

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO THE TRANSPORT OF PERSONS IN CUSTODY IN WESTERN AUSTRALIA

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 25 JUNE 2015**

Members

**Hon Liz Behjat (Chairman)
Hon Darren West (Deputy Chairman)
Hon Nigel Hallett
Hon Jacqui Boydell
Hon Amber-Jade Sanderson**

Hearing commenced at 11.10 am

Mr JAMES McMAHON

Commissioner, Department of Corrective Services, sworn and examined:

Mr GREG ITALIANO

Principal Director, Special Projects, Department of Corrective Services, sworn and examined:

Ms SUSAN HOLT

Manager, Court Security and Custodial Services Contract, Department of Corrective Services, sworn and examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome you to the meeting and ask you to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: You will have signed a document entitled “Information for Witnesses”. Have you all read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

That is formalities over and done with. This is a continuation of our hearing from Monday, commissioner. We did provide you with further questions that we want to go through. Even though you have those questions, I will still need to read them out so we have them on the *Hansard* record. We will just jump straight in, if you are happy with that.

We are talking about oversight and cost-saving measures under the contract. How is an appropriate staffing model for prisoner transport arrived at? The 2013 Inspector of Custodial Services review into court custody centres identified that half of the Serco and youth custodial officers surveyed believed that staffing levels in court custody were poor, although that is a different part of the contract. Can you comment firstly on how the department and Serco arrived at a staffing model and then how that review is conducted?

Mr McMahon: I can and I will comment. Just for clarity, have you all got a copy of our responses?

The CHAIRMAN: No. Would you like to table your responses?

Mr McMahon: I would like to table that. It might be easier. I think we have copies that you can follow through. It might make it a bit more efficient for everyone.

The CHAIRMAN: Are you happy for those responses to be made public?

Mr McMahon: Yes, I am.

The CHAIRMAN: That is tabled paper 1. The committee has given it public status.

Mr McMahon: The answer to that question is that during the initial bid submissions, respondents were required to submit a staffing model. The contractor is required to submit a staffing plan on an annual basis, which is subject to review by DCS. This is reviewed against the original bid as well as its adequacy in the context of current identified service needs.

The CHAIRMAN: Do you want to expand on that for us as to how?

Mr McMahon: I think we were reviewing staffing models for the services that are required. In terms of expanding it, I suppose, we look at the way the contract is set up and, as you know, there are commercial confidentialities there. For example, I use an example like the banding system. You have the staffing model but then you have bands and costs associated with each of the bands. They are reviewed—the bands. I will come back to staffing. Staffing annually, bands are reviewed quarterly that way and quarterly what is coming up and then an agreement is made. Greg signs off on that—that is his part of the contract management—and we go forward that way. In terms of the staffing agreements, original bid, we do our review on it, we agree on that and it goes forward based on that context. I know I am not expanding on it but it is a review process.

The CHAIRMAN: For instance, during the course of this contract, how much movement has there been in those levels between the years? Are you aware of that?

Ms Holt: There has been an increase in the staffing numbers.

The CHAIRMAN: Can you quantify the increase?

Hon AMBER-JADE SANDERSON: And how did you come to get to that number?

Ms Holt: That is the contractor providing that information to us and the numbers have increased. On a monthly basis, as well, they provide us with the number of staff. On an annual basis, they give us the detailed staffing plan that is required under the contract.

The CHAIRMAN: If Serco choose to increase their numbers, you are not going to say to them, “Well, you shouldn’t do that.” What I think might be helpful is if we could for each of the years the contract has been in existence, what those staffing levels started out at in the original contract and what they have progressed to each year.

Mr McMahon: Sure. If I may, the specifics we can get you. That is why I used the banding. The methodology of the banding is quarterly back, quarterly forward, we need more transport—say over 500 kilometres, there is more required there. They need to adjust their staffing model because the amount of transport has gone up. I will not go into the detail for commerciality. I am happy to do it in a confidential setting because that is the advice I have from SSO given that it might be unfair for other people given we are going through big processes coming up. I am making the point that the banding process at some point does relate back to the staffing because they are now saying, “We are going to go to this level because of your demand.” We are a demand-taker. Therefore, they will have to adjust the staffing model for that. It would be demand based.

Hon DARREN WEST: So the modelling was a little bit skew-whiff to start with. Have changes been made now that we are looking at a re-tender of the process? Is there a different formula or a way that you are going about it this time?

Mr McMahon: With due respect, I cannot comment on the modelling that was done for this contract in place now. Going forward, re-looking at the overall way we do transport, that is why we are going back to the market effectively.

Hon DARREN WEST: Sure, but if there is a flaw in the modelling, it changes everything in terms of whether the public sector comparator and everything is going to be thrown out of whack. It will completely change the way the process is bid.

Mr McMahon: I cannot comment on the modelling as it was currently based to do the current contract.

Hon DARREN WEST: Fair enough. Are you using a similar model this time around to work these things out?

Mr McMahon: We are going through that process now to work out the best methodology. We are looking right across Australia for the best methodology and elsewhere to get the best methodology to give us the best service and the best value for money.

Hon DARREN WEST: When you do the planning or the modelling for the contract —

Mr McMahon: Modelling will be part of it —

Hon DARREN WEST: Does it include a lot of the inefficiencies that we have come across in our inquiry in terms of handover of prisoners? Does that get included or is it just this person, this many kilometres, this many staff, this cost? Are all those little ancillaries that we are finding and the gouging for the long distance moves—are all those things coming into your modelling, or is it just sheerly on a calculated number of kilometres?

