes, particularly with the geographical size of Western Australia. That in itself provides challenges. What we are finding is that police officers are effectively in the fallback position where, when Serco do not meet their obligations, police officers then have to be responsible for custodial care, and that has an impact on frontline resourcing because, particularly in regional areas where you do not have a great deal of police officers, particularly in some locations, then they are effectively taken off the road or unable to perform the primary task of looking after the community.*²⁷⁹

5.31 In its submission to the Inquiry, DCS advised that during 2013-14:

²⁷³ Submission 10 from the Office of the Inspector of Custodial Services, 17 April 2015, p 15.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Submission 5 from the Western Australian Police Union, 27 March 2015, p 16.

²⁷⁷ Ibid.

²⁷⁸ Mr George Tilbury, President, Western Australian Police Union of Workers, *Transcript of Evidence*, 17 June 2015, p 2.

²⁷⁹ Ibid, p 5.

*Based on reported incidents, it appears that there was only one instance where, out of a total of 9,314 lock-up clearances, the clearance was not performed within the required 24 hours.*²⁸⁰

5.32 During 2014-15 all PICs in metropolitan lockups were cleared within 24 hours.²⁸¹

5.33 The contractor reported that during 2014-15 there were 1,995 PICs in regional hubs who were transported under the Contract.²⁸² DCS is aware of one PIC in a regional hub during that same period who was not cleared by the contractor within 24 hours.²⁸³

Conclusion

5.34 This Inquiry has changed direction from its original course due to the announcement made by the Minister that the current Contract was not going to be renewed. The Committee has, through the course of the Inquiry, been able to scrutinise the existing Contract and the way it has operated. The Committee has concluded that re-tendering for the contract was the correct decision and hopes that the findings and recommendations within this report will be helpful for any future contract negotiations.

Finding 20: The Committee finds that it was appropriate for the Contract to be re-tendered.

Recommendation 10: The Committee recommends that any future contract address the significant gaps outlined in this report.

²⁸⁰ Submission 9 from the Department of Corrective Services, 31 March 2015, p 13.

²⁸¹ Answer to Question on Notice B11 asked by Hon Liz Behjat MLC during the Legislative Council Estimates and Financial Operations Committee 2014-15 Annual Report Hearings and answered by Mr James McMahon, Commissioner, Department of Corrective Services.

²⁸² Letter from Hon Joe Francis MLA, Minister for Corrective Services, 14 March 2016, p 2.

²⁸³ Ibid.

CHAPTER 6

RELATED MATTERS

- 6.1 A number of further important issues related to the Contract were raised during the Inquiry. These are noted in this chapter.

Funeral visits

- 6.2 The significance of funeral visits for incarcerated people was the subject of a report by the Inspector of Custodial Services in his report of September 2013.²⁸⁴ That report noted that Aboriginal people comprise more than 40 per cent of the prison population in Western Australia, and have both a lower life expectancy and significant cultural obligations in relation to funeral attendance.²⁸⁵ indeed, *‘almost 80 per cent of attendees [at funerals] over the last ten years have been Aboriginal people.’*²⁸⁶
- 6.3 In his submission to this Inquiry, the Inspector of Custodial Services noted the reduction of funeral attendance by people in prison in 2012-13 was a cost cutting measure, and *‘disadvantaged Aboriginal people and disrespected Aboriginal culture.’*²⁸⁷
- 6.4 The supplementary information given to the Committee by DCS in response to a question on notice regarding funerals was that:

A reduction in the number of funerals and visits has been the result of compliance with the application criteria. The criteria authorising a prisoner to be absent on compassionate leave focuses on risk, security and community safety. All prisoners are entitled to apply for an absence permit on compassionate leave (funeral attendance, memorial services, visiting gravesites, visits to dangerously ill relatives) in accordance with section 83(1)(b) of the Prisons Act 1981 and Policy Directive 9 – ‘Permits for Absence’.

Each application is assessed and determined on its merits. A decision is made by considering validity and/or importance of the relationship, any victim issues, cost, and risks to security and community safety.

²⁸⁴ Office of the Inspector of Custodial Services, *Funeral Attendances by Incarcerated People in Western Australia*, Government of Western Australia, September 2013.

²⁸⁵ Ibid, p i.

²⁸⁶ Ibid, p 1.

²⁸⁷ Submission 10 from Office of the Inspector of Custodial Services, 17 April 2015, p 9.

There is an appeal mechanism if the applicant does not accept the decision. Community safety will always be the primary factor.

Where an absence permit is not approved and prisoner re-integration may be affected, mitigation strategies have been considered by DCS. Alternatives may be arranged, such as transferring the prisoner to the nearest prison for visits with family and community members, conducting a memorial service within the prison, facilitating flexible visiting arrangements with family during this time, assisting the prisoner to write something to be read out at the funeral, facilitating e-visits with family members, video-linking the funeral proceedings at the time of the proceedings, playing back a recording of the funeral, facilitating telephone calls with family members or other significant support persons, and any other culturally appropriate activity that DCS deems suitable.²⁸⁸

- 6.5 The Commissioner expanded on this statement in his evidence, indicating that he was aware of the potential consequences on rehabilitation for prisoners who are unable to attend funerals. He stated that ‘*We do everything we can to make sure that that person [who is unable to go to a funeral] can actually be involved in some level in that funeral.*’²⁸⁹ In addition to the methods of involvement outlined above, the Commissioner indicated that since he came into the role of Commissioner in November 2013, the policy around funeral attendance has not changed, but that the due diligence around each particular funeral had.²⁹⁰ He said:

When we make a decision where the person does not go [to the funeral], we have put a lot of time into letting the prisoner know why, but equally importantly we put a lot of effort into letting the families know.²⁹¹

Video link

- 6.6 Section 121 of the *Evidence Act 1906* enables the use of video or audio link as a method for PICs to appear in courts. It states:

- (1) Subject to this section, a WA court may, on its own initiative or on the application of a party to a proceeding in or before the court, direct that in that proceeding evidence be taken or a submission be received by video link or

²⁸⁸ Tabled Paper 4, Department of Corrective Services, 25 June 2015, p 2.

²⁸⁹ Mr James McMahon, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 25 June 2015, p 7.

²⁹⁰ Ibid, p 8.

²⁹¹ Ibid.

audio link from a person at a place, whether in or outside this State, that is outside the courtroom or other place where the court is sitting.

- (2) The court shall not make such a direction unless satisfied the video link or audio link is available or can reasonably be made available.
- (2a) The court shall not make such a direction if satisfied the direction is not in the interests of justice.
- (3) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in this State in accordance with such a direction, the place shall be taken to be part of the court.
- (4) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in a participating jurisdiction, the court may exercise in that place any of its powers that the court is permitted, under the law of the jurisdiction, to exercise in that place.²⁹²

6.7 Audio-visual links between prisons or custody centres and courts has the capacity to ‘*reduce the number of prisoners transported between regional and metropolitan locations.*’²⁹³ It can also reduce the need to transfer prisoners within the metropolitan area. Practice directions allow judges to provide guidelines regarding when video link should be used.²⁹⁴ For example, the practice directions of the Supreme Court provide that:

*To avoid undesirable and unnecessary transportation of persons in custody it is necessary to ensure that the number of personal appearances before the Court by such persons is limited to only those appearances where the interests of justice require it.*²⁹⁵

6.8 Practice directions contain exceptions to a general rule that video link is to be used as a matter of course for many matters, reflecting the requirement that the court will not make the direction if it is not ‘*in the interests of justice.*’²⁹⁶

6.9 DotAG stated that ‘*the judiciary are pretty strongly committed to the use of audiovisual links*’²⁹⁷ and ‘*The judiciary are very concerned about making sure people are not inadvertently transported that do not need to be.*’²⁹⁸

²⁹² Evidence Act 1906 (Western Australia), s121.