[11.20 am]

Mr McMahon: The re-going back to the market will be looking at, first of all, the most effective service and then all the efficiencies. I understand what you are saying. We need to look at all that. Last time I was in here we were talking about the time from prison to courts, and the handover times et cetera—how many times it needs to be handed over—we have got to look at that at one level, and then the modelling for the way we do our banding, the width of the band, the fixed costs associated with that and so on. I am conscious I am not going into confidentiality. I am looking at one inspector looking at the efficiencies in terms of handovers, right through to the way we do banding and modelling, right through to, do we need types in certain regional areas, hub models, where we have a bus service on a routine basis, and we get to that hub model on a taxi basis? Therefore there is a question about how long you keep people in lock-ups versus at a central location. The answer to your question is that we will be looking right across the board for effectiveness to be effected, number one to transport offenders and prisoners safely and in a time-effective manner. The second part of that is value for money.

Hon DARREN WEST: Just finally, if I may, given that you have got a more contemporary model of calculating these things, should it throw up that it is cheaper not to tender and do it in-house, is your department prepared for that?

Mr McMahon: All the models we will look at—every model we look at, if we go to an open tender, there is benchmarking we will do internally.

Hon AMBER-JADE SANDERSON: Is there a public sector comparator?

Mr McMahon: There is benchmarking, internal cost models we do. That is just a standard benchmark thing in any contracting process. So we will do that, and that makes sense, very similar to what we are doing with the women's remand centre, so it is a similar approach. The methodology for that we are working through as we speak, but the principles I have just outlined will be in there. You have to benchmark at some level. The second part of your question is: are we ready for that? We will have to build a capability to be ready for that, and that is part of project management, and there is a time frame associated with building that capability.

Hon DARREN WEST: You will make preparations for an outcome that may say this contract will be better brought back into DCS rather than tendered out to a private operator. You will have

preparations in place for that, if the process goes that way, because there will only be six months from when the tenderer is announced or not announced. Is your department making those preparations, or is it a fait accompli that it is going to be tendered?

Mr McMahon: Please, let me be very clear. It is not a fait accompli. We want the most effective service we can for the delivery of offenders and then we want the most efficient—can I just say that the effectiveness is critical. Since our last meeting we have had attempted suicides on the way to getting to courts. I sort of said last time that the complexity of what we do should not be underestimated. Back to the central point of your question, which was the critical thing. There is a sequencing of project management approach we will take to the delivery of the service if it does become a public service system, so there is a sequencing of project management. If, under the time frames, I feel, because I am the principal of the act, that we have not got the security and the care appropriate for prisoners, then I will extend to make sure I have done that public sector is right. That is what I have got to do; that is why I am the principal of the act.

The CHAIRMAN: The next question is on scope of contract and service demand. We have sort of covered a bit of that in that first section of questioning. We are aware of the scope of the services under the CS&CS contract, and we know there has been an increase in demand for services such as regional or lock-up clearances and metropolitan hospital sits, which were not anticipated in the original volume bands in the contract. What variations in the contract have taken place to date, or are likely to take place, and how has the department coped with the increase in demand?

Mr McMahon: The contract provides for a quarterly review of volume bands across all pricing tables. The review considers the actual service demand for the three-month period prior to each review date as well as projected service demand for the forthcoming quarter. This forms the basis for selecting and agreeing the applicable volume band for the next period. The review involves a comparison of the data provided by the contract against client agency records. Inconsistent data is clarified and disputes are resolved as required. A table outlining the major variations to the CS&CS contract is attached.

The CHAIRMAN: So we can see there on those two pages at the back there what those major variations have been. The additional juvenile services—it says what is happening in that area now, but why was that made part of the contract? What was the rationale behind that? Did that come about because of Banksia Hill?

Mr McMahon: It did. If I can talk at the macro level, and then jump in, Greg or Sue if you want to on that particular thing.

If I go to Banksia Hill, obviously we increased the staff numbers there when I became commissioner by around 25 per cent. Again, it comes back to me being principal of the Young Offenders Act. The key part of that is, I was not satisfied we had the right numbers doing the right thing at the right time, and so the contract allowed the staff there just to focus on the care for children. So that was additional resources. If you look at it, it is additional resources we put into Banksia Hill. That is the logic of the decision. As we go forward with that, as the situation at Banksia improves—I am comfortable to say that over the past year to 18 months, the assaults, the care for children has improved markedly, and I think that has come out in a recent OICS report—the logic is, put the staff effort in, get the right resources on the ground. Over time that may change. Moving it on on a six-monthly basis is to give us flexibility, so that if we do change, potentially, one of the options is it does come back in-house in the public sector way, we can do that as well, but at the moment, my priority is for the care of the young children at Banksia Hill. There is a correlation with the amount of resources we put in with the care that is required. I am not comfortable yet to change that but the government has agreed to put the resources in to get the care right. We will move it forward as we go. We look at it on a six-monthly basis. So that is the macro, I am not sure it was part of the contract. Where did it originally come from?

Mr Italiano: The original responsibility for movement of juveniles in the state was with WA Police, actually, until it was an arrangement where it moved to DCS. It was undertaken originally in-house by the youth services area and then, I think, commissioner, for reasons you have outlined in terms of resource availability, there was a request to enter into a variation in the contract to take the escort service out of that responsibility and for a six-month period originally with Serco to provide that service, and that has remained since.

The CHAIRMAN: Would you envisage that that would now, in terms of the new contract, when you put that out, remain as one of the services being sought in the new contract?

Mr McMahon: I would like some optionality there so that —

The CHAIRMAN: Optionality—that is a good word.

Mr McMahon: I will leave that there.