²⁹³ Submission 9 from the Department of Corrective Services, 31 March 2015, p 3.

²⁹⁴ Tabled Paper 3 from the Department of the Attorney General, 15 June 2015.

²⁹⁵ Ibid, p 1.

²⁹⁶ Evidence Act 1906 (Western Australia), s121 (2a).

- 6.10 DotAG provided the Committee with extensive information about the audio visual capacity of metropolitan and regional courts.²⁹⁹ DotAG also provided information regarding the number and duration of audio visual links made at each major court location in Western Australia, which indicates the extent to which audio and video conferencing is used.³⁰⁰ For example, at the Central Law Courts in 2014-15, there were 8,743 video conference links, lasting for 1,132.7 hours in total.³⁰¹ The Perth Children's Court in the same period used video conferencing 1,730 times, with a total duration of 349.2 hours.³⁰² In the regions, Albany's total number of video conferencing links was 797 for 170.2 hours in total, while in Broome 866 links were used for a total number of 208.5 hours.³⁰³
- 6.11 According to DCS, it *'has continued to promote the use of audio-visual links for court appearances, in order to successfully reduce the number of prisoners transported between regional and metropolitan locations.'*³⁰⁴ During 2014-15 there were 8,429 attendances at court and 24,451 video link appearances.³⁰⁵ This is an increase of 8.43 per cent for warrants for attendance at court and an increase of 32.42 per cent for warrants appearing via video link from the previous year.³⁰⁶
- 6.12 If video links were not used in these circumstances, it is clear that the volume of PICs who would require transportation would be greatly increased, and therefore the associated risks to PICs and the community would subsequently be increased.
- 6.13 However, the Committee received evidence that the use of video conferencing can have an adverse impact on access to justice for some people.
- 6.14 The ALS highlighted some difficulties which may occur as a result of video and audio link, especially in regional courts:

In one case involving a five-way audio/video link an ALSWA lawyer experienced problems hearing the various parties, taking instructions

²⁹⁷ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 15 June 2015, p 5.

²⁹⁸ Ibid.

²⁹⁹ Tabled Paper 3 from the Department of the Attorney General, 15 June 2015.

³⁰⁰ Supplementary Information F2 from the Department of the Attorney General, 30 July 2015, pp 1-2.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Department of Corrective Services, *Contract for the Provision of Court Security and Custodial Services: Annual Report 2014-2015*, Government of Western Australia, 30 September 2015, p 11.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

*and she was not able to properly explain the proceedings to her client (the magistrate was in one location, the accused and prosecution in another, and the lawyer, accused's mother and juvenile justice each in three separate locations). Other ALSWA staff have reported technological difficulties when sound cuts out and this makes it difficult for all involved in the proceedings.*³⁰⁷

- 6.15 In addition, the ALS contends that there are significant advantages³⁰⁸ in PICs being present, in person, in court:

*For sentencing proceedings, instructions may be required to be taken from an accused in relation to information presented during the proceedings such as information contained in a pre-sentence report. It is far more effective and appropriate to take instructions in person ...This is particularly relevant for Aboriginal accused who may not speak English as their first language or who may find the formal court process foreign and daunting. Further, in cases where an interpreter is required, it is preferable that the interpreter and accused are physically present together.*³⁰⁹

- 6.16 The ability for some Aboriginal PICs to comprehend proceedings is central to the difficulties that may arise from the use of video link.

For many clients of the Aboriginal Legal Service, English is a second or even third language. This is often complicated by mental health or cognitive impairment; and for clients from a more traditional background, particularly those from very remote communities, the entire criminal justice system can be a foreign and inhibiting experience. It is not uncommon for clients who appear by video link to believe that their matter is being broadcast on television. They fail to appreciate that that video link in fact was dealing with their matter at all, or report feeling that they were excluded or marginalised from the proceeding.