Hon NIGEL HALLETT: What is the difference in the level between the adult and juvenile transportation as far as care, numbers et cetera? How do you view it when you have got to transfer the two different types at once?

[11.30 am]

Mr McMahon: Every prisoner or young child detainee we move has—it is the same level of care in that we need to get them from A to B in the right frame of mind. Where they started is the way they need to be at the other end. That takes care whether it is adult or it is juvenile. The techniques and mechanism you use, it is like situational leadership. It will be situational based on the person you are dealing with. But the care responsibility, the level does not change. It is the same level of care, that from A to B, the person or young child is required to get there in the appropriate—they have got to be there in the way they have left, whether they have left a court or they have come out of a detention facility. So, the care is the same. It is no different from that perspective. The children obviously for me from a resilience perspective, if you look at the majority of the children in our care in Banksia Hill particularly, they are from wayward backgrounds. So if you tell me my level of risk, what I look at, I focus a bit more on the children's side than I do on the adult's side because I think there is a level of resilience and also a level of risk-taking that is different from adult. So what do I focus on? I do focus on that. As I said, with the six-month review, at some point I will leave the options open. If youth custody officers need to come back into that space, I have not seen an indicator from a performance perspective that gives me cause for concern that the job is not being done properly. I have not seen an abatement or any major incident that has said to me that that has not been done properly.

Mr Italiano: 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.

Mr McMahon: The other thing is the monitoring service. We make sure on an ad-hoc random but routine basis that we double check what Serco is doing, particularly with children.

The CHAIRMAN: The extra training that Serco officers require to handle youth in custody, is that conducted by Serco or by DCS?

Mr McMahon: We provide the training from the academy, because they are skilled in that respect and have the registered training status to enable that, and Serco accesses that training.

The CHAIRMAN: What is the rationale behind not including emergency visits in the contract?

Mr McMahon: The contract provides for hospital sits to be undertaken within three hours of notification. This time frame was provided to enable the contractor to task staff to take over each sit. Emergency transport to attend a hospital is provided by ambulance and the prisoner is

accompanied by prison officers to effect immediate transport and emergency attendance at a hospital which does not necessarily result in an admission to hospital. A person in custody can be returned to prison within a short period of time. Contracting out services which are unplanned, such as emergency visits, is likely to incur significant costs. But can I go one step further—which I was talking to my team about earlier—it is also that you are leaving prison in an ambulance, which means you have got all the facilities of an ambulance that are required potentially to keep that person alive. 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.

The CHAIRMAN: But I think it is also more a reflection of the escort part of it rather than the provision of the paramedical services that an ambulance would give—I mean, that goes without saying. But the question that would then arise is if you are taking the prison officer out of the prison environment, and usually, as we all know, in life in general emergencies tend to happen not at the most convenient time, so it is at a time when there is already a low level of staffing at the prison, and if you take the prison officers away from that to go off with the ambulance, how do you then deal with the impact that has on the prison and the officers who are left behind?

Mr McMahon: I think the time something happens in prison, it can be at lock-down time, so at night. Currently, most prisons are working on the 12 and 12 hours, so 12 open cells and 12 closed. If it is during the daytime—to just give you some raw figures, at some level you are right. There is a difference in figures at night and during the day. I do not want to go into the specific details, for a bunch of reasons.

The CHAIRMAN: No, but we are aware of them.

Mr McMahon: They are quite different. They are sort of here and here. During the day, if more staff are required there are opportunities to ring staff up to come in and/or—we do this when we need to for a whole range of things that are happening in prisons—certain units may be locked down for periods of time while we rejig our staffing. There might be a fire in a prison. You would have to do the same type of approach. The superintendent will take control from that perspective. At night the manning, given that everything is locked down, I will not say there is redundancy in there, but there is a reasonable number of staff on at night—I am thinking of the main maxi prison, you know, volatile, but there is a reasonable number of staff on at night. If worst came to worst out of all of that, we have got on a short notice call-out what we call the special operations group, previously known as the ESG. They can be called out to supplement as we need to do that as well. So I think superintendents will always look at that security side when they are sending staff off, and they have to manage lock-downs to achieve that outcome. If they need to at very short notice they can call the SOG staff as required. If need be, particularly in the metro area, we can actually get lock-downs at other prisons and call staff from other prisons. So we have some flexibility built into the system. We go through all our emergency procedures to check that manning, and our manning as you know is a critical issue. So getting that manning right and getting the EBA right to get that manning right is important as we go forward.

The CHAIRMAN: In your submission to the inquiry you state that there has been a reduction in funerals and visits and there is concern that this may have impact on the reintegration of prisoners into their communities once they are released. The committee understands the requirement for saving money through reducing prisoner movements, but, when you do that, is consideration given to unintended consequences; and, if that has been taken into consideration, what mitigation strategies have been put in place?

Mr McMahon: I will read this out, but the short answer is yes, absolutely. Reintegration/rehabilitation is critical to us. I will go through the answer. A reduction in the number

of funerals and visits has been the result of compliance with the applicable 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 the validity and/or importance of the relationship, any victim issues, cost and risk to security, and community safety. 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 reintegration 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 the 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.

[11.40 am]

The CHAIRMAN: In that case, what is the appeal mechanism?

Mr McMahon: It will come to the deputy commissioner, adult justice, Mr Shayne Maines, and the appeal body comes back to me.

The CHAIRMAN: And funeral visits can happen for youth in custody as well?

Mr McMahon: The methodology?

The CHAIRMAN: Yes.

Mr McMahon: Yes.

The CHAIRMAN: So that is across the estate.