Poor quality video links certainly add to these issues, but the reality is that no matter how good the technology, it will never replace an accused person coming face to face with a judicial officer with the ability to engage fully in the process, and with access to their legal

³⁰⁷ Submission 2 from the Aboriginal Legal Service of Western Australia (Inc), 24 March 2015, p 4.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

*representative throughout and also immediately following the proceeding.*³¹⁰

6.17 The ALS was of the view that video links were most useful ‘for administrative appearances where it may be that there is not much substantial achieved.’³¹¹

6.18 Summarised, the concerns of the ALS are:

- The convenience involved in an appearance via video or audio link can never outweigh the fundamental importance of an accused person understanding the proceedings and being able to participate appropriately in them.³¹²
- However, the ALS also recognised that the option should be given for a PIC attending a court hearing even for superior court matters by video link where the person themselves would prefer it, and where the person has had the advantages or disadvantages explained to them.³¹³ This may be the case where, for example, attendance in person would require long distance transport.

Finding 21: The Committee finds that the use of video links should be used on a case by case basis taking into account the individual circumstances of each person in custody.

Operational Issues Which Demonstrate the Complexity of the Contract

6.19 Other issues related to stakeholder interaction identified by the Committee are set out below.

Process to receive a person into custody

6.20 To understand the interaction between stakeholders to the Contract when receiving a person into custody, the Committee sought an explanation of how that process works:

When a person comes into custody, police go through the process of putting everything onto the current custody system, which includes things such as their condition when they come in, if they have got any medical issues or concerns that need to be addressed, the clothing

³¹⁰ Ms Rosalind Russell-Smith, Managing Solicitor, South Hedland Office, Aboriginal Legal Service, *Transcript of Evidence*, 15 June 2015, p 3.

³¹¹ Ibid, p 4.

³¹² Submission 2 from the Aboriginal Legal Service of Western Australia (Inc), 24 March 2015, p 5.

³¹³ Ibid, p 6.

*that they are wearing, any property that they have at the time, their demeanour, their charges...*³¹⁴

Process to handover a person in custody

- 6.21 When a handover between the police and contractors, or police and other agencies occurs, further processes are required which may slow down the handover of the PIC:

Hon DARREN WEST: *Can you just run us through the procedure? We have heard similar evidence from other witnesses, but can you just run us through the procedure? If a person is in your custody and they need to be transferred and they need to be handed over to either Serco or DCS, what procedure do you need to go through? You have just mentioned that there is a search—can you elaborate a little bit more on that, and then property and paperwork? For instance, how many of your officers does it take to go through that procedure and what resources exactly are tied up?*

Mr Tilbury: *Time, place and circumstance would dictate how many officers are involved. That often comes down to the demeanour of the person in custody. So if they are cooperative, you would always have a minimum of two police officers or police auxiliary officers for safety reasons, but if they are a violent prisoner, then obviously there will be more. When a person comes into custody, police go through the process of putting everything onto the current custody system, which includes things such as their condition when they come in, if they have got any medical issues or concerns that need to be addressed, the clothing that they are wearing, any property that they have at the time, their demeanour, their charges—all the standard things that you would do when someone comes into custody. Now, when it comes time for that person to be handed over—so in that case they cannot be given bail for whatever reason; they are held in custody either to appear before court or to be then taken to a prison—there is a process that is undertaken whereby a handover statement is actually prepared, which is self-generated from the custody system that the police officers have, which details everything that was manually inputted by the particular officer or officers who have been responsible for the oversight of that particular individual. That handover statement includes all the items of property that are being handed over, the condition of that person, any background information, any warnings that may be apparent about that particular*

³¹⁴ Mr George Tilbury, President, Western Australian Police Union of Workers, *Transcript of Evidence*, 17 June 2015, pp 3-4.