Mr McMahon: The priority is community safety.

The CHAIRMAN: The alternatives seem to be quite numerous. I am just wondering are these taken advantage of on a regular basis or is it just a couple of times?

Mr McMahon: I want to take out Aboriginality, if I may.

The CHAIRMAN: Yes. You say culturally appropriate, but I think it is for the whole.

Mr McMahon: It is regardless. It does not matter if you are Aboriginal or non-Aboriginal, because I know that comes up from a sensitivity perspective. But we need to do everything we can if a person cannot go to a funeral because it is deemed that there are risks to the community, victims et cetera. We do everything we can to make sure that that person can actually be involved at some level in that funeral. That is critical in terms of rehabilitation et cetera. We do go to those lengths. I have done this numerous times. I will meet members of the family and explain the reason for my decision. I have done that on one major occasion. I had up to 30 people in a room and I explained the reason for my decision. I can actually say that particular group of people left: "Thank you, commissioner, because you have spent the time to explain for us." They actually I do not think fully agreed with all of it, but they appreciated the logic of the decision. We also write to some other bodies for the reason for our decision.

The CHAIRMAN: How quickly can a decision be made? I am thinking about, in particular, those of the Jewish or Islamic faith where a burial takes place very quickly after someone has died, and generally within 24 hours. So how quickly could arrangements be made?

Mr McMahon: I have made decisions over the phone while I have been on the road—obviously hands-free; I want to make that clear! I am thinking now that this was more someone unfortunately who was dying in hospital and we wanted to get their family there and there were security rules and I said, “You need to leave that. Get the people there as quickly as possible.” That person was, I think, another offender, so we made that happen. I was on the road actually out to Bandyup at the time and I said, “Just do it now.” So we can make those decisions very quickly, and we have all got mobile phones as soon as something comes up. We do have people I am promoting within the department, so when someone rings up, we respond straightaway. So we are trying to get better at that service. The other works as well. I will be very open. We have intelligence checks that we do 24 hours before, eight hours before, a funeral, and if we get intelligence, it might all be heading the right way, we will stop that person going, because there is a community risk aspect to that. I think you would appreciate what I am saying there.

The CHAIRMAN: Sure; we understand that.

Hon DARREN WEST: Would it be fair to say that these arrangements have been reviewed and there has probably been a little better learning since the Geraldton breakout? Was that a factor in the change or was it just a review that came about? Given that the numbers have dropped significantly, was there a tipping point to cause that or was it just part of your day-to-day review of how you go about things?

Mr McMahon: I took up the appointment in November 2013 and I think I did say at the start my focus as commissioner was really to get our security side of our business running properly. I have got to be fair with you; 10 escapes in the first two months did concern me. The level of escape, being maximums, really concerned me. That is unacceptable. So we did a major review in the February–March area. The policies have not changed. On the decision matrix, the use of intelligence and getting a greater understanding of what that funeral entails, I can absolutely say we have done that. We have not changed the policy; what we have really changed—so, the cost policy and all those things, but we might have changed slightly—is the due diligence around each particular funeral. When we make a decision where the person does not go, 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 why. So we have changed, but not the macro policy; the policy is the same. To be fair, when I came in, one of my *raison d’être* was to look at the security side. I will also say—I am just happy to give you this—funerals are funerals, but there is a performance in prisoner that goes with that as well, so it helps a person’s rehabilitation. There are a number of factors that go into the decision, and quite detailed now.

The CHAIRMAN: On the situation with court at the Perth watch house, certainly it has been suggested that having the Northbridge court operating daily would reduce the need to transport persons in custody, because it is really just walking them down the corridor. Are you having conversations with WAPOL and DOTAG about this happening?

Mr McMahon: We are, and the senior officers group will actually be looking at that specifically. That is one of their tasks from an operational area—to look at that and provide recommendations up to myself, the Commissioner of Police and the DG of DOTAG, and then we will take it obviously up higher.

The CHAIRMAN: It is a matter of who provides the actual custody at the watch house, is it not, and who is going to be responsible for —

Mr McMahon: There are a couple of issues there. I think there are aspects, and please jump in if you would like to comment, of if you run it longer, there may be—as in not just on the weekend in the courts—efficiencies in the CS&CS contract, because you have got your housing people, if you like, from a lockup perspective in Perth, but then you drop them back to Armadale, for example. They could be dealt with there and then, and then, if they are on bail, you do not drop them back. There are those types of things to consider. Did you have a comment?

Mr Italiano: I think that is right. Presently, it is operating on weekends only and we have embedded that model and it is working relatively well. There is a proposition to be put around establishing it on weekdays as well. So the reasons that transport occurs from the watch house are either obviously on a weekend there is a remand outcome, in which case persons are transported to prison, or during the week they are transported to either the Central Law Courts to appear before a magistrate there or back to a suburban court for an appearance in those courts. If it could be achieved that those transportations were not required and those matters could be dealt with in Northbridge, there is a dividend there in terms of reduction in transportation requirement.

To an earlier point in the hearing, there is also the question of the amount of times people pass through custody. So, in the case of a CLC court hearing, you go from police custody to Serco custody to G4S custody. There is a benefit to be assessed there. Principally, on the other side, if you ran it weekly, obviously the Magistrates Court would have to sit, so there is a magistrate and then obviously a decision around how court security would be provided at the time. At the present time, the weekend court security is provided by Serco.

The CHAIRMAN: I think that is probably the main thing—that you would get cost savings under the CS&CS contract for DCS. But then, I guess, DOTAG are saying, “But that’s going to be added costs for us because we’re going to have to provide the magistrate and other people.” You need to take a whole-of-government approach to this, I think.