*individual, and that handover has to take place between either police officers or police auxiliary officers and either Serco or DCS staff. They actually go through that and make sure that everything is correct, so they have to check off that all the property that is listed is there, ask any questions about medications, medical condition, demeanour of the person. Once they are satisfied that all of that is in order, then they will sign that particular individual and then take them into their custody to then take them to wherever they are going.*³¹⁵

- 6.22 Concerns were raised about the handover of PICs to Hakea Prison on weekends due to reception staff at that prison not accepting PICs being transported by the contractor from PWH after 4pm on Saturdays and 3pm on Sundays.³¹⁶
- 6.23 The Committee was advised that Hakea will accept PICs, regardless of the time they arrive. Hakea cannot turn Serco transports away as the contractor has nowhere to hold those persons; Hakea must accept them.³¹⁷
- 6.24 Legal Aid submitted that due to the cut off time for acceptance into Hakea Prison, ‘most persons who are granted surety bail from the Magistrates’ Court sitting at the Perth Watch House are still transported to prison in order to arrive at Hakea by the cut off time.’³¹⁸
- 6.25 Legal Aid suggested that this process be reviewed to improve efficiencies between the contractor and DCS.³¹⁹

Double handling of persons in custody

- 6.26 The Committee heard evidence regarding double handling of prisoners and lack of clarity regarding who was able to do what in the transport of PICs.
- 6.27 For example, Legal Aid and the ALS highlighted systemic problems with the handling of PICs in regional centres:

In the South Hedland Courthouse, as with the other Courts in our jurisdiction, prisoners are brought from RRP to Court by Serco but

³¹⁵ Mr George Tilbury, President, Western Australian Police Union of Workers, *Transcript of Evidence*, 17 June 2015, pp 3-4.

³¹⁶ Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 2.

³¹⁷ Telephone conversation between Mr Doug Coyne, Hakea prison, and Committee staff, 14 September 2015.

³¹⁸ Submission 3 from Legal Aid of Western Australia, 26 March 2015, p 2.

³¹⁹ Ibid, p 3.

*are then processed through the Police station rather than through Serco holding cells. This design is not suitable as remand and sentenced prisoners should not have to go through Police stations or interact with the Police when coming to court.*³²⁰

Supervision of persons in custody in police lock-ups

- 6.28 The WAPU suggested that the supervision of PICs in police lock-ups has been an ongoing problem, and expressed its belief that DCS ‘*should have total responsibility for all persons within its custody before, during and after court appearances*’.³²¹ It submitted that in instances of prisoner escorts, police officers should only ever have to escort a prisoner to a prison or watch house under extraordinary circumstances.³²²

Case studies

- 6.29 Legal Aid provided examples where people from regional areas such as Katanning and Ravensthorpe had been arrested in those towns, transported in custody to Albany and then released in Albany with limited or no means to return home. They illustrate the difficulties that can be encountered by persons from regional areas if they are transported in custody away from where they live.

Case study one

A Legal Aid client was summonsed to appear in the Magistrates Court at Ravensthorpe on 28 October 2013 for stealing property from IGA to the value of \$9.50. The client was 65 years of age. He forgot about the summons and a warrant was issued for his arrest.

The warrant was executed on or around 26 March 2015 and the client was brought to Albany to appear in court. He was arrested in Jacup, 250km east of Albany and 50km west of Ravensthorpe.

*Although Ravensthorpe police station has video link facilities, he was transported unrestrained in the rear of a police van to the Magistrates Court at Albany where he appeared and was granted bail. He experienced difficulty in arranging transport to return home.*³²³

³²⁰ Submission 6 from Legal Aid of Western Australia, Pilbara Regional Office and Aboriginal Legal Service of Western Australia, South Hedland Office, 27 March 2015, p 3.

³²¹ Mr George Tilbury, President, Western Australian Police Union of Workers, *Transcript of Evidence*, 17 June 2015, p 2.

³²² Submission 5 from the Western Australian Police Union, 27 March 2015, p 31.

³²³ From supplementary information B2 from Legal Aid of Western Australia, 17 July 2015, p 2.