Mr McMahon: Absolutely.

Mr Italiano: And that is what I am facilitating with my colleagues. Obviously, persons who are seen at that court do not have to be seen at another court. So there are various flow-ons, but we will carefully examine that.

The CHAIRMAN: Breaking down the silos, I think, is one of the really important things.

Mr Italiano: I could not agree more.

The CHAIRMAN: In this area, it is all from the same bucket of money.

Hon DARREN WEST: We have been at it for a hundred years!

The CHAIRMAN: We can keep on talking about that. Of the areas not currently covered in the contract, which areas might possibly be brought into the contract when it is renewed, or are you considering an additional contract with another supplier to resolve these areas? So, we might have a whole group of people in that space.

[11.50 am]

Mr McMahon: The government has announced that it intends to re-tender for the court security and custodial services in the coming months. The scope of the services to be included in the tender is yet to be decided. Fair and squarely, we are into the methodology about how we actually do the re-tender, which will obviously have an internal cost model benchmark of some sort, but it goes back to an earlier question, if I may, in the essence of time; that is, we will be looking at what are the efficiencies from prison to court or court to prison, the amount of times we handle, how many times you need to do searches and how much paperwork you need. They are all part of it, but at the other level, banding levels, and at the other level do we need a hub model that is a bus service versus, if you want to move quickly at a lockup, maybe that is a service provided by someone else. I cannot comment on that, because we are right at the start of that journey.

The CHAIRMAN: I do not want to put you on the spot. A lot of that is policy decisions to be made, but we would be very interested to know what the contract—James McMahon was the writer of the contract—would look like. That would be quite interesting to know.

Hon DARREN WEST: There is one more thing on that too that I think has come up in the course of this inquiry. When Serco will not perform or cannot perform because they do not have staff and

things, the taxpayers pick up those as well, so we heard about police having to run people from the lockup long distances to meet a van in a service station car park. There is all that and it always ends up going back to the taxpayer. I just hope that that is well and truly considered in the modelling that goes into the preparation of this complex model.

Mr McMahon: That will definitely be considered, and value for the taxpayer and flexibility in the contract needs to be put in as well. So there is a lot to consider and I think time spent looking at options around Australia and other places around the world—we need to do a bit of that as well. I am not talking trips, I am talking just understanding what other states do and why.

The CHAIRMAN: That leads me to a question that you actually do not have on one of the ones we gave you on notice—it is some we thought of at a different time—but it is about contract management. The inspector of corrective services staff have been told that there has been a reduction in contract management staff in the department since 2012; can you confirm whether that is correct and if it is, provide the details of that reduction?

Mr Italiano: I am only confident in commenting on the time I have been in the department, which is the last five months, so there has been an overall government voluntary severance introduced during that time, as you know, and that has been applied in the department. A number of persons who work in the contracted services area did avail themselves of that opportunity. So, there has been a reduction.

The CHAIRMAN: Can you quantify that?

Mr Italiano: I will quantify that, if I can take it as supplementary.

The CHAIRMAN: Can you take that on notice?

Mr Italiano: Yes, thank you.

The CHAIRMAN: That is the numbers of contract management staff—the reduction in those numbers since 2012.

[Supplementary Information No A1.]

Hon AMBER-JADE SANDERSON: Just off the top of your head, one witness said it is up to 50 per cent; is that in the right ballpark?

Mr Italiano: It would not be 50 per cent across the totality of the staff, no.

Hon AMBER-JADE SANDERSON: Of contract management staff?

Mr Italiano: Yes.

Mr McMahon: I thought you might know the exact numbers, but there are couple of things we need to put some context around. Obviously, our structural review, which we are going through as we speak, is taking place. We are reforming the methodology around the way we do contracted services. That is actually happening and it is well documented on our website, and there are a whole lot of things happening there. We are looking at each specific area. I will give you an example: How you do the interface between the contract manager, the monitor and what is actually happening on the ground? Who does the monitoring service? Do we need more monitors? Contract management is one piece and if you write a very succinct and well versed contract, the amount of contract managers actually can reduce; it depends how you want to do that. The monitoring is another whole area that I think we are definitely looking at. We are looking potentially at even the SOG getting a role to be doing some contract monitoring for us as well. They are experts in what they do; they do the high security escorts et cetera, so we are looking at that. The monitoring is an important part that we are happy to put back as part of that question. But I also go back, to put it in context, to the performance of the contract. As I said, we had seven escapes the year before last and we have had none over the last 11 or 12 months, so obviously our changes have led to performance as well. I am just putting into context where we are at.

The CHAIRMAN: There are some custody issues for Serco. One of the submissions stated that the Serco contract does not allow for people to be brought to the court or the non-contact rooms before 9.00 am and that people can only be in Serco custody for 30 minutes, which results in lawyers being unable to see prisoners in a timely manner. This came to us from Legal Aid and the Aboriginal Legal Service. Is that an accurate description of the situation from your perspective?

Mr McMahon: There is no contract stipulation regarding when a person can be brought into court or a non-contact room. There is no specific time limit for a person to be in Serco custody. Sue, I might ask you to comment.

The CHAIRMAN: Who would have set this 9.00 am limit then? Is it something that Serco has decided on as an internal guideline?

Ms Holt: Often, where Serco provides court security, they need to operate the court at the times the court is opened. So, there are times when people may be given a warrant to appear, say, for 10 o'clock, and the court needs to open in sufficient time for it to open and operate. Similarly, a person may be given a warrant time to appear at 9 o'clock and clearly the court has to operate and open prior to that time, and Serco is required to do that. That is why the contract does not provide any stipulation, so that the courts can operate at the requirement of the magistrate and the court sitting days. Those court sitting days change and court sitting times change as well.