Case study two

A Legal Aid client was arrested in Tambellup on 13 June 2015 for breaching a bail condition not to consume alcohol. She was conveyed approximately 126km to Albany and remained in custody to appear by video link on 15 June 2015 before the Magistrate who was sitting in Katanning, 45km from Tambellup.

She was released to bail but required a surety.³²⁴ She was unsure how she would get from Albany to her home in Tambellup. If she had been held in Katanning and taken to the Magistrate there, she would not have had the same difficulty in organising transport.³²⁵

The client was unable to raise a surety and remained in custody until 18 June 2015 when she was sentenced and released on Community Based Orders.³²⁶



Hon Liz Behjat MLC
Chairman

21 June 2016

³²⁴ A surety is a person who agrees to pay a certain amount of money if the accused does not appear in court: <http://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/Bailandsurety/Pages/Beingasurety.aspx>, (viewed 10 February 2016).

³²⁵ Persons in custody are not always held overnight in the police station at Katanning. See paragraph 5.10.

³²⁶ From supplementary information B2 from Legal Aid of Western Australia, 17 July 2015, p 3.

APPENDIX 1

MINISTER'S STATEMENT

[ASSEMBLY — Tuesday, 16 June 2015]

COURT SECURITY AND CUSTODIAL SERVICES CONTRACT

Statement by Minister for Corrective Services

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [2.11 pm]: I wish to update the house on the future of the court security and custodial services contract. The current court security and court custodial services contract was awarded to Serco in 2011. Under this contract, Serco Australia Pty Ltd has provided court security and court custody services at major metropolitan and regional courts throughout Western Australia. This also includes a range of services transporting people in custody between police lockups, courts, court custody centres, prisons and remand centres, and other movements such as hospital transfers.

Under the current contract, Serco was offered an initial operating period of five years, which expires on 30 June 2016. Clause 5.2 of the contract allows for extensions on the contract for up to a further five years. However, the Department of Corrective Services must advise Serco of its intentions to extend the contract by 30 July 2015. Due to changes in policy and circumstances, there have been a number of variations to the contract. In order to make an informed decision on the future of the contract, I have asked the Commissioner of Corrective Services to work with the director general of the Department of the Attorney General and the Commissioner of Police on a review of the current contract. As a result of the review process, the government has now informed Serco that it does not intend rolling over that contract. Tender documents will be released for public tender in the coming months.

The Department of Corrective Services will identify future service delivery options and advise the government on its preferred service delivery model. I acknowledge that there is continuing debate about whether the functions under the present contract should be undertaken by the public or private sectors. The government will be guided by what represents the best value for money for the people of Western Australia; however, the priority will always be the safety of the Western Australian community.

APPENDIX 2

STAKEHOLDERS INVITED TO MAKE A SUBMISSION, SUBMISSIONS RECEIVED AND PUBLIC HEARINGS

Stakeholders invited to make a submission

1	Ramsay Health Care
2	St John of God Health Care
3	Law Society of Western Australia
4	Legal Aid Western Australia
5	Deaths in Custody Watch Committee
6	Western Australian Council of Social Service
7	WA Police Union of Workers
8	Western Australian Prison Officers Union
9	Aboriginal Legal Service, Western Australia
10	Hon Wayne Martin AC, Chief Justice of Western Australia
11	Serco Australia
12	Law Reform Commission of Western Australia
13	Ms Jennifer Hoffman, Commissioner, Victims of Crime Reference Group
14	Mr Timothy Marney, Commissioner, Mental Health Commission
15	Department of Health
16	Department of Attorney General
17	Dr Karl O'Callaghan, Commissioner, Western Australia Police
18	Professor Neil Morgan, Inspector, Office of the Inspector of Custodial Services
19	Mr James McMahon, Commissioner, Department of Corrective Services
20	Hon Peter Collier MLC, Minister for Aboriginal Affairs
21	Hon Joe Francis MLA, Minister for Corrective Services
22	Hon Liza Harvey MLA, Minister for Police
23	Hon Dr Kim Hames MLA, Minister for Health
24	Hon Helen Morton MLC, Minister for Mental Health
25	Hon Michael Mischin MLC, Attorney General