Hon AMBER-JADE SANDERSON: But the evidence on the ground is saying that that is not happening.

The CHAIRMAN: There is certainly an issue that was brought to our attention about prisoners not being picked up from prison in a timely manner on some occasions or they are being picked up very early and not getting their breakfast and those sorts of things. It was certainly put to us, and it was not just a one-off thing, that it is a regular occurrence; prisoners are not given enough time prior to the listed appearance time to have a briefing with their lawyers or to seek that legal advice that they need, so they are really going cold into the courtroom. That was put to us that it was because of these time lines, so we need to find out where those time lines come from if they are not in the contract. So it is not in the contract?

Mr Italiano: No.

Hon AMBER-JADE SANDERSON: Is it something Serco imposes on operational matters outside of the contract that is inhibiting the ability for people to get legal advice?

Mr McMahon: We cannot say that.

The CHAIRMAN: Is there scope for Serco to do that outside the terms of the contract—to make their own rules and regulations?

Mr McMahon: Not to my knowledge. There is a contract they follow. In the contract it says you need to follow our policies.

The CHAIRMAN: And there have been no complaints that you are aware of coming to the department about prisoners not being able to have time with their legal advisers or other advisers prior to their appearances?

Ms Holt: Not that I am aware of.

Mr McMahon: That is what I am saying. I sit on the quarterly meetings. When I read that question I asked my staff about it—like, is there anymore we need to know here?—and that is the first I have heard of it.

The CHAIRMAN: The next question related to youth transport and we have a covered that well enough in our responses we have talked about, as to what has happened there. Rockingham Magistrates Court: it appears that Rockingham Magistrates Court is not part of the current contract. Can you clarify whether that is correct; and if it is, why Rockingham is specifically excluded?

Mr McMahon: 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.

Hon AMBER-JADE SANDERSON: What about the police lockup in Rockingham?

[12 noon]

Mr Italiano: To be helpful here, I think the issue that has been identified is the transport of persons in custody from the Perth watch house to appear before the Rockingham court.

Hon AMBER-JADE SANDERSON: So while they are in police custody?

Mr Italiano: That is right. So that is not included in the current scope. That is a factual clarification; that is the reference.

Hon DARREN WEST: And the other way? Because I think it was that —

Mr Italiano: Bringing them in after arrest would be a police scope under any circumstance.

Hon DARREN WEST: But was there not a reason that they had to bring them to Perth—they could not hold them —

Mr Italiano: Police make a determination about where they want to hold people in custody in a given set of circumstances, so they may well deem that it is more operationally appropriate to convey the person from Rockingham to Perth watch house, as opposed to holding them in custody at the local police station.

The CHAIRMAN: It is probably outside your scope, but I know you have good experience with WAPOL so you might know. Would it be because their custody suite might be full in Rockingham, and that they have to take them to the watch house, or they see them as being a security issue or —

Mr Italiano: It is more likely to be that, obviously, once you have a person in custody in your police station, you are obliged to provide a standard of care for that person, which, in essence, is a manpower consideration for the shift at Rockingham. It may well be that the operational decision is, look, it would be preferable to spend the time conveying this person to the Perth watch house and releasing those officers to undertake duties for the rest of the shift rather than to hold that person in custody for the duration of that time. But it would be a time, place and circumstance thing that would be weighed up by the amount of tasking going on in the area at the time and other factors that would be going on. It is obviously geographically a longer conveyance period as well, given that it is more distant from the Perth watch house than most.

The CHAIRMAN: We are going to move to the area of the interaction with stakeholders, and one of the questions, again, that you have not had on notice. It is just that the department's submission talks about the directors general group as "determining a consolidated position in communication with the contractor". What does that mean?

Mr McMahon: It is listening to Police and the Department of the Attorney General through me and through the staff, so we get a common understanding of what we want out of the contract and then taking that forward to the contractor.

The CHAIRMAN: It seems to suggest that in the past communications have probably been fragmented and you have not all been on the same page. Is that what you are trying to achieve?

Mr McMahon: Look, I am not in the business of talking about the past, but I have to say that I think people have actually said to me that it is good that we are meeting regularly and we are getting common messages across. I am not trying to be sharp by that. I mean that I am not sure what happened in the past, but I know that meeting regularly and us getting consolidated positions on things has, I think, been appreciated by all. That is the feedback I get.

Mr Italiano: I think from my perspective —

The CHAIRMAN: It gives you that optionality to talk to —

Mr McMahon: It does, but I think the other thing is, as you would appreciate, the streamlining of justice aspect. I am meeting with the Commissioner of Police and the DG of the Attorney General regularly now, so we talk about all those issues.

The CHAIRMAN: I just want to draw your attention to the fact that it has gone past midday. I know we said we would have you here from 11.00 am to 12 noon, but we started a few minutes late. Are you okay for us to just continue for a few more?

Mr McMahon: Absolutely.

The CHAIRMAN: Great. What memorandums of understanding are in place between stakeholders to the CS&CS contract at present, who is party to those MOUs and how are they communicated?

Mr McMahon: The MOU that entitles the use of the Western Australia Police air wing for the transportation of youth detainees and adult prisoners or persons in custody is currently in place between DCS and WA Police. DCS has not utilised the police air wing for the movement of adult prisoners in the last year; however, on occasions inquiries are made by DCS for this service. The most recent inquiry by DCS was for the movement of an adult prisoner from Roebourne to Perth. DCS did not proceed with this escort due to the cost and availability. While the MOU sets out the access regime and costs for use of the police air wing service, it is seldom used by DCS for adult prisoner transport. Youth justice services has not utilised the police air wing since Serco commenced providing additional juvenile services in October 2013.