Submissions received

- 1 Aboriginal Legal Service of Western Australia
- 2 Legal Aid Western Australia
- 3 Community and Public Sector Union / Civil Service Association of Western Australia
- 4 WA Police Union of Workers
- 5 Legal Aid Western Australia, Pilbara Regional Office and Aboriginal Legal Service of Western Australia, South Hedland Office
- 6 Western Australian Prison Officers Union
- 7 The Law Society of Western Australia
- 8 Hon Joe Francis MLA, Minister for Corrective Services
- 9 Office of the Inspector of Custodial Services
- 10 Serco Watch
- 11 Western Australia Police

Public hearings

The Committee held public hearings with the following witnesses. Transcripts of the hearings are available on the Committee's website at www.parliament.wa.gov.au/pub

15 June 2015

Aboriginal Legal Service, South Hedland
Rosalind Russell-Smith, Managing Solicitor

15 June 2015

Office of the Inspector of Custodial Services
Professor Neil Morgan, Inspector

15 June 2015

Legal Aid Western Australia
Maureen Kavanagh, Director, Criminal Law Division
Kelly Niclair, Team Leader, Duty Lawyer Service

15 June 2015

Western Australian Prison Officers Union
John Welch, Secretary

15 June 2015

Community and Public Sector Union / Civil Service Association

Toni Walkington, Branch Secretary

15 June 2015

Deaths in Custody Watch Committee

Mark Newhouse, Chairperson

Arlia Fleming, Board Member

15 June 2015

Serco Watch

Colin Penter, Convenor

15 June 2015

Department of Corrective Services

James McMahon, Commissioner

Greg Italiano, Principal Director, Special Projects

Sue Holt, Manager, Court Security and Custodial Services Contract

15 June 2015

Department of Attorney General

Ray Warnes, Executive Director, Court and Tribunal Services

Ron Randall, Director, Court Security

15 June 2015

Western Australia Police

Dr Karl O'Callaghan, Commissioner

Gary Dreibergs, Deputy Commissioner

Duane Bell, Assistant Commissioner

17 June 2016

Department of Treasury

Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation

Michael Andrews, Acting Director, Performance and Evaluation

17 June 2016

Western Australian Police Union of Workers

George Tilbury, President
Jane Baker, Research Officer

17 June 2016

Serco Australia

Paul Mahoney, Managing Director; Justice, Community and Health
Andy Beck, Deputy Managing Director and Director, Operations, Justice and Health
Aboo Kajee, Contract Director

25 June 2015

Department of Corrective Services

James McMahon, Commissioner
Rod Alderton, Director, Contracted Services
Sue Holt, Manager Court Security and Custodial Services Contract
Stuart Cameron, Senior Assistant State Solicitor

10 November 2015

Department of Corrective Services

James McMahon, Commissioner
Rod Alderton, Director, Contracted Services
Sue Holt, Manager Court Security and Custodial Services Contract
Stuart Cameron, Senior Assistant State Solicitor

APPENDIX 3

TRANSPORT VEHICLES USED BY SERCO



Photograph A



Photograph B



Photograph C



Photograph D

APPENDIX 4

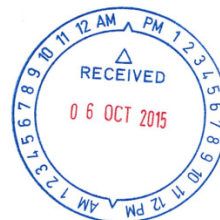
RESPONSE FROM DEPARTMENT OF THE ATTORNEY GENERAL



Government of **Western Australia**
Department of the **Attorney General**
Court Risk Assessment Directorate

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CS 2945: 2013/01632-07



Hon Liz Behjat MLC
Chairman
Legislative Council Standing Committee on Public Administration
Parliament House
Terrace Road
Perth WA 6000

Dear Ms Behjat

Inquiry into the Transport of Persons in Custody

I refer to your letter of 16 September 2015, to Mr Michael Morgan of the Court Risk Assessment Directorate (CRAD), relating to the "Inquiry into the Transport of Persons in Custody" and the timeliness of arrival at the courthouse.