The CHAIRMAN: Is that the only MOU in existence?

Mr McMahon: Yes.

The CHAIRMAN: Who fills out the customer satisfaction survey among contract stakeholders, and does DCS or Serco administer that? The context is that the committee received evidence that 90 per cent of members of the WA Police Union are unaware of the survey. Given that Serco receives a customer satisfaction performance fee of 20 per cent for each quarter based on these surveys, is DCS concerned that the survey is either not robust enough, as suggested by the Inspector of Custodial Services, or not representative of stakeholders who interact with the contract?

Mr McMahon: Thank you. 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.

The CHAIRMAN: It has been suggested that there is confusion between who has the responsibility for prisoners at South Hedland Magistrates Court, and whether the police or contract staff are responsible for prisoners. Are you familiar with this issue?

Mr McMahon: I am familiar with it based on the answer I got from my staff. 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 the person is returned to WA Police following the court appearance, the person returns to being in the custody of WA Police. Handover of custody between agencies and the contractor is an intrinsic part of service provision within the functioning of the contract.

The CHAIRMAN: I think it comes down to more of a practicality thing in South Hedland. We have talked about that at the last hearings, about the need then to do these multiple searches of a prisoner because they leave custody for one thing and then the police officer then might become

the prosecuting officer in the case. Is that something you would consider in the new contract, that you would look at streamlining those sorts of things?

Mr McMahon: Absolutely. I think it came up last time: is there better use of Serco on the ground at that time? That was part of that questioning. So that is where my mind goes. That is about—again, I think it goes back to that first question—we have to look at that. The taxpayers are paying for a service; if we can get more out of it, then let us get more out of it. We need to look at those and we need look at those in the original context, and obviously any of the major policy decisions associated with that will have to go back to government. But absolutely we will be looking at that.

The CHAIRMAN: The arrangements for handling noncompliant prisoners who require transport, is that something that the contract staff are required and expected to deal with and they are trained to deal with people in that frame of mind?

Mr McMahon: The contractor is expected to undertake the movement and management of persons in custody consistent with the contractual provisions and are expected to manage noncompliant prisoners. The contractor must ensure that all persons in custody are classified and segregated in accordance with their gender status, as a juvenile or adult assessed-risk or protection classification and associations, including gangs and the ethnicity. Persons in custody shall be appropriately treated, held in appropriate accommodation options available, and managed while in custody at the custody centre. The contract provides for high-security escorts, as determined by DCS, to be undertaken by DCS. So, with our special operations group, if the risk is deemed—a Serco person does all the appropriate training, but we have some unwieldy characters and associations—that we need to bolster that from an external security first, and then potentially an internal security. The SOG officer may have more ability to do a forcible removal from a cell. Now, that is in the best interests of everyone to have that risk-managed approach as we go forward.

Hon AMBER-JADE SANDERSON: The evidence that was given through the prison officers' union was that regularly Serco officers will just refuse to take a noncompliant prisoner.

Mr McMahon: I would not use the term “regularly”, but I will look at my staff.

Hon AMBER-JADE SANDERSON: And that obviously then has to come out of the prison staffing to do that.

Ms Holt: Certainly within the agency all those issues, if they came up, would go through a central coordination point operationally and would be ordered to me as the contract manager to look at. But I have not received, and I am not aware of, any of those for some substantial period of time.

[12.10 pm]

Hon AMBER-JADE SANDERSON: So, every time a Serco officer says, “No; I’m not going to take this prisoner”, and it has to be done by DCS staff, that would come to your unit?

Ms Holt: It should, because there is the normal chain of going through an operational centre—coordination centre. Certainly that would come to me if they deem that that was necessary if it has not already been resolved on the ground.

Hon AMBER-JADE SANDERSON: Resolved by a DCS officer to take them?

Ms Holt: No; just resolved by ensuring that the contractor does what the contractor is contracted to do. That is what we generally would expect.

Hon DARREN WEST: If I could push on that for a little bit more then. In the instance where there is perhaps a disagreement about whether the contractor is obligated to move the prisoner or whatever the case may be and the obligation comes back onto either police or DCS, is there any financial adjustment made between the department and Serco? Sorry—to pitch it a different way, if you do work that may or may not be the role of Serco for whatever reason, is there any financial recompense to the department for doing their job?

Mr Italiano: 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. Just to give you an example, movements from Karnet are not included in the scope of some contractual movements that are included from other prisons. That is just how the contract applies. If you took the view that every prisoner movement from a prisoner is a Serco obligation, it is not the case. I am just trying to help the understanding of that.

Hon DARREN WEST: I am glad you are across it, because I found it very, very confusing and we have spent a lot of time and done a lot of research into this and put a lot of resources into this inquiry. It is very complex and confusing. I hope that in the future that is not always going to be the case.

Mr Italiano: I think the active question is, as with any contract: what scope do you want and what expenditure do you wish to undertake on that in relation to how else that service might be delivered? A real consideration, obviously, on any contract is the extent of scope. If you made a contractor, for argument’s sake, responsible tomorrow for every prisoner movement in the state, you would have a considerably larger contract than the one that currently exists.

Hon AMBER-JADE SANDERSON: I think you are right. It is also about the parties to the contract understanding and their education around what it is

Mr Italiano: Welcome to my every day.

Hon AMBER-JADE SANDERSON: On the role of WA Police, they like the idea of auxiliary police officers moving prisoners. Obviously, they do not want to take police officers off their duties. What is your view of that?

Mr McMahon: My view is that it is all risk management. Certain people in the system, if they are in police custody, I think the police would want to move them because of the risk of the person. At a lower-level risk, I think there is an appropriate auxiliary. I do not have an issue with that.

The CHAIRMAN: I think there is always going to be exceptional circumstances. I do not think there is a general rule.

Mr McMahon: Yes; it is and to me having been the commissioner for 18 months now, it is all about a risk matrix.

Hon AMBER-JADE SANDERSON: For those of low risk.

Mr McMahon: For low risk, if there is an appropriately trained person that has the right purpose and the right training, that is appropriate. That risk dynamic is what it is all about, and then you pay for the service you need for that risk. That is the interesting thing. It is no different, if I may, say to max, med and minimum-security classifications in prison. To run a maximum-security prison costs a lot more than it costs to run a minimum because you pay for the security. I am trying to use that as an analogy, and there is a certain person who should run those certain things that have certain training, certain qualifications et cetera. Could I just say, going forward, one thing we put in, we put a co-ord/ops centre that we have not had before in corrective services. That will feature heavily in what we do in the future. That is about that one-stop shop that actually double checks risk—stop there; go there. We have brought that in in 18 months because I think I was a bit surprised that we did not have an operations centre. FESA has one; police obviously has one. We need one to run operations. I am going back to your points about complexity, so I too felt it was a tad complex. I need a head of operations knowing where vehicles are, who is doing what, why they are being picked up. We need that. I am going back to your question about the staff. We have increased an ops centre. The staffing in contracts might be different but we have actually now got far greater

oversight, I think, than we have had. That is important, so the structural changes we make—we have got a far bigger intelligence section now—will help us with the future contractor and maybe have more control.

Hon DARREN WEST: Yes, because where there is confusion, uncertainty and three people have pointed fingers, that itself is a risk.

Mr McMahon: Yes.

The CHAIRMAN: The former Under Treasurer and now Mental Health Commissioner, Tim Marney, talks about having a dashboard, and that is exactly what you are saying about that. Having someone sitting at that dashboard and looking at exactly what is happening to make sure that machine is running as it does.

Our last area to cover in this hearing, commissioner, is regional transport. Question 4.3 has already been covered in relation to the constant handovers and paperwork required, so we have dealt with that and we do not need to talk about that. The transport options program with regard to what happens when a person in custody is released is not covered by the contract. There are issues with some of these people being returned to their home from where they have come. They are taken away, not at their will, and they are left at their own free will to return. That in itself can present some problems, so what sort of arrangements can DCS put in place in that regard?

Mr McMahon: There are things in place that I will articulate. 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.

The CHAIRMAN: The program is administered by DCS, is it?

Mr McMahon: I think it is —

Mr Italiano: It is one of the service agreements we have, so it is a contract we have with the not-for-profit sector separate to the CS&CS.

The CHAIRMAN: You consider that to be a more effective way of dealing with that rather than bringing it into the contract?

Mr Italiano: We are talking about released persons, so people released from prison are no longer in custody at that point, so it is more of a service for reasons you have outlined; that is, to get the person back to where they need to go, but under very different circumstances from a person who is obviously in custody.

Mr McMahon: I would not rule it out about going forward. I suppose it comes back to a previous conversation about: I do not need a reasonably highly trained person in a set of skills that is about risk. When a person leaves prison, I would like to get a non-profit that is focused on rehabilitation and getting them into volunteer programs and having that chat on the way home. I know it sounds—but anything we can do to improve that, that is outstanding because it is, hopefully, someone who makes the choice not to come back to prison.

The CHAIRMAN: I know certainly at a different time on a totally different matter, we were given information that people who are released are given a voucher to get on a bus. It is more attractive sometimes for them to exchange that voucher for alcohol and then they stay where they have been released from, create more problems and end up reoffending before they have even had that

opportunity to get back to where they are going. That whole program is vital, I think, to ensure that that circuit is broken.

Hon DARREN WEST: It is also important because the inn is getting full.

Mr McMahon: Absolutely! Hand on heart, rehabilitation does not stop once you leave prison.

The CHAIRMAN: This is our final set question. A submission was received expressing concern over a range of regional locations that are not serviced by Serco. Examples of this are Collie, Busselton, Karratha, and Derby. Are the court locations that are listed in the contract exhaustive or is there room for variation?

Mr McMahon: The court locations listed in the contract are subject to variation as determined by the scope and cost of these services. The contract specifies the locations from which the contract is required to perform a movement. Movements from locations not covered by the contract are undertaken by WA Police from ports and police stations and by prison officers or the SOG from DCS locations. DCS movements are controlled by the department's new coordination centre.

The CHAIRMAN: I think that brings us to the end of questions. Commissioner, Sue and Greg, on behalf of the committee, thank you very much for giving up your time twice to appear before us. As you know, it is really important for us to get really great evidence from the people involved in these contracts, and it will certainly help us with our deliberations. I want to charge every person in the room today to leave here and in some way today incorporate the word "optionality" into your speech because the more people who use it, next year it will be in Google's list of new words, and it will all be down to you, Commissioner McMahon.

Mr McMahon: Thank you very much. My mum told me a long time ago, "If you can't spell it, just make it up."

The CHAIRMAN: We have estimates today, and I am sure the word optionality might come up once or twice in estimates.

Mr McMahon: It is the new programic specificity. I think I am in trouble! Anyway, thank you very much.

The CHAIRMAN: Thank you very much.

Hearing concluded at 12.22 pm