The evidence from Legal Aid of Western Australia needs to be considered in two contexts: persons in custody being delivered to the Central Law Courts/District Court Building custody centres from a prison; and those who have been arrested by Police, refused bail and held in custody overnight pending appearance before court the following day.

With regard to those being transported from prison, prisoners are generally delivered to the District Court Building and then transferred to Central Law Courts custody centre via the connecting tunnel. There is an ongoing issue with the late prisoners being delivered to the District Court Building later than is contractually required, (30 minutes before the nominated warrant time). However, the observations from CRAD are that the greater majority of prisoners arrive at the courthouse before the commencement of court, notwithstanding it is after the required contract time.

Following on from the concerns in relation to timely movements to, and primarily from, District Court Building, CRAD facilitated meetings between the Department of Corrective Services, G4S and Serco to negotiate a more effective protocol. These negotiations led to more timely movements: in particular from the courthouse back to prisons at the end of each day.

In relation to the movement of Police overnight arrestees, which it is understood to make up the bulk of Legal Aid clients, all persons appearing in the Central Law Courts are held overnight at the Northbridge Watch House, and transported to the court house the following morning. The exception is Saturdays, Sundays and Public Holidays, when such persons appear before the Northbridge Magistrate Court.

Mr Morgan discussed the issue with the G4S site manager, who advised that it is common for the large number of overnight arrestees to require several trips between the Watch House and Central Law Courts. For example, on the day Mr Morgan spoke to the G4S site manager, Serco undertook three trips: the first vehicle arriving at 8.19 am; the second at 10.06 am; and the third at 10.49 am. In addition, four Police vehicles delivered additional arrestees to the courthouse over the course of the morning.

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wa.gov.au

DotAG does not keep records of arrival times; such data is recorded by Serco and G4S in their respective custody management information systems. DotAG does however, have some access to data in those systems. A sample of the arrival times from Northbridge Watch House indicates that between 1 January and 30 April 2015, a total of 1309 persons in custody were delivered to the Central Law Courts and District Court Building custody centres. The arrest and remand court generally starts at 10.00am, and 991 were delivered before 9.45am. The following table shows the arrival times in fifteen minute blocks.

**PICS Transported Northbridge Watch House to Central Law Courts
Arrival Time in 15-Minute Blocks – 1 January to 30 April 2015**

<i>FROM</i>	<i>TO</i>	<i>NO.</i>	<i>%</i>
0800	0815	368	0.28
0816	0830	317	0.24
0831	0845	51	0.04
0846	0900	9	0.01
0900	0915	23	0.02
0916	0930	93	0.07
0931	0945	131	0.10
0946	1000	125	0.10
1001	1015	87	0.07
1016	1030	25	0.02
1031	1045	14	0.01
1046	1100	9	0.01
1101	1115	12	0.01
1116	1130	16	0.01
1131	1145	14	0.01
1146	1200	10	0.01
1201	1215	3	0.00
1216	1230	0	0.00
1231	1245	0	0.00
1246	1300	2	0.00
		1309	1.00

The G4S site manager advised that a larger problem is Legal Aid representatives seeking to interview clients in custody just before court is scheduled to commence, and the person in custody has already been taken from the custody centre to the courtroom. This often leads to the subsequent requests in court for an adjournment in order to meet with the accused

You also seek information on the frequency with which transport vehicles arrive at the District Court Building/Central Law Courts court custody centre, and have to wait for the sallyport to be cleared before being admitted, rather than being admitted as soon as they arrive. DotAG does not keep such records, and is unaware of whether Serco maintains same. Anecdotally, DotAG is aware that such delays do occur, but cannot advise on the frequency, or the impact it has on getting persons in custody processed into the Central Law Courts court custody centre.

Yours sincerely


Michael Cardy
Executive Manager
Court Risk Assessment Directorate

30 September 2015